

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO
3 Criminal Action No. 96-CR-68
4 UNITED STATES OF AMERICA,
5 Plaintiff,
6 vs.
7 TERRY LYNN NICHOLS,
8 Defendant.

ff

9
10 REPORTER'S TRANSCRIPT
 (Trial to Jury: Volume 141)

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ff

12 Proceedings before the HONORABLE RICHARD P.
MATSCH,
13 Judge, United States District Court for the District of
14 Colorado, commencing at 4:38 p.m., on the 23d day of
December,
15 1997, in Courtroom C-204, United States Courthouse,
Denver,
16 Colorado.

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23
24
Transcription
Street,
629-9285

Proceeding Recorded by Mechanical Stenography,
Produced via Computer by Paul Zuckerman, 1929 Stout
P.O. Box 3563, Denver, Colorado, 80294, (303)

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1 APPEARANCES
2 PATRICK RYAN, United States Attorney for the
Western
3 District of Oklahoma, and RANDAL SENDEL, Assistant U.S.
4 Attorney for the Western District of Oklahoma, 210 West
Park
5 Avenue, Suite 400, Oklahoma City, Oklahoma, 73102,
appearing
6 for the plaintiff.
7 LARRY MACKEY, SEAN CONNELLY, BETH WILKINSON,
GEOFFREY
8 MEARNS, JAMIE ORENSTEIN, and AITAN GOELMAN, Special
Attorneys
9 to the U.S. Attorney General, 1961 Stout Street, Suite
1200,
10 Denver, Colorado, 80294, appearing for the plaintiff.
11 MICHAEL TIGAR, RONALD WOODS, ADAM THURSCHELL,
REID
12 NEUREITER, and JANE TIGAR, Attorneys at Law, 1120

Lincoln

for 13 Street, Suite 1308, Denver, Colorado, 80203, appearing
14 Defendant Nichols.

15 * * * * *

16 PROCEEDINGS

17 (In open court at 4:38 p.m.)

18 THE COURT: Please be seated.

19 The jury has sent word that they've arrived at
a
20 verdict. I'm going to return the jury now to the
courtroom to
21 return the verdict.

22 Before doing so, I want to caution all present
to
23 avoid any audible or other response to the verdict and
to
24 maintain the appropriate decorum in the courtroom.

25 We'll return the jury.

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1 (Jury in at 4:39 p.m.)

2 THE COURT: Members of the jury, good
afternoon.

3 JURORS: Good afternoon.

4 THE COURT: Have you now arrived at a verdict?

5 JURORS: Yes, we have.

6 THE COURT: And if your foreperson will pass
the 7 verdict form to Mr. Manspeaker, the clerk.

8 Members of the jury, you'll please listen to
the 9 reading of your verdict.

10 VERDICT

11 THE COURT: Criminal Action 96-CR-68-M, United
States 12 vs. Terry Lynn Nichols, defendant. Verdict:

13 We, the jury, upon our oaths unanimously find
as 14 follows:

15 Count 1, conspiracy to use a weapon of mass
16 destruction: Guilty.

17 Count 2, use of a weapon of mass destruction:
Not 18 guilty.

19 Count 3, destruction by explosive: Not
guilty.

20 If you find the defendant guilty of one or
more of the 21 crimes charged in these three counts, then answer the
following

22 question: Do you find that the Government proved
beyond a 23 reasonable doubt that the crime or crimes committed by
the 24 defendant, Terry Lynn Nichols, as found above resulted
in the

25 death of one or more of the persons named in the
indictment?

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1 Yes.

2 If your answer is yes, then answer the
following

3 additional question: Was the death of such person or
persons a

4 foreseeable result of the defendant's criminal conduct?

5 Answer: Yes.

6 Count 4:

7 First-degree murder of Mickey Bryant Maroney:
Not

8 guilty.

9 Second-degree murder of Mickey Bryant Maroney:
Not

10 guilty.

11 Involuntary manslaughter of Mickey Bryant
Maroney:

12 Guilty.

13 Count 5:

14 First-degree murder of Donald R. Leonard: Not
guilty.

15 Second-degree murder of Donald R. Leonard:
Not

16 guilty.

17 Involuntary manslaughter of Donald R. Leonard:

18 Guilty.
19 Count 6:
20 First-degree murder of Alan Gerald Whicher:
Not 21 guilty.
22 Second-degree murder of Alan Gerald Whicher:
Not 23 guilty.
24 Involuntary manslaughter of Alan Gerald
Whicher:
25 Guilty.

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1 Count 7:
2 First-degree murder of Cynthia Lynn Campbell-
Brown:
3 Not guilty.
4 Second-degree murder of Cynthia Lynn Campbell-
Brown:
5 Not guilty.
6 Involuntary manslaughter of Cynthia Lynn
Campbell-
7 Brown: Guilty.
8 Count 8:
9 First-degree murder of Kenneth Glenn
McCullough: Not
10 guilty.

	11	Second-degree murder of Kenneth Glenn
McCullough:	Not	
	12	guilty.
	13	Involuntary manslaughter of Kenneth Glenn
McCullough:		
	14	Guilty.
	15	Count 9:
	16	First-degree murder of Paul Douglas Ice: Not
guilty.		
	17	Second-degree murder of Paul Douglas Ice: Not
guilty.		
	18	Involuntary manslaughter of Paul Douglas Ice:
Guilty.		
	19	Count 10:
	20	First-degree murder of Claude Arthur Medearis:
Not		
	21	guilty.
	22	Second-degree murder of Claude Arthur
Medearis:	Not	
	23	guilty.
	24	Involuntary manslaughter of Claude Arthur
Medearis:		
	25	Guilty.

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	1	Count 11:
	2	First-degree murder of Paul C. Broxterman:
Not		

3 guilty.

4 Second degree murder of Paul C. Broxterman:

Not

5 guilty.

6 Involuntary manslaughter of Paul C.

Broxterman:

7 Guilty.

8 Dated 23 December, 1997, Niki M. Deutchman,

9 Foreperson.

10 Ms. Deutchman, were these and are these the

jury's

11 verdicts?

12 FOREPERSON: Yes, they are.

13 THE COURT: And I will ask each of you with

respect to

14 your individual verdict -- and I do so now referring to

you by

15 the chairs in which you sit, beginning with the

foreperson in

16 Seat No. 1.

17 The juror in Seat No. 1: Were these and are

these

18 your verdicts.

19 JUROR NO. 1: Yes.

20 THE COURT: The juror in Seat No. 2: Were

these and

21 are these are your verdicts?

22 JUROR NO. 2: Yes.

23 THE COURT: The juror in Seat No. 3: Were

these and

24 are these are your verdicts?

25 JUROR NO. 3: Yes, they are.

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1 THE COURT: The juror in Seat No. 4: Were
these and

2 are these your verdicts?

3 JUROR NO. 4: Yes.

4 THE COURT: The juror in Seat No. 5: Were
these and

5 are these your verdicts?

6 JUROR NO. 5: Yes, sir.

7 THE COURT: The juror in Seat No. 6: Were
these and

8 are these your verdicts?

9 JUROR NO. 6: Yes.

10 THE COURT: The juror in Seat No. 7: Were
these and

11 are these your verdicts?

12 JUROR NO. 7: Yes.

13 THE COURT: The juror in Seat No. 8: Were
these and

14 are these your verdicts?

15 JUROR NO. 8: Yes.

16 THE COURT: Juror in Seat No. 9: Were these
and are

17 these your verdicts?

18 JUROR NO. 9: Yes, sir.

19 THE COURT: Juror in Seat No. 10: Were these
and are
20 these your verdicts?

21 JUROR NO. 10: Yes.

22 THE COURT: Juror in Seat No. 11: Were these
and are
23 these your verdicts?

24 JUROR NO. 11: Yes, sir.

25 THE COURT: Juror in Seat No. 12: Were these
and are

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1 these your verdicts?

2 JUROR NO. 12: Yes, your Honor.

3 THE COURT: Now, we're going to return the
alternate
4 jurors to the courtroom at this time.

5 (Alternate jurors in at 4:46 p.m.)

6 THE COURT: The alternate jurors have been
returned to
7 the courtroom for the reason that the verdict in this
case that
8 has been arrived at by the 12 deliberating jurors is
that the
9 defendant has been found guilty of on Count 1, the

conspiracy

10 to use a weapon of mass destruction.

Count 2, 11 The jury found the defendant not guilty of

12 the use of a weapon of mass destruction, and Count 3,
13 destruction by explosive.

14 The juror -- the jury also found that with
respect to

15 Count 1 that the Government proved beyond a reasonable
doubt

16 that death resulted of one or more of the persons named
in the

17 indictment and that such death was foreseeable.

18 With respect to the first-degree murder
counts, the

19 jury found the defendant not guilty of first-degree
murder, not

20 guilty of second-degree murder, but guilty of
involuntary

21 manslaughter on each of those counts.

22 What that means -- and I am now addressing all
of

23 you -- is that because the conspiracy count, Count 1,
of which

24 the defendant has been found guilty and which also has
resulted

25 in foreseeable deaths of the persons named in the
indictment,

is a 1 carries the possibility of a sentence to death, there
recall that 2 further hearing that is required. Each of you will
went 3 when we went through the jury selection process and we
and the 4 through your views with respect to capital punishment
mentioned to 5 possibility of a sentencing stage that this was
must accept 6 you. And, of course, for you alternate jurors, you
but you're 7 the verdict of the deliberating jurors in this case,
sentencing 8 going to be asked to return to participate in the
for that 9 hearing, along with the other jurors. And the reason
some 10 is the possibility that as that hearing goes forward,
or other 11 juror may be unable to continue for illness, accident,
once 12 reason. And therefore, we need the alternate jurors
to 13 again. So you're going to be able -- going to be asked
14 return to serve further.

15 Now, given that tomorrow is a day of religious
preceding 16 significance for some persons and is also the day
and 17 another day of religious significance for other persons

I'm going 18 that Thursday is an additionally a national holiday,
punishment or 19 to wait to begin the trial on the question of
new 20 sentencing on Monday. And that, indeed, will then be a
you in 21 matter at that time. And, of course, as I explained to
were being 22 the course of the voir dire again, the time that you
involves 23 selected as jurors and alternate jurors, that stage
that 24 the same sort of process that the trial has followed:
statements, 25 there will be witnesses and exhibits -- opening

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fashion. I 1 witnesses, exhibits, and oral argument in the same
exact 2 cannot now tell you with any degree of certainty the
that 3 length of that trial; but here again, it is a matter
4 requires our attention and patience and care.
you 5 And I am going to let you go home now and to,
you see 6 know, take the time off between now and Monday to do as
7 fit; but there are some cautions here. I anticipate

that

8 during the -- as a result of the time that has been
involved in
9 the trial that some of the news media have identified
some of
10 you or all of you; that I, of course, announced the
name of the
11 foreperson here. And I want to simply advise you of
this: that
12 if anybody in any way attempts to contact you and in
any way
13 seeks to ask you about your verdict in this case, you
who
14 deliberated in the case, or in any way seeks to
influence you
15 in what lies ahead, the decisions that lie ahead, you
will, of
16 course, refuse to talk to any such persons in any way
about
17 this case and report such a contact to me through the
means
18 that you have been given here by calling the number
that you
19 have called and let me know immediately. You are not
to be
20 contacted by anybody during this time, not the
deliberating
21 jurors and not the alternate jurors.

22 Similarly, on your part, you're not to discuss
the
23 case with anyone. You know, this verdict, of course,
is now
24 public. I'm sure even as we speak, it is public. So I

want

25 you to recognize your continuing responsibility in this
matter.

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1 It is not your -- your job is not done.

2 And what, of course, is required of you is
that in

3 reaching the next decision to be reached here -- and
again,

4 just so that all of you have this well in mind, what
you will

5 be asked to do is to hear additional evidence, hear
from both

6 sides in the case; and then you'll be asked to make a
decision

7 as to what the punishment in this case should be for
this

8 conspiracy that resulted in death, whether that
punishment

9 should be death, life in prison without the possibility
of ever

10 being released, or a lesser sentence, in which case
what you

11 essentially do is turn the matter over to me to decide.
So

12 those -- you know, that's what the choices will be, so
that

13 you're clearly informed about that ahead of time. I
don't want

14 you to -- the fact that we have these several days
between now

15 and the penalty phase -- I don't want you to be
uncertain about

16 that.

17 I will, of course, at the conclusion of the
taking of

18 the evidence in that phase give you additional
instructions

19 about how to approach that -- those questions that will
be

20 before you. But the answers will have to be based upon
what

21 happens in this courtroom and nothing else.

22 There is no doubt that the verdict of the jury
in this

23 case will receive considerable public attention and
will

24 generate considerable comment in a number of ways and
may be

25 criticized by some, praised by others -- all of that.
You, of

14750

1 course -- you who have the responsibility for deciding
the

2 future of the defendant must avoid all of that
publicity, any

3 of that comment, so that you can again return to this
courtroom

and the 4 and participate in this process according to the law
5 evidence and your oath.

do. I 6 Now, that is not going to be easy for you to

7 realize that. I have some experience in making
decisions that

8 get public comment. And it is the same for you. You
have

9 judged the facts of this case, and there will be people
who

10 judge your judgment. But each one of you must
recognize that

11 you are indeed judges of the facts and that you will
now have

12 the responsibility to make an additional judgment that
has to

13 be made on the basis of the law and the evidence as it
will be

14 given to you.

15 So please be very careful. And the best thing
that

16 you can do, of course, is to -- and it really is
required that

17 you turn off, turn out, turn away from anything that
will

18 appear and including the comments, you know, of family
and

19 friends.

20 During this time between now and the
conclusion of the

21 penalty phase hearing, you must consider that your job.
The

22 priority is this case and the responsibilities that you
have
23 here; and, you know, nothing should interfere with
that. You
24 don't go back to work during this time. You continue
to be on
25 the job.

14751

1 Now, with that, members of the jury, I'm going
to
2 excuse you now, recess, and we will return Monday
following the
3 process, you know -- you'll be given some instructions
when we
4 recess here and will return to your responsibilities on
Monday
5 morning and resume at 8:45.

6 You are all now rejoined as a group of 18.
And for
7 those who did not deliberate in this case, the
alternate
8 jurors, I don't want you to question these folks in any
9 respect: Well, how did you decide this or that; tell
me about
10 your deliberations -- a natural thing now to want to
do. Don't
11 do it. These folks don't have to answer to anybody for
their

12 decision, and that anybody includes the six of you.

13 So you must accept their decision without
question. I

14 trust that you all understand that.

15 All right. You're now going to be excused,
and we'll

16 resume with this on Monday morning, the 29th, I guess
that is.

17 Yes, the 29th.

18 All right. Rest.

19 (Jury out at 4:47 p.m.)

20 THE COURT: Ms. Hasfjord, exhibit the verdict
form to

21 counsel and the defendant.

22 Mr. Tigar . . .

23 DEFENDANT'S MOTIONS

24 MR. TIGAR: Your Honor, because I'm uncertain,
given

25 the bifurcated proceeding, we move at this time
pursuant to

14752

1 Rule 29 of the Federal Rules of Criminal Procedure for
judgment

2 of acquittal and pursuant to Rule 37 of the Federal
Rules of

3 Criminal Procedure in arrest of judgment; and we ask
the Court

a 4 to record the fact that we made that motion and ask for
after the 5 briefing date on those to be set by the Court 28 days
phase. 6 verdict in a penalty phase, if there is a penalty

7 THE COURT: The Rule 29 motion: I don't
understand

8 the need for briefing with regard to that.

9 MR. TIGAR: Well, your Honor, we would request
the
10 opportunity to brief it. If the Court is disposed to
decide it
11 now --

12 THE COURT: Well, you know, my understanding
of the
13 procedure here is that none of the times for motions
begins on
14 the verdicts, because I think the verdicts are
interrelated.

15 And while, of course, the verdicts on the -- the not
guilty
16 verdicts are not affected by this and the verdicts on
Counts 4
17 through 11, I don't think -- you know, we should not
separate
18 out --

19 MR. TIGAR: I understand. I'm not moving
under Rule
20 33 for precisely that reason.

21 THE COURT: Yes. All right.

22 MR. TIGAR: The court understands that's why

I'm

23 moving under 29 and 37.

24 THE COURT: We don't have a whole and we don't
have a

25 final verdict yet in my view of the procedure until
there is a

14753

1 verdict on the sentencing phase.

2 MR. TIGAR: I understand your Honor's
position. I

3 want it to be on record because the rule is not clear.

4 THE COURT: I understand.

5 MR. TIGAR: And the time limits are
jurisdictional.

6 THE COURT: Well, the motion has been made.

7 MR. TIGAR: Thank you, your Honor.

8 THE COURT: And I'm not going to set briefing
on it

9 now. I think you've preserved your position.

10 I do, of course, have some other matters to
deal with

11 counsel, motions to be heard prior to what I told the
jury the

12 penalty phase to begin on Monday.

13 MR. TIGAR: Well, your Honor, the -- of
course, the --

14 I understand the United States' position is that

despite

15 acquittals on Counts 2 and 3 that they intend to go
forward.

16 Whether the United States believes that given the
verdicts on

17 Counts 4 through 11 they can under Ash vs. Swenson go
forward

18 is a different question; and that, we would be prepared
to

19 address at the earliest procedural hour.

20 THE COURT: Yes. Well, I can hear it
tomorrow. I can

21 hear it Friday. I'm at your --

22 MR. MACKEY: Tomorrow morning would be fine,
Judge.

23 THE COURT: I suggest we do it as early as
possible.

24 MR. TIGAR: Tomorrow morning, your Honor.

25 THE COURT: Tomorrow morning at 9?

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1 MR. TIGAR: Fine.

2 THE COURT: And we'll address that here, of
course.

3 I want you to review the verdict form before I
recess

4 and return it to the clerk. I don't want to lose track
of it.

5 Show it to Government counsel, too, please, a

party in

6 interest.

7 Let me just pronounce further that as I
instructed the

8 jury, they are not going to comment to anyone on their
verdict.

9 And it is my view that anyone attempting to contact
these

10 jurors and the alternate jurors to question them
concerning

11 this verdict or their continuing responsibilities in
this

12 case -- that such a contact would constitute an
obstruction of

13 justice.

14 We'll be in recess till 9:00 tomorrow morning.

15 (Recess at 5:03 p.m.)

16 * * * * *

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1 INDEX

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5 * * * * *

6 REPORTER'S CERTIFICATE

transcript from 7 I certify that the foregoing is a correct

Dated 8 the record of proceedings in the above-entitled matter.

9 at Denver, Colorado, this 23d day of December, 1997.

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Paul A. Zuckerman

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