

CLOSED, APPEAL

**U.S. District Court
DISTRICT OF KANSAS (Wichita)
CRIMINAL DOCKET FOR CASE #: 6:13-cr-10111-MLB-1**

Case title: USA v. Denson
Magistrate judge case number: 6:13-mj-06107-KMH

Date Filed: 06/19/2013
Date Terminated: 12/16/2013

Assigned to: District Judge Monti
L. Belot

Appeals court case number:
13-3329 10CCA

Defendant (1)

Steven J. Denson
TERMINATED: 12/16/2013

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*Designation: Public Defender or Community
Defender Appointment
Bar Status: Active*

Pending Counts

18:922(g)(1) and 924(a)(2) – Felon
in possession of a firearm
(INDICTMENT 06/19/213)
(1)

Disposition

18 months imprisonment; 3 years supervised
release; \$100.00 Assessment

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

**Highest Offense Level
(Terminated)**

None

Complaints

Disposition

18:922(g)(1) and 924(a)(2) Felon in possession of a firearm (COMPLAINT 6/7/2013)

Plaintiff

USA

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Date Filed	#	Page	Docket Text
02/06/2014	42	3	<p>REDACTED TRANSCRIPT of Motion Hearing held 9-5-2013 as to Steven J. Denson before Judge Belot, Court Reporter: Cindy Schwemmer.</p> <p>Pursuant to Judicial Conference Policy, this Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber for 90 days from the filing of the original unredacted transcript. After that date (see original transcript filing), the transcript may be obtained through PACER.</p> <p>(Schwemmer, Cindy) (Entered: 02/06/2014)</p>

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)	
)	
)	Plaintiff,
)	District Court
)	Case No. 13-10111
vs.)	Circuit Court
)	Case No. 13-3329
STEVEN J. DENSON,)	
)	
)	Defendant,
)	

TRANSCRIPT OF MOTION HEARING

On the 5th day of September, 2013, came on to be heard **Motion to Suppress** in the above-entitled and numbered cause before the HONORABLE MONTI L. BELOT, Judge of the United States District Court for the District of Kansas, Sitting in Wichita.

APPEARANCES

The Plaintiff appeared by and through Mr. Matt Treaster;

The Defendant appeared by and through Mr. Tim Henry.

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25**I N D E X****SEPTEMBER 5, 2013:****WITNESS****BRANDON BANSEMER**

Direct by Mr. Treaster:	4
Cross by Mr. Henry:	25
Redirect by Mr. Treaster:	50

JOSH MOFF

Direct by Mr. Treaster:	51
Cross by Mr. Henry:	58

NEAL TIERNEY

Direct by Mr. Treaster:	72
Cross by Mr. Henry:	84

STEVEN DENSON

Direct by Mr. Henry:	92
Cross by Mr. Treaster:	102
Redirect by Mr. Henry:	104

BRANDON BANSEMER (Recalled)

Continued Direct by Mr. Treaster:	106
Cross by Mr. Henry:	107

Certificate of Certified Shorthand Reporter: 113

EXHIBITS

	I	O	A
G-1	94		
G-1-B	109		
G-1-C	110		
G-1-D	110		
Deft 2	91	91	91

1 (Beginning at 10:05 a.m.
2 September 5, 2013, the following
3 proceedings were held.)

4 THE COURT: This is United States against
5 Steven Denson. Case number 13-10111. Matt Treaster
6 appears for the Government.

7 I assume that you are Steven Denson.

8 DEFENDANT: Yes, sir.

9 THE COURT: Defendant appears with Tim Henry.
10 This is a Motion to Suppress. Call your first witness,
11 please.

12 MR. TREASTER: Your Honor, United States would
13 Brandon Bansemer.

14 MR. HENRY: Your Honor, could I ask that the
15 other witnesses be sequestered.

16 THE COURT: Are there any other witnesses
17 here?

18 MR. HENRY: Marshal Moff and Agent Tierney.

19 THE COURT: Tierney is the case agent, isn't
20 he?

21 MR. HENRY: That's true. He's excepted. I'm
22 sorry, but U.S. Marshal Moff is --

23 THE COURT: Josh, we'll call you when we need
24 you.

25

1

BRANDON BANSEMER

2

Having been first duly sworn to tell the truth, the

3

whole truth and nothing but the truth, testified as

4

follows on:

5

DIRECT EXAMINATION

6

BY MR. TREASTER:

7

Q Please state your name for the record.

8

A Brandon Bansemer.

9

Q Sir, how are you employed?

10

A Yes, sir.

11

Q How are you employed?

12

A I'm employed with the Kansas Department of

13

Corrections Enforcement Application Investigation unit.

14

Q What do you do in that capacity?

15

A I'm assigned as a special agent with KDOC. Our

16

primary objective is to locate and apprehend absconders

17

or fugitives from state parole. We're also assigned to

18

the United States Marshal Fugitive Task Force as task

19

force officers to assist them.

20

Q How long have you done your job?

21

A I've worked with DOC since 2008. Been assigned with

22

the task force since 2008. I did leave for a short

23

period of time and came back last year.

24

Q Do you have any other law enforcement experience?

25

A I did. I started out in 2003 with Derby police

1 department as a patrol officer. Worked there until the
2 time I came to KDOC. I've been --

3 Q Were you assigned a subject file on Steven J Denson?

4 A Yes, sir.

5 Q What was the purpose of that?

6 A Just to locate and apprehend Mr. Denson on an
7 absconder warrant through Kansas Department of
8 Corrections.

9 Q And there was a warrant out for his arrest through
10 KDOC?

11 A Yes, sir.

12 Q Show you what's been premarked as Government Exhibit
13 6. Do you recognize that, sir?

14 A I do, sir.

15 Q What is that?

16 A That is our standard warrant that is given to us
17 that basically states that Steven J Denson is an
18 absconder through DOC.

19 Q And based on that, then, you did a file review?

20 A Yes, sir.

21 Q As part of that, what did you do?

22 A Initially when we open a file we take all the
23 pertinent information from the parole file, we enter it
24 into a data base. And from there we start developing
25 leads, collateral leads, information that could possibly

1 help us apprehend or locate Mr. Denson, whether it be
2 here in Sedgwick County, Kansas, or other parts of the
3 United States.

4 Q As part of that, do you look at their background?

5 A Yes, sir.

6 Q Could you tell from your file what Mr. Denson's
7 prior convictions were for?

8 A Yes, sir.

9 Q And what was that?

10 A They were two counts of aggravated robbery.

11 Q And that was in the State of Kansas?

12 A Yes, sir.

13 Q Did he have any gang member ties that you could
14 tell?

15 A According to the file and also through Wichita
16 Police Department gang data base, he was associated with
17 a criminal street gang.

18 Q The warrant itself, the absconder warrant, when was
19 that issued?

20 A The warrant was issued November 7, 2012.

21 Q Did he have any other outstanding warrants that you
22 were aware of?

23 A He did. In the file that was given to me, he had an
24 outstanding warrant through the Wichita Police
25 Department, I believe for either possession of

1 paraphernalia or possession of marijuana. He also had a
2 child support warrant through Sedgwick County. And he
3 was a subject of a possible felony pick up on a flee and
4 elude case through Wichita PD.

5 Q Okay. So he has a bench warrant for a misdemeanor
6 drug case?

7 A Yes, sir.

8 Q He also has a warrant for failure to pay child
9 support?

10 A Yes, sir.

11 Q And then he's the subject -- a pick up order had
12 been issued for him in relation to a high speed chase he
13 got into with law enforcement?

14 A Yes, sir. That was in the file.

15 Q Okay. Now, after you looked at his past, did you
16 try to find out -- look for leads on where he might be
17 currently?

18 A I did.

19 Q And what did you do?

20 A We checked with family members. We checked with
21 friends. There wasn't really much in the file. He had
22 relatives in Dodge City, Kansas. He didn't really have
23 many associates here in Wichita. We did exhaust a lot
24 of our leads here in Sedgwick County. We did not locate
25 him from November until we came in contact with him in

1 February.

2 Q Okay. So when you did this check, approximately
3 what time frame are you talking about?

4 A Initially when I opened my file, it was in November.
5 I checked on the 13th with Social Security. I checked
6 with SRS. I checked with West Star. There was no leads
7 that were developed out of there. He had a brother in
8 town that had not seen him, supposedly; and he also had
9 a grandmother still in Wichita; but his mom was located
10 in Dodge City, Kansas, per the file.

11 Q Now, on February 26 of 2013, did you do a West Star
12 records check a second time?

13 A I did, sir.

14 Q And what did you uncover then?

15 A I found that through West Star, after giving his
16 social security number, it came to light that he was an
17 active user of West Star with a new address in Wichita,
18 Kansas.

19 Q And what was that address?

20 A It was -- (Redacted) North Hillside.

21 Q Okay. And was he listed as a primary account holder
22 or secondary?

23 A He was a primary account holder.

24 Q Were there any other names associated with that
25 account?

1 A Yes, there was.

2 Q And who was that?

3 A Secondary was listed as a Keeana Miller.

4 Q And was that of any importance to you?

5 A Not at the time. There was a female identified in
6 the file as a Keeana but no last name and the spelling
7 was different. But I did go ahead and do a records
8 check on her, too, to develop further information.

9 Q What did that tell you?

10 A I found out that Keeana Miller, also has an alias
11 for a Keeana Morris. After I checked through KBI, found
12 that she had an active arrest warrant out of Shawnee
13 County, Kansas.

14 Q Okay. What was that warrant for?

15 A Original charge was probation violation; and they
16 put in next to the charge, flee and elude LEO.

17 Q Were you able to connect Keeana Miller or Keeana
18 Morris, then, to Mr. Denson?

19 A Yes. Through West Star, they were able to give me
20 the last four of their social per their policy. I was
21 able to connect the last four of her social through what
22 the teletype was through NCIC.

23 Q So at this point you have both Ms. Morris or
24 Ms. Miller and Mr. Denson associated with -- (Redacted)
25 North Hillside?

1 A Yes, sir.

2 Q And they both have outstanding warrants at that
3 point?

4 A Yes, sir.

5 Q Did you check employment records for Mr. Denson to
6 see if he was employed anywhere?

7 A Through the State of Kansas there was no earnings
8 for that quarter for Mr. Denson.

9 Q Okay. What about vehicles registered to him?

10 A I did an NCIC check for any vehicles with the last
11 name of Denson or Steven. There was nothing that came
12 back to him.

13 Q Okay. So on -- after you get this hit on the West
14 Star records on the 26th of February, what do you do?

15 A At that point I get all my intelligence together and
16 we decided to do an early morning operation to try to
17 apprehend Mr. Denson.

18 Q Okay. And why did you want to do an early morning
19 operation?

20 A We have more chances for success in catching people
21 at their residence in the early hours of the day versus
22 mid day or early evening, or even late evening
23 sometimes.

24 Q Was part of that based on your belief that he wasn't
25 employed?

1 A That is true, sir.

2 Q So you get a team together?

3 A Yes, sir.

4 Q How does that process work?

5 A Well, since we're a part of the United States
6 Marshal's task force, we had a couple of deputies that
7 were assigned to the warrants division. Task force
8 commander is Josh Moff. He's our coordinator. So I was
9 able to contact him. And he also contacted another
10 deputy. And there are two other work partners that are
11 also assigned.

12 Q So it was Mr. Moff, Deputy Moff, and another U.S.
13 Marshal?

14 A Yes, sir.

15 Q And then three enforcement officers from state
16 parole?

17 A Yes, sir.

18 Q Okay. What was decided to do then?

19 A At that point in time we decided to set up
20 surveillance first. Kind of get a layout of the
21 residence, see if there was any vehicles that we could
22 connect to 'em. And also try to get in the area.
23 Because the way it's set up is extremely difficult to
24 get good surveillance on that particular duplex just
25 because it's on a major -- major street. It's pretty

1 close to 17th Street on Hillside.

2 Q Okay. And this is on February 27th?

3 A Yes, sir.

4 Q So what happens when you all go over there?

5 A At that point I set up surveillance on the rear. I
6 was able to see the back of the duplexes. There's two
7 back doors, one for each unit. My partners, Special
8 Agent Brad Jones and Special Agent Mark Richardson were
9 setting up to watch the front door. Approximately about
10 20 minutes of surveillance while we waited for Deputy
11 Moff and the other deputy to arrive.

12 Q While you're doing your surveillance, do you see
13 anything?

14 A Nobody came in or out of the residence from where I
15 was at.

16 Q Once Deputy Moff gets there, what happens?

17 A At that point we decide to move up and attempt to
18 try to contact and apprehend Mr. Denson.

19 Q What do you guys do?

20 A The first team, which consisted of Jones and
21 Richardson, went to the front door. I believe Deputy
22 Moff did, too. Deputy Lemer came to the back with me
23 because he came from a different area. I cut across the
24 yard to look at the back of the duplex, try to get a
25 layout of it to see how many bedrooms, if I could see if

1 there was a basement access. As I made it to the back
2 of the residence -- it was snow-covered ground from all
3 the snow that we've had. I noticed there was footprints
4 in the snow from the back door and it appeared they led
5 to the front around the side of the house.

6 Q Okay. So there was footprints going from the back
7 to the front?

8 A Yes, sir.

9 Q Did you see anything else that indicated somebody
10 might be there?

11 A I looked at the meter and it was spinning extremely
12 fast, the electric meter, appeared that electricity was
13 on and it looked like someone was using a high amount of
14 it.

15 Q Okay. Did you see any vehicles parked in front of
16 this house?

17 A We made it to the front. I did notice a van,
18 conversion type van. It looked like it was snow-packed
19 in, like it was stuck in the driveway. The tag did not
20 come back to anything I recognized for my target
21 Mr. Denson.

22 Q You said you checked windows. Anything of interest
23 you saw there?

24 A We checked the windows on the side. It looked like
25 it possibly was a two-bedroom residence, maybe a bath

1 kind of in the middle. When I got to the front door, I
2 noticed that it was a glass pane on the top and wooden
3 frame door. Glass pane was uncovered. I was able to
4 visually see inside the apartment from outside the door.

5 Q Okay. What did you see as you looked in the front
6 door?

7 A I could see two couches, a suitcase on the floor
8 that was open, television and old microwave. Just kind
9 of household items. And then I could see all the way
10 into the kitchen area from the living room in and I
11 could see the back door from there.

12 Q Okay. So once you get to the front door, what do
13 you do?

14 A At that point, the officers were in place. Started
15 knocking and announcing our presence and identifying
16 ourselves and the reason why we were there.

17 Q Do you knock quietly or loudly? How do you do this?

18 A Normally what we do is we don't knock super
19 aggressively. We knock loud enough to make sure that
20 they can hear us in the residence, or at least we think
21 they can hear us, and also make sure the neighbors can
22 hear us; and we are identifying ourselves, why we're at
23 somebody's door.

24 Q Okay. And did you do that?

25 A I did that several times, yes, sir.

1 Q How long did you knock at this door?

2 A Initially I knocked probably maybe one to two
3 minutes. And then Deputy Moff told me that he had a
4 device that he wanted to deploy and see if we could
5 determine if there was anybody in there.

6 Q Okay. What did he do then?

7 A At that point he went back to his vehicle which was
8 a little further away. I stayed on the front door.
9 Knocked occasionally. There was a gentleman that came
10 out of the duplex to the right of me, I believe, at ----
11 (number redacted) and he left the area.

12 Q You just let him leave?

13 A He didn't seem interested in talking with us and I
14 asked him if I could show him the picture. He basically
15 said no and walked off.

16 Q Okay. So, while Deputy Moff is going to go get this
17 device, you guys continue to do what?

18 A We continued to knock. Nothing really came of it.
19 Deputy Moff came back probably maybe a minute, two
20 minutes later. And he deployed the device on the
21 residence.

22 Q While you were there, did you see anybody moving
23 within the house?

24 A No, I did not.

25 Q So he deploys this device. What happens?

1 A At that point the device indicates the presence of
2 somebody being in the residence and it gave us an
3 approximate feed of where this person is.

4 Q What do you -- did you guys continue to knock?

5 A At that point we kind of stepped up a little bit and
6 began knocking louder and identifying ourselves louder
7 than what we had before.

8 Q Okay. How long do you continue to knock?

9 A I'm guessing probably knocked for another minute or
10 two to the point where a piece -- there was three pieces
11 of glass on the top portion. There's -- on the left in
12 the middle and then the right side there was a piece of
13 plywood that didn't appear to be intact very well; and
14 that fell off while I was knocking on the door. I was
15 trying not to knock -- to break the glass, but the piece
16 fell off.

17 Q Okay. And so this is all at the front door?

18 A Yes, sir.

19 Q What happens then?

20 A At that point we continue yelling; and then I put my
21 hand through the open part of the door and unlocked it
22 and opened it.

23 Q Okay. What happens at that point?

24 A At that point we made a couple more announcements at
25 the door yelling for Mr. Denson to come out. We heard

1 nothing. So at that point we made entry into the
2 residence.

3 Q What happens?

4 A At that point I cleared through the living room to
5 the back door portion and opened it to allow Deputy
6 Lemer into the residence. And then I heard Deputy Moff
7 and my partner, Special Agent Richardson, making contact
8 with somebody by yelling verbal commands for them to
9 show 'em their hands.

10 Q Did you see anybody at that point?

11 A I came back -- the way it was set up, it's really a
12 small hallway. From the living room to the left was an
13 entryway into the hallway. There were two bedrooms and
14 a bath. They pretty much filled that hallway, just
15 those two. At that point they were yelling into the
16 room that was on the right from the bath.

17 Q Okay. What do you see next?

18 A Special Agent Richardson told me that it was our
19 gentleman Mr. Denson they had contact with. He called
20 out he was compliant. He did not give any trouble. He
21 kept his hands where he needed to and he was handcuffed
22 in the hallway portion and then passed on to me.

23 Q How was he dressed at that point?

24 A At that point he had no shirt on and a pair of
25 shorts, no shoes.

1 Q Okay. What did you do with him?

2 A After he was handcuffed behind his back, we cleared
3 the couch in the living room and we sat him down there
4 to detain him.

5 Q Okay. While you're doing this, what's going on?

6 A At that point after that was done, Special Agent
7 Richardson assisted clearing that portion of the bedroom
8 with Special Agent Jones, and Deputy Moff cleared the
9 adjacent bedroom which was to the left of the bathroom
10 for any other persons.

11 Q Okay. Was there a concern that the Defendant's
12 girlfriend might also be there?

13 A Due to the fact that there was delayed response when
14 we came to the door, we thought there might have been
15 somebody else in there, including his girlfriend, yes.

16 Q Which would be Ms. Miller or Ms --

17 A Ms. Miller, Morris, yes.

18 Q However she goes by. With his gang ties, was there
19 a concern that there might be gang members or friends of
20 his gang members in the house?

21 A There was a possibility. We weren't going to take
22 any chances. For officer safety, we needed to clear the
23 rest of the residence.

24 Q Okay. And then what happened?

25 A At that point after Deputy Moff cleared the vacant

1 bedroom, he yelled for me. And Deputy Lemer was
2 watching Mr. Denson. I stepped into that room, and
3 there was an open closet door, and I walked in and
4 Deputy Moff told me to look in the closet. I did.
5 There was absolutely nothing in that bedroom. There was
6 nothing in the closet. But when I looked in, I saw kind
7 of towards the back portion, two long guns in an upright
8 position against the wall.

9 Q So in the bedroom, this bedroom itself, there's
10 absolutely nothing?

11 A There's no personal property in that bedroom.

12 Q No furniture?

13 A No furniture; no dressers; no beds; no clothing.

14 Q Okay. But there was these two guns in this closet?

15 A Yes, sir.

16 Q Okay. And was there anything else in the closet?

17 A No, sir.

18 Q Could you describe the guns?

19 A Two guns were wooden stock in nature. One had a
20 bolt that was open, looked like it was missing a
21 magazine. The other one, I believe the bolt was closed.

22 Q Okay. Any ammunition?

23 A I did not find any ammunition. Then when I checked
24 the weapons to make them safe, there was nothing loaded
25 in either one.

1 Q Okay. What is done with the weapons at this point?

2 A The weapons -- when I cleared them, they were
3 brought out of the closet and leaned up against the
4 wall. I had my gloves on. I did not handle them after
5 I cleared them. And Deputy Moff wanted to call Special
6 Agent Tierney with ATF.

7 Q Okay. And then what was done with the Defendant?

8 A Defendant was on the couch; but because of the
9 temperatures, we were going to allow him to get dressed
10 and get some clothing.

11 Q Okay. And did you allow him to do that?

12 A We did.

13 Q And then what happens?

14 A At that point we're in stand-by mode for Special
15 Agent Tierney to arrive on-scene. Mr. Denson had not
16 caused any problems. I believe we allowed him to smoke
17 a cigarette while we were waiting. I can't remember the
18 exact time frame when Special Agent Tierney arrived.
19 But we all remained in the living room portion.

20 Q Okay. And then eventually the Defendant's taken to
21 the county jail?

22 A Yes, sir.

23 Q Who did that?

24 A Special Agent Richardson and Jones transported
25 Mr. Denson.

1 Q Was he asked any questions while he was on the
2 couch?

3 A He wasn't asked any questions about the weapons.

4 Q Okay. What about anything else?

5 A Not really. Mostly casual talk. I did ask him a
6 couple questions when I booked him into Sedgwick County
7 jail about his whereabouts just for parole and about his
8 girlfriend also.

9 Q About her whereabouts?

10 A Yes, sir.

11 Q Okay. Now, the -- you talked about footprints from
12 the back door to the front door, you saw those in the
13 snow?

14 A Yes, sir.

15 Q Did they appear to be fresh footprints?

16 A They did.

17 Q Okay. So that indicated to you somebody might have
18 just entered the house?

19 A Good possibility.

20 Q Okay. I'm going to show you some pictures.

21 (Off-the-record discussion
22 between Mr. Treaster and
23 Mr. Henry.)

24 BY MR. TREASTER:

25 Q I'll hand you what's been premarked as Government

1 Exhibit 1. Can you tell us what's in that photograph?

2 A This is a front photograph shot of the duplex of
3 ---- (number redacted) and ---- (number redacted) North
4 Hillside.

5 Q And as you look at it, which is the half of the
6 duplex that Mr. Denson was found in?

7 A Looking at this photo, it's going to be on the left
8 side. It would be the left duplex.

9 Q Okay. And here's Government Exhibit 2. What does
10 that photograph depict?

11 A This photograph is going to be of the front door/
12 porch portion of ---- (number redacted) North Hillside.

13 Q It's just a close-up?

14 A Yes, sir.

15 Q And in looking back at Government Exhibit 1, there's
16 some baggage or bags on the front porch there. Did you
17 discover what that was about?

18 A I did, sir.

19 Q What was that?

20 A Mr. Denson told me that he had got into an argument
21 with Keeana the evening before and had kicked her out
22 and those items were her belongings.

23 Q Okay. And here's Government Exhibit 3. What is
24 that?

25 A This is a little bit more of a close up of the door,

1 identifying the two panes of glass and the piece of
2 wood.

3 Q And the piece of wood is on the right pane as you
4 look at it?

5 A Yes, sir.

6 Q Is that the piece of wood that fell out when you
7 were knocking?

8 A Yes, sir.

9 Q The other two panes were glass so you could see
10 through those?

11 A Yes, sir. They were unobstructed.

12 Q Government Exhibit 4, what is that?

13 A This was a shot that I had taken from the front door
14 into the living room portion. It showed the couches and
15 showed the television and the open bag of clothes that
16 was on the floor.

17 Q And is that the couch that the Defendant was sat on?

18 A The three-cushion couch is the one that the
19 Defendant was sitting on.

20 Q And then Government Exhibit 5, what is that?

21 A This was a shot of the bedroom that was to the left
22 of the bathroom where we had located the two long guns
23 in the closet.

24 Q Okay. And the guns were not found in this position?

25 A They were not, sir.

1 Q They were actually inside the closet?

2 A They were inside the closet to the left against the
3 wall.

4 Q And then I'll hand you what's been premarked as
5 Government Exhibit 8. Can you identify that for the
6 Court?

7 A I can, sir. This is what they call the Kansas
8 Prisoner Review Board Certificate of Release, post
9 release, for Steven J Denson. This item here is what
10 the people coming out of a facility going to parole are
11 given. They review it and they sign it. Gives their
12 last known address and explains the conditions of parole
13 on the back.

14 Q That's Mr. Denson's release, certificate of release?

15 A Yes, sir.

16 Q Could you read for the Court condition number 12,
17 please?

18 A I can, sir. Condition number 12 is titled Search.
19 It states here: Be subject to a search by parole
20 officers or designated law enforcement officers of my
21 person, residence or any other property under my
22 control.

23 MR. TREASTER: Your Honor, I have no further
24 questions. I would just move to admit Exhibits 1
25 through 6 and 8.

1 THE COURT: Any objection to the exhibits,
2 Tim?

3 MR. HENRY: No objection, Your Honor.

4 THE COURT: All right. Cross-examination.

5 **CROSS EXAMINATION**

6 BY MR. HENRY:

7 Q Starting off where Mr. Treaster ended. You were --
8 regarding the pictures, you were contacted by my
9 investigator Anthony Scognamillo yesterday and -- about
10 the photographs; is that correct?

11 A That is correct, sir.

12 Q And did you send over to us all the photographs that
13 were taken in the -- of that morning by you?

14 A Yes, sir.

15 Q And I'm going to hand you what's been marked as
16 Defendant's Exhibit 1. These may be somewhat out of
17 order, but -- if you would just give me a moment.
18 They're in a folder.

19 And you reviewed all the pictures; is that
20 correct --

21 A Yes, sir.

22 Q -- prior to your testimony here today?

23 A Yes, sir.

24 Q Okay. If you could just maybe look through those
25 and put them in the proper order again if you don't

1 mind. And some of these are duplicative of what
2 Mr. Treaster just had admitted; is that correct?

3 A That's correct, sir.

4 Q But would this be the entire amount of photographs
5 that you took that day?

6 A Yes, sir.

7 (Off-the-record.)

8 A I believe that's as close to the order from the way
9 I remember.

10 Q Is that the entirety of all the photographs that you
11 took that day?

12 A Yes, sir.

13 Q Okay. Now, with respect to the room where the
14 closet door was open that had the weapons that were
15 found by you and Agent Moff or Marshal Deputy Moff, that
16 room was empty of anything else; right? As far as
17 property goes?

18 A That's correct sir.

19 Q No bed. Didn't look like anybody lived there; is
20 that correct?

21 A That is correct, sir.

22 Q And that is actually the first bedroom to the left
23 as you entered the living room; is that correct?

24 A When you enter the living room and then you take a
25 left at that small hallway, it will be the first one to

1 the left, that is correct, sir.

2 Q I think you said that the one on the right from the
3 bathroom, that's if you're looking at the bathroom,
4 where Mr. Denson was found. He was in the room that had
5 property in it, had a mattress that he was on. That's
6 to the -- that's to the west?

7 A That would be, yes, sir, that would be to the west.

8 Q Okay. The southwest bedroom versus the southeast
9 bedroom?

10 A Yes.

11 Q And in approaching the house, you came along the
12 duplex side of ---- (number redacted), not ---- (number
13 redacted) is that correct?

14 A Yes, sir.

15 Q And you were looking inside the house and you were
16 able to determine that that was a two-bedroom duplex?

17 A I was guessing it was just from the layout of how
18 the windows were.

19 Q Okay. And doesn't it appear that the sunshine is
20 flowing into that front southeast bedroom that was
21 empty?

22 A Yes, sir.

23 Q Okay. And can you get to those pictures as well?

24 A Yes, sir.

25 Q And, again, all these pictures were taken that day?

1 MR. HENRY: Your Honor, I would ask that they
2 be admitted at this time if there's no objection from
3 the Government.

4 MR. TREASTER: No objection.

5 THE COURT: They're in.

6 BY MR. HENRY:

7 Q In looking at the pictures, that front room was
8 quite illuminated; is that correct?

9 A Yes, sir.

10 Q But that's, again, when you go into this house, you
11 announced your presence, but you go in and you are
12 looking for not just Mr. Denson but maybe anyone else
13 for safety purposes; is that right?

14 A Yes, sir.

15 Q And I noticed in all of these pictures that you have
16 in front of you that there's no picture of the actual
17 bedroom where my client was arrested out of?

18 A No, I did not get that photo.

19 Q Do you have any reason for that?

20 A It was an oversight on my part.

21 Q That room was searched thoroughly, wasn't it?

22 A I believe it was.

23 Q And, in fact, it was pretty tore up and the mattress
24 had been flipped over and all the drawers or clothing
25 were searched and things like that. Is that correct?

1 A Yeah. I believe there was like a futon bed and a
2 dresser and a television was the only items in there, of
3 furniture.

4 Q And did you take part in that search?

5 A I did not.

6 Q Okay. Did you search the kitchen?

7 A There wasn't much to search in the kitchen. There
8 was the kitchen and there was a small little back room
9 area that led to the back door.

10 Q And you opened up that door and let Agent Lemer in?

11 A Deputy Marshal Lemer, yes, sir.

12 Q And did you or anyone else search through any of the
13 trash that was in the kitchen?

14 A I don't believe we did, sir.

15 Q But that first room that's searched upon -- and,
16 again, the first thing that's done is you identify my
17 client in that one bedroom, the southwest bedroom, and
18 then he's taken into custody; is that correct?

19 A That's correct, sir.

20 Q That's essentially the first thing that's done; is
21 that correct?

22 A Yes, sir.

23 Q And then you have to clear the couch because you're
24 going to put him on the couch; is that right?

25 A That's correct, sir.

1 Q And then the rest of the living room where he's at
2 is also cleared; is that correct?

3 A It's cleared for any potential weapons.

4 Q But, again, he's in handcuffs; is that correct?

5 A Yes, sir.

6 Q And he's cuffed with his hands behind his back; is
7 that right?

8 A That is correct.

9 Q And during the whole time, he was cooperative and
10 remained seated there; is that right?

11 A Yes, sir.

12 Q And then the -- so after the living room is
13 searched, his bedroom is searched; is that correct? By
14 two officers?

15 A I believe they went in and cleared it, yes, sir.

16 Q And just from a visual of looking into that front
17 southeast bedroom, it could be seen that there was no
18 one there; is that correct?

19 A There was nobody in the main portion.

20 Q And, in fact, that closet -- and, again, I think in
21 the pictures that are in Defendant's Exhibit 1, if we go
22 to the -- I think there's four or five pictures of just
23 the closet area.

24 A Uh-huh.

25 Q Now, the closet is -- it's not very deep but it has

1 a -- it goes back to the left; is that correct?

2 A That's correct, sir.

3 Q And, in fact, there's -- the picture looking
4 straight into the closet has some hangers showing and a
5 rod; is that correct?

6 A Yes, sir.

7 Q And, again, the guns are pulled out for this
8 picture; is that right?

9 A Yes, sir.

10 Q To the left of the door area there is approximately,
11 what, two or three feet, maybe four feet, where there
12 are boards nailed into the sides for shelving; is that
13 correct?

14 A That's correct, sir.

15 Q But there was no shelving?

16 A No, sir.

17 Q And, again, there appears to be the appearance of a
18 hanger laying down on the ground in that hidden area of
19 the closet; is that correct?

20 A Yes, sir.

21 Q And you can't see that hanger from the straight-on
22 photograph from the outside of the closet, can you?

23 A No, sir.

24 Q Okay. So these guns were not just -- they weren't
25 visible from looking straight in. You had to actually

1 stick your head into the closet and then they would have
2 been back against the interior wall?

3 A Yes, sir.

4 Q Okay. And the -- okay. Now, did you bring your
5 report today?

6 A I did, sir.

7 Q Do you have it in front of you?

8 A I do, sir.

9 Q Okay. That report has a -- it has a time and,
10 again, you may be -- hopefully you'll be able to explain
11 this -- but it appears that it's some type of an,
12 initially, a computerized form that you would have
13 filled in regarding which agents were there and some of
14 the background information. Is that correct?

15 A Yes, sir.

16 Q And you have down there on the KDOC warrant a couple
17 of X's, other arrests, a couple of X's. And then --
18 and, again, I'm having trouble reading this -- but I
19 think it says existing charge, misdemeanor. Do you see
20 that?

21 A Yes, sir.

22 Q Is that the possession of paraphernalia and
23 possession of marijuana that you discussed?

24 A Yes, sir.

25 Q Now, the A & D, or Arrest and Detain, regarding the

1 suspected I think you said flee and elude, that's not on
2 here, is it?

3 A No, sir.

4 Q And did you have at that time Government Exhibit 6,
5 the KDOC warrant?

6 A Yes, sir.

7 Q And was there a reason why that wasn't put down
8 there as well? Or am I missing it?

9 A That's the KDOC warrant that's Xed.

10 Q Just two X's?

11 A Yes, sir. Just indicating that we had served that
12 warrant.

13 Q You don't put down the actual warrant number or
14 anything?

15 A That's a little further down where you look under
16 the arrest data and it has DOC warrant number and the
17 date issued. Just right underneath the KDOC warrant
18 where the two X's are.

19 Q Oh, thank you. This has an arrest time on here; is
20 that correct?

21 A Yes, sir.

22 Q And that is immediately after you went into the
23 house and you arrested him. That was at 8:50 that
24 morning?

25 A That was what I was told. I confirmed later with

1 dispatch that we had announced on the radio that it was
2 at 9:05 hours.

3 Q Now, you say in your report that you approached the
4 house at 8:38; is that correct?

5 A Yes, sir.

6 Q And based upon the device that Deputy Moff had to go
7 get -- how long were you at -- or, on the front porch
8 prior to entry?

9 A I'm guessing we were out there maybe 10 -- maybe a
10 little bit longer than 10 minutes.

11 Q So, and, again, the arrest would have happened right
12 off the bat when you went in?

13 A Yeah. We didn't spend much time messing around. It
14 was a small duplex and we were able to clear it quickly
15 and they located him fairly fast.

16 Q From 8:38 to approximately when you were approaching
17 the house to, say, 8:50, that would have been, in your
18 mind, when the arrest went down?

19 A That's what -- when we walked up there, it was about
20 8:38 because I remember we checked out on the radio. We
21 make it up to the house, make our approach. Make it to
22 the front. It was roughly between 8:50, 9:00, when he
23 got taken into custody. Like I said, when I checked
24 with dispatch, they gave me a different time than what
25 was given to me, so I don't know whose times were off.

1 That's a pretty big -- significant difference.

2 Q And isn't it possible that the 9:05 time may have
3 been when he was actually taken out to the -- to the
4 squad car, the vehicle?

5 A It might have been; but we usually don't notify
6 that. We usually take 'em out, we'll put them in, and
7 it will be for transport is usually the next time that
8 we give dispatch.

9 Q In fact, shortly after being taken out to the squad
10 car, would he have been taken downtown or taken to the
11 jail?

12 A I believe so. That's normally our practice, sir.

13 Q Okay. He was taken in the SUV that is shown in the
14 first picture in Defendant 1; is that correct?

15 A That is correct, sir.

16 Q And that actual picture is timed and dated; is that
17 correct?

18 A Yes, sir.

19 Q What is the time and date for that picture?

20 A It was 9:16 when that photo was taken.

21 Q That was the vehicle that took Steven Denson to the
22 Sedgwick County jail. So at 9:16 he was still on the
23 scene; is that correct?

24 A That is correct, sir.

25 Q So approximately at this time we're talking about,

1 he's still there for 25 minutes?

2 A Yes, sir.

3 Q And how long did it take Special Agent Tierney to
4 arrive on the scene?

5 A I'm not for sure. I'm going to guess approximately
6 maybe 20 minutes before he arrived; but I can't speak on
7 that behalf because I did not look at my watch.

8 Q And during this entire time, search of the residence
9 is being done?

10 A No. We were in stand-by mode in the living room.

11 Q But a search of his room had been done?

12 A It had been done.

13 Q And it was a thorough search?

14 A I believe they did go through, yes, sir.

15 Q And it was one that you decided not to photograph?

16 A It was an oversight, yes, sir.

17 Q How long did it take to clear the living room first?

18 A Just initially for weapons and we flipped the couch
19 cushions and the second couch cushions and we looked
20 underneath to make sure there wasn't accessible weapons.
21 I'm guessing maybe a minute.

22 Q Did you go through the luggage that was in the
23 living room floor?

24 A We did.

25 Q And was that just you or was that also Agents

1 Richardson and Jones?

2 A I can't remember who exactly helped me clear that
3 luggage.

4 Q Okay. Isn't it true that just prior to Mr. Denson
5 being taken outside to the SUV that it was only at that
6 point in time that Deputy Moff looked in that empty room
7 and discovered the guns?

8 A You're stating that he -- I'm sorry. Can you ask
9 that question again.

10 Q Okay. The discovery by Deputy Moff of those guns
11 occurred late in the entry of that house; isn't that
12 correct?

13 A No, sir. It was fairly immediate after we took him
14 into custody.

15 Q Are we talking about minutes?

16 A Yes, sir.

17 Q How many minutes did it take for him to announce to
18 you to come into that room?

19 A I'm guessing maybe a minute or two once we made
20 entry.

21 Q But that room already would have been viewed and you
22 would have known that no one was there?

23 A You can see into that room, yes, sir; but I believe
24 the closet door was closed.

25 Q Had you looked into that window on the way up to the

1 front door?

2 A I didn't peek in that window, no, sir.

3 Q But, I mean, isn't that -- wouldn't you want to know
4 if there were more people inside before you make entry?

5 A It's kind of one of these deals I don't like putting
6 my face somewhere with the potential of getting shot at.

7 We try to use objects in between us for officer safety
8 on purpose for the residence. I try not to sit there
9 and peek into people's house because -- most law
10 enforcement don't.

11 Q But this was a house that you were planning on
12 making entry in; is that correct?

13 A Yes, sir.

14 Q And, in fact, you knocked out that board to gain
15 entry; is that correct?

16 A Yeah, it fell off during the knocking, yes, sir.

17 Q And, again, the warrant that you were dealing with
18 here is simply an arrest warrant; is that correct?

19 A Yes, sir.

20 Q Absconder's warrant. There was no other active --
21 evidence of criminal activity on the part of Mr. Denson.
22 It was just an absconder's warrant; is that correct?

23 A At that time it was just that warrant and the two
24 warrants that Wichita and Sedgwick County had placed on
25 him.

1 Q But you were actually executing the KDOC one?

2 A Well, yeah, that was my initial goal was to execute
3 that; and also the other two.

4 Q Okay. But that's after you had taken him into
5 custody but --

6 A Yes, sir.

7 Q But you were there just for the KDOC warrant at that
8 time?

9 A Yes, sir.

10 Q And there was no search warrant for the house, was
11 there?

12 A No, sir.

13 Q And to be able to do a search of the house, you have
14 to get approval from the supervisor; is that correct?

15 A Yes, sir.

16 Q And prior to going out there that morning, had you
17 had that approval?

18 A My supervisor authorized me to execute the warrant
19 for the arrest of Mr. Denson.

20 Q Okay. Again, that was only for the arrest of
21 Mr. Denson?

22 A Yes, sir.

23 Q And that occurred -- the first thing that was done
24 was identify Mr. Denson in the house and take him into
25 custody; is that correct?

1 A Yes, sir.

2 Q So your supervisor didn't give you permission to
3 search the house, did they?

4 A As to going through and making sure there's no other
5 parole violation or crime, he did not.

6 Q So all you had was the -- and those are procedures
7 that you are supposed to follow; is that correct?

8 A Yes, sir.

9 Q And so Mr. Denson was already arrested and on the
10 couch when Deputy Moff called you into that room; is
11 that correct?

12 A Yes, sir.

13 Q And you're saying maybe a minute or two after?

14 A Possibly. Maybe shorter. I'm not for sure.

15 Q Okay. And, again, as far as the weapons go, you did
16 not ask Steven Denson any questions regarding those; is
17 that right?

18 A That is correct, sir.

19 Q And you knew that there was another person that
20 possibly would have lived there because there was a
21 secondary name on the West Star account?

22 A That's correct, sir.

23 Q And so the -- and weapons in a residence, in one's
24 home, I mean, that's something that's legal; is that
25 correct?

1 A That's legal if you're not on parole or have any
2 conditions to be prohibited from weapons.

3 Q Okay. You said that there was a warrant for
4 Ms. Miller. But it was a flee and elude; is that
5 correct?

6 A It was a probation violation; and it just had in
7 caps original charge was flee and elude.

8 Q Did it say whether or not that warrant was felony or
9 misdemeanor?

10 A On the initial teletype, it was not. When I called
11 Shawnee County, they told me it was a misdemeanor
12 warrant.

13 Q So Ms. Miller, if those were her weapons and she did
14 not have a felony record, those would be permissible?

15 A I don't know what the conditions of her probation
16 were on weapons. I can't speak to that.

17 Q Okay. Thank you. Now, did you take possession of
18 the weapons or did Agent Tierney?

19 A I did, sir.

20 Q And did you -- where did you then take them to store
21 them for the chain of custody?

22 A Those weapons are locked in the secure evidence room
23 at our 212 South Market location.

24 Q Now, you're not Mr. Denson's parole officer, are
25 you?

1 A No, sir.

2 Q In fact, that's Kylie Hodges; is that correct?

3 A I believe that's who he was assigned to.

4 Q Okay. And she wasn't present during this execution
5 of the arrest warrant, was she?

6 A No, sir.

7 Q And there was no consent for you to enter the house,
8 was there? No consent given?

9 A No, sir.

10 Q And, in fact, from that front porch when you were
11 looking through those two panes of glass, you could not
12 see into either of those bedrooms?

13 A That is correct, sir.

14 Q And that was because you go to the middle of that, I
15 guess interior wall, where the hallway is leading to the
16 bathroom, and the doors for each of the two rooms, the
17 southwest and southeast, are actually in that hallway
18 area?

19 A Yes, sir.

20 Q Okay. So you didn't know when you made entry
21 whether or not Mr. Denson was there?

22 A That is correct, sir.

23 Q And, again, you're a member of the apprehension unit
24 with KDOC; is that correct?

25 A Yes, sir.

1 Q And so, for example, there is this procedure that
2 you've identified in, I think it's Government Exhibit 8,
3 which is the condition number 12 regarding subjecting to
4 a search. Do you remember that?

5 A Yes, sir.

6 Q That is something that Mr. Denson's parole officer
7 would go up and ask the person that she is supervising
8 to be able to search the residence; is that correct?

9 A For that portion, it was.

10 Q But, again, we were well past that because he had
11 been on absconder status since early of November; is
12 that right?

13 A Yes, sir.

14 Q And, again, your position with KDOC is in a
15 different position than a parole officer who does
16 supervision; is that correct?

17 A More or less. We do the apprehension portion.

18 Q So you execute the arrest warrants. You don't go
19 up -- you don't supervise anyone, do you?

20 A No, sir.

21 Q So you wouldn't do what, say, Ms. Hodges might do is
22 to go up to a parolee's residence and say I'm going to
23 go ahead and use your consent that you gave us here and
24 I'm going to want to look in your house. You're not
25 doing those home visits or home visitations or searches,

1 are you?

2 A We do the searches for them.

3 Q You do?

4 A Yes, sir.

5 Q But that's not what you were there for that morning?
6 You were there to execute the KDOC absconder arrest
7 warrant?

8 A Yes, sir.

9 Q There was nothing found in the duplex, was there,
10 incriminating other than the weapons in the closet; is
11 that correct?

12 A That's correct, sir.

13 Q Nothing found in the room where Mr. Denson was at?

14 A I believe there was nothing found, sir.

15 Q And, again, if you could, the -- there was no
16 vehicle evidence that tied Mr. Denson to that ----
17 (numbers redacted) North Hillside, was there?

18 A No, sir.

19 Q The only evidence you're able to point to was the
20 West Star account information; is that correct?

21 A That's correct, sir.

22 Q And how long had that account been opened?

23 A According to West Star, when I made my notations --
24 I want to give you the exact date. He became the
25 primary account holder for that property February 5th,

1 2013.

2 Q And the date of this arrest was on February 27?

3 A Yes, sir.

4 Q And, again, the only surveillance was done the 20
5 minutes before you went into the house; is that right?

6 A Correct, sir.

7 Q Now, did you take any photographs of the footprints
8 that were there in the snow?

9 A No, I did not.

10 Q Were you able to determine whether or not they were
11 large or small? Women's or men's footprints? What type
12 of a shoe? Any of that?

13 A I didn't really inspect the footprints.

14 Q Okay. Could you tell direction?

15 A I could. Just because of the way the snow picked up
16 and moved forward.

17 Q And was the direction going towards the front of the
18 house or toward the back?

19 A It looked like it came from the back and then walked
20 around the side of the house towards the front.

21 Q And you said that there was a back door; is that
22 correct?

23 A That's correct, sir.

24 Q And you were able to -- was it unlocked when you let
25 Deputy Lemer in?

1 A No, sir.

2 Q It was locked or unlocked?

3 A It was locked.

4 Q Okay. So you unlocked it and let him in?

5 A Yes, sir.

6 Q Now, regarding the 9:05 notation in your report,
7 that's actually in the narrative part of your report; is
8 that correct?

9 A That's correct, sir.

10 Q Okay. But with -- but you went and you made this
11 report after the arrest of Mr. Denson; is that correct?

12 A That's correct, sir.

13 THE COURT: He couldn't have made it before
14 the arrest.

15 MR. HENRY: Well, some of the information on
16 the front page, Your Honor, could have been inputted
17 ahead of time.

18 THE COURT: Probably, but --

19 MR. HENRY: Well, I'm --

20 BY MR. HENRY:

21 Q Was it inputted ahead of time or was it all just
22 done after?

23 A I believe it was all done after the arrest.

24 Q So you put down 8:50 on the front of that report; is
25 that correct? As far as the time of the arrest?

1 A Yes, sir.

2 Q And then in the narrative there is a statement in
3 the sixth paragraph down that says Denson was taken into
4 custody approximately 9:05?

5 A Yes, sir. That was the dispatch time.

6 Q Okay. Now, you talk about when you have contact
7 with dispatch, the times are noted every time a call
8 would come in; is that correct?

9 A Yes, sir.

10 Q And so did you have to call dispatch later to say
11 when was the second time, you know, we called in or
12 whatever?

13 A I do -- what I do is I call them and ask for our
14 on-scene time, our custody time and our transport time
15 and our clear time of the incident.

16 Q And -- and is it possible that this time that's on
17 here was when he was being taken out of the house?

18 A He never left the house early on. It was later on.

19 Q He was allowed to smoke on the front porch, wasn't
20 he?

21 A I'm not sure if he had to smoke on the front porch.
22 He smoked inside, I believe.

23 Q Okay. But is there a time when he is taken out
24 of -- do you talk to the dispatcher when he is taken out
25 of the house into the SUV when he is being transported?

1 A I believe that's when we give our transport time.

2 Q Is that anywhere in the narrative?

3 A The transport time I don't believe was put in
4 because Special Agent Richardson and Jones transported
5 him.

6 Q Did they make a report?

7 A I don't have a copy of the report if they did.

8 Q But you would agree that given the first picture in
9 Defendant's 1, that time, that 9:16 a.m., that
10 Mr. Denson would have been in that vehicle that's
11 reflected in that first picture at that time because
12 that's the vehicle that Jones and Richardson used to
13 take him to the Sedgwick County jail?

14 A He wasn't in the vehicle at 9:16. He was still in
15 the residence.

16 Q Oh, so he was in the residence for almost a half an
17 hour?

18 A Yeah. It would --

19 Q After you already made entry?

20 A Yeah. We were leaving the vehicle unattended. It
21 was still cold out.

22 Q So is there a time when he actually did leave the --
23 what time was it that he actually was taken by
24 Richardson and Jones to the Sedgwick County jail?

25 A I want to say it was well before -- it was before

1 10:00 when he was taken. I'm not for sure of the exact
2 time. I'd have to get my notes for that.

3 Yeah, I don't have those notes with me, sir. I
4 apologize.

5 Q The next door neighbor, he left prior to you making
6 entry; is that correct?

7 A Yes, sir.

8 Q And did he leave by foot or did he take off in a
9 vehicle?

10 A No. He left by foot. Appeared his van was stuck in
11 the driveway.

12 Q The device that Deputy Moff went to get to determine
13 whether or not there was someone inside that residence,
14 where is that device?

15 THE COURT: Why don't you ask Moff that.
16 You've got him coming here.

17 MR. HENRY: I will, Your Honor. Thank you.
18 I'll move on.

19 Q Since you took custody of the weapons, they're still
20 in your custody; is that correct?

21 A No, sir. I turned them over to ATF.

22 Q Did you ever submit them for DNA back in February
23 when they were seized?

24 A No, sir, I did not.

25 MR. HENRY: I have nothing further. Thank

1 you.

2 THE COURT: Thank you, Mr. Henry. Brief
3 redirect and then we'll take a short recess and get
4 Deputy Moff in here.

5 MR. TREASTER: Yes, Your Honor.

6 **REDIRECT EXAMINATION**

7 BY MR. TREASTER:

8 Q Now, the closet that the guns were found in, would
9 you describe it as big enough for a person to hide in?

10 A Yes, sir.

11 Q And there's a recession in the closet to the side
12 where the guns were found?

13 A Yes, sir.

14 Q Could someone hide in that recession?

15 A Yes, sir.

16 Q Okay. Is there any policy that prevents you -- by
17 your department that prevents you from doing a
18 protective sweep when you enter a residence for officer
19 safety?

20 A No, sir.

21 Q Are you trained to do a protective sweep for officer
22 safety if you believe somebody else might be there?

23 A Yes, sir.

24 Q Is there anything in your policy that would prevent
25 you from, like, doing a hand search of the couch around

1 where you're going to set the Defendant?

2 A No, sir.

3 Q Are you trained to do that?

4 A Yes, sir.

5 MR. TREASTER: No further questions, Your
6 Honor. Thank you.

7 THE COURT: Mr. Henry, anything?

8 MR. HENRY: No, Your Honor.

9 THE COURT: Thank you. All right. We'll take
10 a recess, maybe ten minutes or so, and get Josh down
11 here and listen to what he has to say.

12 (Recess.)

13 MR. TREASTER: Your Honor, United States would
14 call Deputy Josh Moff.

15 **JOSH MOFF**

16 Having been first duly sworn to tell the truth, the
17 whole truth and nothing but the truth, testified as
18 follows on:

19 **DIRECT EXAMINATION**

20 BY MR. TREASTER:

21 Q Please state your name for the record.

22 A Josh Moff.

23 Q How are you employed?

24 A I'm a Deputy U.S. Marshal with the Marshal Service.

25 Q How long have you held that job?

1 A Over ten years.

2 Q As part of that job, do you apprehend people who
3 have active warrants?

4 A Yes.

5 Q And are you a part of a task force to do that?

6 A I am.

7 Q Could you explain that to the Court?

8 A Uhm, we have a task force we work with the Kansas
9 Department of Corrections. There's four of the special
10 enforcement officers from Department of Corrections on
11 our task force. We help them serve their warrants and
12 they help us serve our warrants.

13 Q Okay. Were you assigned to help execute a warrant
14 on Steven J Denson?

15 A Yes.

16 Q How did that come about?

17 A I was contacted by Officer Bansemer and he said that
18 they had somebody that they were looking for, had a
19 warrant for, and requested my help.

20 Q Okay. Based on that request, what did you do?

21 A I met him over at ---- (numbers redacted) North
22 Hillside. We rallied there and talked briefly about the
23 case. They showed me a picture of the person we were
24 looking for; what his previous charges were. And went
25 from there.

1 Q Okay. What was the plan then?

2 A They had already been watching the house for a
3 little while. We decided we wanted to go ahead and
4 knock on the door to see if anybody was home.

5 Q And did you guys do that?

6 A We did.

7 Q How did that go about?

8 A When we approached the house, I believe Officer
9 Bansemer approached from the rear of the house.
10 Possibly another officer. I don't remember. And then
11 me and a few other officers went towards the front.
12 Officer Bansemer came around towards the front
13 eventually and advised me that he had saw footprints
14 coming from the back to the front of the house and that
15 the meter was going pretty fast and appeared that
16 somebody was possibly going to be in the house.

17 Q Okay. So what did you do then?

18 A We decided to go ahead and knock on the door and see
19 if anybody would answer. So I believe Officer Bansemer
20 knocked on the door. Nobody answered the door. So
21 knocked a little bit louder. Eventually we started
22 yelling police, come to the door. Nobody answered the
23 door. We did that for a few minutes. And then I
24 decided to go back to my vehicle and retrieve a piece of
25 equipment that we use for officer safety to see if

1 anybody was in the house.

2 Q Okay. And how far did you have to go to get that?

3 A I had parked on the -- this house was on Hillside,
4 which is a busy street, so I couldn't park on Hillside.
5 I had to park one block over to the north -- yeah, to
6 the north. I don't remember the street name; but I had
7 to walk out through the snow to get back to that. It
8 was about half a block.

9 Q So then what happens?

10 A I get the piece of equipment, go back to the house,
11 scan the house. And then Officer Bansemer keeps
12 knocking. And I believe at some point there's a piece
13 of paneling on one of the windows on the door that had
14 covered up a piece of broken glass; and I think he had
15 knocked on that and it fell off and so we started
16 yelling. I can't remember if I yelled or he yelled
17 through that piece of open door right there inside the
18 house, shouted police, come to the door, for a few more
19 minutes.

20 Q For a few more minutes?

21 A Probably a minute or two.

22 Q Okay. Then what happens?

23 A Well, we don't hear anything; nothing has moved
24 inside; nobody's come to the front door. We decide that
25 it's a reasonable belief that somebody is in the house.

1 It's 8:30 in the morning. We don't know the guy to have
2 a job. No vehicles that we know about. That, combined
3 with the footprints, one set of footprints leading into
4 the house and the meter going crazy in the back, we
5 decide to make entry to the house. And this is the
6 primary residence for Mr. Denson, according to
7 utilities.

8 Q Did you have reasonable belief that he was the one
9 inside that house?

10 A I did.

11 Q So you guys decided to make entry into the house.
12 What happens?

13 A We make entry. At some point pretty soon after I
14 walk in, I notice -- I can see in the southwest bedroom
15 because the door's open. It's a small house. And I see
16 somebody laying in the bed. I'm just a few feet in the
17 doorway. But it's such a small house -- possibly -- I
18 can't remember if I'm halfway in the hallway, halfway in
19 the living room; but I see somebody in the bedroom so I
20 start yelling at them to show me their hands and get up.

21 Q Did that person comply?

22 A He did.

23 Q Did you recognize him when he got up?

24 A It was kind of dark in the room, so I ordered the
25 person to come towards me. Once they came towards me, I

1 recognized him as Mr. Denson.

2 Q Okay. Then what happens?

3 A I don't recall if I handcuffed him or the person
4 next to me did. I'm guessing the person next to me did
5 because I had my weapon out. Then right after he was
6 passed off to other officers, I immediately went toward
7 the restroom, which is just in the south, and the
8 southeast bedroom, and cleared both of those rooms with
9 another officer.

10 Q How long did it you take to clear the bathroom?

11 A After we ordered him out of the bedroom, passed him
12 off, it took -- it was a matter of seconds.

13 Q Okay. And then how long did it take you to clear
14 the bedroom?

15 A Cleared the bedroom. There was no furniture. I
16 mean, small room. Two seconds. And then I saw a
17 closet, so I opened the closet door up, looked inside.
18 There was nothing in the closet except the two firearms
19 sitting in there, two long guns.

20 Q So from the -- so when Mr. Denson is brought out
21 from the bed, he's handcuffed next to you or he's passed
22 off?

23 A He's passed off.

24 Q From that point, how long did it take you to go from
25 there to look in that closet?

1 A 15 seconds.

2 Q And so it was very rapid?

3 A Very rapid.

4 Q When you opened up that closet door, were you
5 looking for people?

6 A I was.

7 Q Were you worried that his girlfriend might be there?

8 A Yes.

9 Q Were you worried that maybe other gang members,
10 friends of his, would be there?

11 A Yes.

12 Q And was the closet big enough for a person to hide
13 in?

14 A Yes, it was.

15 Q But the only thing you found in that closet were
16 those two firearms?

17 A Yes.

18 Q Once you find the firearms, what happens?

19 A I see the firearms. I don't remember telling the
20 officer behind me. I just said clear for bodies. We
21 move out, go and make sure the rest of the house is
22 being cleared, which I believe it was. I think somebody
23 else cleared the bedroom that Denson was in and the
24 kitchen area. So once everything was clear, within 30
25 seconds of clearing that back room, I told Officer

1 Bansemer that I've located a couple firearms, long guns,
2 that were sitting in the closet. At that time we
3 decided that we would contact the ATF and notify them.

4 Q Okay. And who at ATF did you notify?

5 A Special Agent Neal Tierney.

6 Q That was because you found the firearms?

7 A Yes, sir.

8 Q I'll hand you what's been admitted as Government
9 Exhibit 5. Do you recognize that?

10 A Yes, I do.

11 Q Could you describe it for the Court? What you see
12 there?

13 A I believe that's the 12 gauge and the 22 long guns
14 that I found in the closet.

15 Q And they were actually found inside the closet?

16 A They were.

17 Q And as you're looking at the closet, were they
18 inside to the left or inside to the right?

19 A Inside to the left.

20 Q And could you see them from the outside? I mean,
21 once you opened the door, you had to look inside to see
22 them?

23 A I had to -- I looked inside. As I was clearing
24 inside the closet is when I saw them.

25 MR. TREASTER: No further questions, Your

1 Honor. Thank you.

2 THE COURT: Mr. Henry.

3

4 **CROSS EXAMINATION**

5 BY MR. HENRY:

6 Q So, Deputy Moff, when you first went into the
7 southeast bedroom, Mr. Denson was already cuffed; is
8 that correct?

9 A I'm not -- I don't recall if he was handcuffed or I
10 had just passed him off to be handcuffed; but I knew he
11 was being secured by the other officers.

12 Q And he was actually sitting in the living room after
13 the couch had been cleared; is that correct?

14 A When I -- I'm not sure. After I came back out of
15 the southeast bedroom, he was sitting on the couch.

16 Q Okay. Now, how many times did you go into the
17 bedroom, southeast bedroom?

18 A The first time I went in there, and, then, I believe
19 I took Officer Bansemer back in there to show him. And
20 then at least one more time with Special Agent Tierney
21 to show him the weapons.

22 Q Okay. But when you first went in there, you yelled
23 clear for persons; is that correct?

24 A I believe, yes, sir.

25 Q And then you said I think that it was later that you

1 told Officer Bansemer that you had located the guns; is
2 that correct?

3 A Yes.

4 Q Where in the house or duplex did you tell Officer
5 Bansemer that you had found those guns?

6 A Possibly in the living room or kitchen. I don't
7 recall.

8 Q But you didn't call him back in there, to look at
9 them?

10 A Well, I don't recall. I don't recall if I came out
11 and told him or if I called him back there to tell him.

12 Q Okay. But you just testified that you think you
13 told him either in the living room or in the kitchen?

14 A Yes, sir.

15 Q I wanted to know how long did it take fo Agent
16 Tierney to get there?

17 A I'd say approximately 30 minutes.

18 Q And the -- did you make any notes of when you
19 actually made that phone call?

20 A No, sir.

21 Q Did you take any notes after you went back to your
22 office that day?

23 A No, sir.

24 Q When did you actually do your reports?

25 A Probably within a week to a month afterward. I'd

1 have to look at my report here to tell.

2 Q Do you have the report in front of you?

3 A I do, yes, sir.

4 Q Could you look and see when you actually did the
5 report?

6 A I sent it for approval to my supervisor on March
7 20th.

8 Q Would that have been around the time when it was
9 completed?

10 A Yes, sir.

11 Q And then it just took one day to have your
12 supervisor approve it; is that correct?

13 A Yes, sir.

14 Q And that's Mr. Oberly that's on that report?

15 A Yes.

16 Q So about -- well, three weeks go by before you
17 actually do your report; is that correct?

18 A Yes, sir.

19 Q What was the device that you used when you -- after
20 you came back from your car?

21 A It's called a Ranger. It's a hand-held Doppler
22 radar device.

23 Q And what does it pick up?

24 A It picks up breathing, human breathing and movement
25 within a house.

1 Q Were you able to detect any movement in the house?

2 A No, sir.

3 Q And the -- this was a floor heater that was right
4 there in between the two bedroom doors; isn't that
5 correct?

6 A I don't recall.

7 Q Okay. You don't recall picking up any sound of
8 the -- of the central heating system being used in that
9 duplex?

10 A Picking up sound on my device?

11 Q Yes.

12 A No, it doesn't pick up sound.

13 Q And please explain for me, if you can, the -- how
14 the Doppler works?

15 A It's a device that's about 10 inches by 4 inches
16 wide, 10 inches long. You hold the device up to the
17 house and it sends that radar out, or, Doppler radar out
18 through the house; and when it comes back, it will tell
19 you if it's picking up somebody's breathing. Then it
20 will tell you if that person is moving or if they're
21 stationary. And it tells you how many feet from where
22 you're at it's coming from. So it could say 10 feet, 15
23 feet or whatever; and if it's moving, it will say -- it
24 will read the different feet off as they're moving, how
25 far they are from you.

1 Q Now, you're being called out that morning by Officer
2 Bansemer; is that correct?

3 A Yes.

4 Q And had you been in any way previously briefed prior
5 to that call?

6 A No.

7 Q Okay. So whatever briefing you got was from Officer
8 Bansemer there at the scene?

9 A Yes, sir.

10 Q You didn't know you were going to be doing that this
11 morning? There was no preplanning done?

12 A Not that I recall.

13 Q Okay. And so whatever reasonable suspicion that you
14 thought or about whether or not somebody was there in
15 the house would have come from Officer Bansemer?

16 A Yes.

17 Q And so the -- and you said in your response to the
18 Government's question that there was reasonable
19 suspicion. Again, what was your understanding of
20 reasonable suspicion at that point in time?

21 A Well, before we approached the house I was told
22 there was warrants. I asked if he drove anything. They
23 said not that they know of. Asked if he worked
24 anywhere. They didn't know of any place of employment
25 that he worked. So we figured if he's going to be

1 anywhere, he's going to be at home. Told me the
2 utilities came back to his name as the primary and his
3 girlfriend's name as the secondary, which I was also
4 advised she had a warrant then. Like I said, after we
5 approached the house, we saw prints that went from the
6 front to the back, one set, and meter was going faster
7 than normal.

8 Q Okay. Now, again, the footprints in the yard going
9 from back to front, there was a back door on that
10 duplex; is that correct?

11 A I believe so.

12 Q And so if somebody is coming from the backyard and
13 lives there, they could have easily entered the
14 residence through the back door; is that correct?

15 A I'm sorry. Could you restate that.

16 Q If somebody is coming from the back of the house
17 towards the front of the house and actually lives in
18 that house, they could have just entered their house
19 from the back door?

20 A Yes.

21 Q And there wasn't any identification of prints going
22 up onto the porch, was there?

23 A No. There was no snow on the porch that I remember.

24 Q So we're talking about just footprints in a yard.
25 Could have been anybody's prints?

1 A That went towards the front porch.

2 Q Well, went from back to front. But if that were the
3 case, it would have been on the side of the house?

4 A I believe it went around the side, yes, sir.

5 Q And when you arrived there, there were other
6 officers in the vicinity; is that correct?

7 A Yes.

8 Q Were they already in the front yard?

9 A No.

10 Q Did you notice any footprints or just the prints
11 that were referred to by Officer Bansemer?

12 A I noticed footprints coming from the neighbors
13 house, I believe. But -- the duplex to the north. But
14 the only prints I recall seeing when we approached the
15 house were the set of prints that Bansemer, Officer
16 Bansemer was talking about.

17 Q Now, are they in the front of the house or on the
18 side of the house?

19 A From what I remember, I didn't go to the side or the
20 back of the house. So the only prints I saw were on the
21 front of the house.

22 Q You were aware that this was only an arrest warrant,
23 absconder warrant, from KDOC; is that correct?

24 A Yes.

25 Q And, in fact, the first thing that was done upon

1 entry of the residence was to place Mr. Denson into
2 handcuffs; is that correct?

3 A Yes.

4 Q He was the only person located in the place; is that
5 correct?

6 A Yes.

7 Q In fact, once he was located, that's where the
8 attention went with everybody that went into the
9 house -- or at least two officers went there?

10 A Yes.

11 Q Do you know if there was a third officer in the room
12 when he was being taken into custody?

13 A Yes, there was.

14 Q There were three officers?

15 A I'm -- yes, I believe there was.

16 Q You and two others?

17 A Yes, sir.

18 Q And the other two officers were then making sure the
19 other rooms were clear?

20 A I passed Denson off to one or two other officers and
21 then me and another officer -- so I think there was
22 probably four of us in there -- went back to clear the
23 other room, the southeast bedroom and the bathroom.

24 Q Now, Deputy -- is it Lemer, Blake Lemer?

25 A Deputy Lemer.

1 Q Lemer. I'm sorry. I'm mispronouncing that. He was
2 also on the team; is that correct?

3 A Yes, sir.

4 Q So there were a total of five? Or were there more
5 than five officers that morning?

6 A I believe there was five.

7 Q And, again, the first thing that at least three of
8 the officers did while the other two were clearing the
9 place were the attention was directed towards the
10 occupant and he was immediately taken into custody?

11 A Yes.

12 Q And it was after that point that the guns were
13 found?

14 A Yes.

15 Q Did either the KDOC officers, the Deputy Marshals
16 there or ATF Agent Tierney, did any of them proceed to
17 get a search warrant prior to seizing the guns?

18 A No.

19 Q How long did you stay on the scene?

20 A I'm not certain; but I would say from 30 to 45
21 minutes. Possibly maybe an hour total.

22 Q And were you there when my client was taken out of
23 the house and to the SUV that Officers Richardson and
24 Jones used?

25 A Yes, sir.

1 Q How long into the detention did it take for them to
2 leave with my client?

3 A Like I said, probably 30 minutes to an hour. When
4 we took him out is when we were leaving, all of us.

5 Q And he was allowed to smoke; is that correct?

6 A I don't recall that.

7 Q Did he give you any trouble?

8 A No, sir.

9 Q In this approximate hour that you were there, 45
10 minutes to an hour on the scene, how late did you -- did
11 it take for you to contact Agent Tierney?

12 A I think I contacted him within -- after I located
13 the firearms when I was searching the room or clearing
14 the room, probably say I contacted him within 5 to 10
15 minutes after we made entry.

16 Q Were you there, then, when my client's bedroom was
17 searched?

18 A I don't recall his bedroom being searched. Might
19 have been cleared by officers.

20 Q And it's a small place we're talking about? Two
21 bedrooms and living room and the kitchen?

22 A Yes.

23 Q And it's all right in that same area where there's
24 five officers and my client sitting down on the couch;
25 is that correct?

1 A Yes.

2 Q And you didn't see any search going on in his
3 bedroom?

4 A Not that I can recall.

5 Q And, again, from the front door, you can't see
6 whether or not there's anybody actually in any of those
7 bedrooms, could you?

8 A Not from the front door.

9 Q And the device that you used, the Doppler device,
10 doesn't say who actually is in the room?

11 A No, sir. It just picked up breathing.

12 THE COURT: Is that what it did? It picked up
13 breathing?

14 A Yes, sir, it did pick up breathing.

15 THE COURT: Okay.

16 BY MR. HENRY:

17 Q Now, room that's empty, the southeast bedroom, it
18 was illuminated quite well due to the sunshine coming in
19 from the east; is that correct?

20 A Yes.

21 Q And, in fact, the photographs that -- I want to keep
22 these in order -- but if you could look at Defendant
23 Exhibit 1. This is in the order that Officer Bansemer
24 put them in. And you were there when he was taking
25 photographs?

1 A Yes.

2 Q If you could look through there. And could you tell
3 me which number through -- here, let me see. I'll
4 just -- I'll separately mark it. But -- the pictures of
5 the bedroom. I'm going to hand you what's been marked
6 as Defendant Exhibit Number 1-A. I'm going to mark it
7 on the back so it's not effecting any of the photograph.
8 Is that the southeast bedroom where the closet's at?

9 A Yes, sir.

10 Q Now, was that closet door open if you can recall?

11 A I believe it was closed.

12 Q Now, the window that is there, is that the east
13 window on the front of the house or would that have been
14 the --

15 A Be the east window.

16 Q Okay. That's the east window. And the sun is
17 shining in pretty brightly; is that correct?

18 A Yes.

19 Q In fact, you can see the reflection of the sun from
20 the window on the floor; is that correct?

21 A Yes.

22 Q Now, the guns weren't in that position when you
23 discovered them, were they?

24 A They were not.

25 Q They were back in and against the interior wall of

1 the left side of the closet; is that right?

2 A Yes, sir.

3 Q And later photographs here of Defendant's Exhibit 1
4 reflect that; is that correct?

5 A Yes.

6 Q Do you know why the pictures weren't taken where the
7 guns were at in their original place?

8 A I believe Officer Bansemer made the guns safe by
9 clearing them before we proceeded much further as far as
10 taking photographs.

11 Q Okay. Thank you.

12 Do you know if -- when the three officers that make
13 entry go to the southwest bedroom where Mr. Denson was
14 located at, do you know if the other officer went to the
15 southeast bedroom?

16 A No, I do not.

17 Q You don't know where the other two officers were at?

18 A No, sir.

19 Q The -- and the discovery of the guns by you was
20 after my client's arrest?

21 A Yes.

22 Q And it is your position that it was within just
23 seconds?

24 A Yes, sir.

25 Q If Officer Bansemer said one or two minutes into

1 the -- into the entry into the house or after the arrest
2 of my client, would that be a possible fair assessment
3 as well?

4 A It could have been up to a minute. Officer Bansemer
5 wasn't with me in the bedroom. They were clearing the
6 back room.

7 Q Jones and Richardson were with you in the bedroom?

8 A It was one of these two or Deputy Lemer that was
9 there. I don't recall which one was with me. I know
10 somebody was behind me and we went -- and we went quick.

11 Q What prompted you to do your report three weeks
12 later?

13 A Honestly, I don't know. I don't know why it took so
14 long. Sometimes it takes a little longer to do a
15 report. Depends how busy I am on the street doing other
16 warrants.

17 MR. HENRY: I have nothing further. Thank
18 you.

19 THE COURT: Anything further of Deputy Moff?

20 MR. TREASTER: No, Your Honor. Thank you.

21 THE COURT: Thank you.

22 MR. TREASTER: Government would call Special
23 Agent Tierney to the stand.

24 **NEAL TIERNEY**

25 Having been first duly sworn to tell the truth, the

1 whole truth and nothing but the truth, testified as
2 follows on:

3 **DIRECT EXAMINATION**

4 BY MR. TREASTER:

5 Q Please state your name for the record.

6 A Neal Tierney.

7 Q Who do you work for?

8 A Work for the Bureau of Alcohol, Tobacco, Firearms
9 and Explosives.

10 Q What do you do for them?

11 A Investigate crime and allegations of crime involving
12 alcohol, tobacco, firearms, explosives and arson.

13 Q How long have you worked for ATF?

14 A 21 years in a week.

15 Q And how long have you been a special agent with ATF?

16 A 13 years and several weeks.

17 Q Were you called out by Deputy Marshal Josh Moff on I
18 believe it's January 27th -- February 27?

19 A Yes, sir, I was.

20 Q What was the purpose of that call out?

21 A Deputy Moff had contacted me. I was at the ATF
22 office here in Wichita. He had explained to me on the
23 phone that they'd been involved with arresting an
24 absconder, firearms had been found in a residence, and
25 asked for my assistance in identifying the firearms.

1 Q Based on that, what did you do?

2 A I notified other people in my office that I was
3 leaving. I left downtown Wichita at 301 North Main,
4 drove to ---- (numbers redacted) North Hillside where
5 Deputy Moff was located and had told me that was the
6 address.

7 Q About how long after you received the call from
8 Deputy Moff did it take you to get to that Hillside
9 residence?

10 A I don't recall specifically. Probably took me four
11 or five minutes to get my stuff and leave the office.
12 And probably 15 or 20 minutes to drive there. So 20, 30
13 minutes.

14 Q What did you do when you got there?

15 A Well, again, the location is an address on Hillside.
16 Hillside is a north/south street here in Wichita. It's
17 a busy street. Really wasn't any good place to park.
18 It was somewhat bad weather that day with snow and ice
19 on the ground and melting. I was driving my Ford
20 Expedition. And I did find a spot to the north,
21 actually just a little bit off the north side of the
22 driveway. In an effort to not get my vehicle stuck, I
23 waited until traffic was appropriate where I could back
24 my vehicle in so if I had to engage four-wheel drive to
25 leave, I could. So I parked just off the driveway to

1 the north at that location.

2 Q Okay. What did you do then?

3 A I grabbed my note pad and then I approached the
4 front of the residence. I don't remember who I saw
5 there. It was one of the KDOC personnel. I believe I
6 recognized all the law enforcement officers there that
7 day. They invited me inside. Walked into the
8 residence. I saw Mr. Denson sitting on the sofa. And I
9 found Josh Moff and he briefed me as to the events of
10 the morning.

11 Q Okay. Did you -- did he have you go look at two
12 firearms?

13 A Yes, sir.

14 Q And did you look at 'em?

15 A Yes, I did.

16 Q Where were they when you looked at them?

17 A When I got to the residence, I walked in -- the
18 front door faces east. Walked into the living room. I
19 was taken into the residence, proceeded west. There's a
20 small hallway immediately to your left where you can see
21 a bathroom. Walked there. And then there's immediately
22 to the left and right one bedroom on the east and one
23 bedroom on the west. I was taken into the east bedroom.
24 And up against the door of the closet were two long guns
25 standing up against the door. (Witness indicating.)

1 Q And if I show you what's been admitted as Government
2 Exhibit 5, does that look like how you found them?

3 A Yes. Apparently I'm mistaken. They're up against
4 the wall, not against the door. But that's an accurate
5 representation of my recollection of when I first saw
6 the firearms.

7 Q Okay. And did you inspect the firearms?

8 A Yes, sir, I did.

9 Q And what were you looking for?

10 A I was looking to see if the firearms were loaded.
11 I'm looking to see if they're modern or antique
12 firearms. Generally, I get called to a scene when there
13 are firearms, as being a firearm and ammunition expert
14 as well as an ATF agent, I'm looking to see if the
15 firearms have any obliterated serial numbers. Looking
16 to see if it's a legal firearm. By legal, legal length
17 barrel on a shotgun must be 18 inches or longer and
18 overall length of the weapon must be 26 inches or it
19 should be registered. And then the barrel length on
20 a rifle must be 16 inches long, overall length being 26;
21 and if it's shorter than that, it must be registered.
22 So I'm thinking of all those things when I examine the
23 firearms.

24 Q Okay. Did the firearms appear to be legal?

25 A Yes.

1 Q At that point, what do you do?

2 A At that point I indicated that they both appeared to
3 be unloaded. I was advised that the firearms had been
4 cleared and they were unloaded. I inquired if there was
5 any ammunition found inside the residence and I was told
6 that they had not found any ammunition. I never fully
7 touched them to put any of my fingerprints or anything
8 else on to them.

9 Q Did you leave them there?

10 A Yes.

11 Q So what do you do next?

12 A I talked with Deputy Marshal Moff as well as KDOC
13 Special Agent Bansemer. We discussed the fact that he's
14 a prior convicted felon apparently in possession of two
15 firearms inside a house. I indicated to them that I
16 would contact the U.S. Attorney's office and see if
17 federal prosecution would be warranted.

18 Q Okay. What did you do next?

19 A I got together with KDOC Special Agent Bansemer. He
20 gave me -- I can't remember which type of report.
21 Something -- I was asking for specific identifying
22 information for Steven Denson so that I could get name,
23 date of birth, do a criminal history check and start
24 looking into the allegations of criminal use and
25 possession of a firearm.

1 Q Okay.

2 A I got a one-page identifier from Special Agent
3 Bansemer. At that point I indicated I would contact
4 them and I departed the location.

5 Q Okay. Did you then later that day have contact with
6 the Defendant Mr. Denson?

7 A Yes, sir, I did.

8 Q About how much long -- how long after you left the
9 residence, his residence, did you come in contact with
10 him?

11 A Four or five hours.

12 Q Okay. And where did you visit with him at?

13 A I traveled to the Sedgwick County detention
14 facility, the jail.

15 Q Okay. And what was the purpose?

16 A At this point I had not Mirandized Mr. Denson. I
17 did not ask him any questions at the ---- (numbers
18 redacted) North Hillside location. If I'm going to
19 prepare a case for federal prosecution, I'm going to try
20 to attempt to interview the defendant. So the purpose
21 was to go and sit down and talk to Mr. Denson.

22 Q All right. Did you do that?

23 A Yes, I did.

24 Q And how did that go?

25 A When you go to the jail, it's called a pro visitor,

1 professional visit request. I showed up at the jail. I
2 requested an opportunity to visit with Mr. Denson. That
3 request was fulfilled. He was put into an interview
4 room. And once he was seated in the interview room, I
5 walked into the interview room. I proceeded to identify
6 myself to him. I showed him my government issued
7 credentials. I said I was interested in talking to him
8 about the incident and the facts or circumstances of
9 that day. He indicated he wanted to talk to me. I
10 asked him to refrain and let me execute a Miranda and
11 advice of rights, which we did. Every time I do it, I
12 try to do it the same way. I hand him a copy of the
13 form and I read a copy of the form. I ask the
14 individual, as I did in this case, if he can read.
15 Mr. Denson stated that he could. I went through the
16 entire waiver. He signed it and agreed to speak with
17 me.

18 Q Okay. I'll hand you what's been premarked as
19 Government Exhibit 7. Do you recognize that?

20 A Yes, sir, I do.

21 Q What is that?

22 A This is ATF Form 3200.4. The form is Your Rights,
23 an advice of rights and waiver.

24 Q Is that the form you read to Mr. Denson?

25 A Yes. It's a copy of the form.

1 Q Did you sign the form?

2 A Yes, sir, I did.

3 Q And did he sign the form?

4 A Yes, sir.

5 MR. TREASTER: Your Honor, I'd move for the
6 admission of Government Exhibit 7.

7 MR. HENRY: No objection.

8 THE COURT: 7 is received.

9 BY MR. TREASTER:

10 Q Okay. So he agrees to talk to you. How long did
11 you talk to him?

12 A I'm going to guess 25 or 30 minutes.

13 Q Did you talk to him about being an absconder?

14 A Yes.

15 Q What did he tell you?

16 A He said that he was an absconder and that he knew he
17 was.

18 Q And did you ask him about the guns?

19 A Yes, I did.

20 Q And did you ask him about whose guns they were?

21 A Yes, sir, I did.

22 Q What did he tell you?

23 A At first he said that they were not his firearms. I
24 asked him whose they were and he did not want to answer
25 the question.

1 Q Okay.

2 A We went on past that. Probably five or ten minutes
3 into the interview, I came back to the question. I
4 indicated to him that neither firearm was loaded. Two
5 firearms found in the residence. Asked him if he knew
6 that he was a prior convicted felon. He said that he
7 was. I asked him if he knew that he could not possess
8 firearms. He said he knew that he couldn't. And then I
9 redirected the question back to him as to why the
10 firearms were there. And then he indicated that he was
11 holding the firearms for a cousin.

12 Q Okay. And did he tell you any more about that?

13 A Yes. Prior to the end of the interview, he finally
14 indicated that the name of the cousin was a Mario
15 Polite. He indicated to me that -- I believe he said in
16 November that he and Mario were living in a residence
17 that his father had provided to them. That there had
18 been an incident involving a molotov cocktail being
19 thrown through the front door of the residence and then
20 some extreme smoke damage along with the fire damage
21 that caused them to move out of the residence. He
22 indicated to me that he had been living on the street
23 with his girlfriend until earlier in the month of
24 February when they had obtained that location. He said
25 to me that he was holding those for Mario because Mario

1 did not want to keep them where he was located and that
2 he was currently out of the United States overseas with
3 his wife who was serving in the military.

4 Q The wife was serving in the military?

5 A Mr. Denson stated that his cousin's wife was serving
6 in the military overseas.

7 Q Okay. Did you ask him if he realized there was a
8 warrant out for his arrest?

9 A Yes, I did.

10 Q What did he say?

11 A He said that he knew there was a warrant out for his
12 arrest. That his girlfriend was pregnant and that she
13 was due to deliver a baby sometime in July of 2013. And
14 that he wanted to remain with her until such time as she
15 had delivered the baby and then he was planning to
16 surrender himself to authorities.

17 Q The girlfriend, was that Keeana Miller?

18 A Yeah. I asked him the girlfriend's name and he
19 stated Keeana Miller.

20 Q Did you ask him if he worked?

21 A Yes.

22 Q What did he say?

23 A He said he was not currently employed. I asked him
24 how he could manage to pay the bills. He said the
25 family members provided him money. He said that Keeana

1 also received assistance from the State of Kansas for
2 being pregnant.

3 Q Did he indicate that he's the one that paid the
4 bills at the residence?

5 A He indicated that the utilities were in his name.

6 Q Did you ask him about gang affiliation?

7 A Yes, sir.

8 Q What did he say?

9 A I asked him if he was affiliated with any local
10 gangs and he said that he wasn't any longer. I said
11 what gang were you previously affiliated with and he
12 said the Junior Boys. At that point he pulled up his
13 shirt and across the abdomen of his lower stomach were
14 the initials P-E-A-N-U-T, Peanut. And he said that that
15 was his nickname in his prior time as a Junior Boy.

16 Q That was his nickname, street name. And did he talk
17 about his cousin Mr. Polite?

18 A I asked him if Mario Polite was a member of a street
19 gang and he said that he was.

20 MR. HENRY: Your Honor, I'm going to object as
21 to relevance.

22 MR. TREASTER: I'm done, Your Honor.

23 THE COURT: The way I look at it is if you
24 object to it then don't ask him any questions on
25 cross-examination about it. Otherwise, I don't see that

1 it's relevant.

2 MR. TREASTER: I have no further questions,
3 Your Honor. Thank you.

4 THE COURT: Okay.

5 **CROSS EXAMINATION**

6 BY MR. HENRY:

7 Q Agent Tierney, when did you do your report in this
8 case?

9 A I believe it was in July.

10 Q Do you have your report in front of you?

11 A Yes, sir, I do.

12 Q Reflects July 15 of 2013; is that correct?

13 A Yes, sir.

14 Q And that would have been about four and a half
15 months after the time that you went out there to
16 investigate this case; is that correct?

17 A Yes, sir.

18 Q Did you take custody of the guns?

19 A Not that day. But I did take custody --

20 Q Okay. But not that day?

21 A Not on July -- excuse me -- not on February 27. I
22 believe it was August 5th. I can refer to my file and
23 tell you. But I believe that's correct.

24 Q Okay. Now, did you take notes? You said you
25 grabbed your note pad. Did you take notes that morning?

1 A Yes.

2 Q Okay. Do you have your notes with you?

3 A I do. In the case file.

4 Q Could you please review them for us. Are these
5 notes that are taken actually on the day -- the morning
6 that you're there on February 27?

7 A Yes, sir.

8 Q Does it say when you got called out?

9 A My notes are handwritten notes. Two pages of 8 1/2
10 by 11 lined paper. And the date on it is 2-27-13. Page
11 1 of 2; 2 of 2. I do not have the time called out.

12 Q Do you have time of when you arrived at the scene?

13 A No, sir.

14 Q Does it have a time when you left the scene?

15 A No, sir.

16 Q How long were you at the scene?

17 A I'm going to guess from parking my vehicle to
18 getting my vehicle to leave was somewhere in the
19 neighborhood of 5 to 7, 5 to 8 minutes.

20 Q You were there just for 5 to 8 minutes?

21 A Less than ten minutes, yes.

22 Q And you said you got your car stuck; is that
23 correct?

24 A No. I parked it so that I was hoping I wouldn't be
25 stuck and I did not get stuck.

1 Q With respect to the time period, my client then was
2 still there when you left the scene?

3 A Yes, sir.

4 Q And he sometime later that morning then would have
5 been taken to the Sedgwick County jail and booked in?

6 A I believe so.

7 Q Are you familiar with how long it takes to get
8 somebody booked in? Depending on how busy they are?

9 THE COURT: Tim, you've got to help me out
10 here. What does the time have to do with anything?

11 MR. HENRY: The attenuation issue regarding
12 the statement that I submit is fruit of the poisonous
13 tree versus the warning and the time period in between,
14 Your Honor. It's going towards the attenuation issues.

15 THE COURT: But it was taken in the afternoon
16 of the arrest.

17 MR. HENRY: Yes.

18 THE COURT: Well, okay. But -- go ahead, but
19 I don't see the relevance of it, frankly. You know, if
20 the statement had been taken, you know, two or three
21 months later, that would be one thing.

22 MR. HENRY: If there's no issue regarding the
23 time period or attenuation issues then -- but, I mean, I
24 would agree that it's taken shortly after my client is
25 booked into the jail. There's --

1 Q And you came in right after lunch; is that right?

2 A Yeah. In fact, I --

3 THE COURT: Doesn't the Miranda warning
4 reflect the time it was given to Mr. Denson?

5 Q That was at 1:34; is that correct?

6 A Yes. So it probably took me 15, 20 minutes for the
7 pro visit; but when I spoke with him and we signed the
8 form, it was 1:34. So I'd probably been there 10 or 15
9 minutes prior to that. After lunch is correct.

10 Q So he's still there when you leave the scene that
11 morning. You don't know when he gets to booking but
12 he's booked in; he has the lunch hour; then you get
13 to -- you interview him right after lunch?

14 A Yes, sir.

15 Q Okay. So it's a fairly quick time period for you to
16 get over to the jail and get the interview done; is that
17 correct?

18 A Yes, sir.

19 MR. HENRY: Thank you. That's where I was
20 going, Your Honor. Thank you.

21 BY MR. HENRY:

22 Q Now, in your report you refer to the date of August
23 27th a couple different times. Did you see that?

24 A Yes, I did. In the initial summary and then in the
25 narrative bullet number 1. And, basically, when we

1 write our reports -- when I say we, the ATF -- the
2 summary is generally cut and pasted. And that is
3 absolutely my mistake, Mr. Henry. It was February 27th,
4 not August 27, on both the summary and narrative number
5 1.

6 Q And yet also your report is actually approved by one
7 of your supervisors; is that right?

8 A Yes.

9 Q And that's Mr. Stoddard?

10 A Well, he was acting that day; but, yes, he was
11 technically a supervisor that day.

12 Q And neither of you picked up on the mistake or
13 mistakes on the date?

14 A I would say that's accurate.

15 Q Now, these guns -- these are -- these are -- these
16 are fairly old guns; is that correct?

17 A You know, I could date them for you. They're not --
18 they're, obviously, prior to 1968 when the Gun Control
19 Act required serial numbers to be placed onto firearms.

20 Q So just for clarification, these didn't have serial
21 numbers; but they weren't required by law to have them?

22 A That's correct.

23 Q They weren't obliterated or anything like that? It
24 was just that's the gun that it didn't have serial
25 numbers back then?

1 A Yes, sir.

2 Q Is there anything that you can think of that would,
3 if your notes aren't reflecting it, would accurately
4 place the time of when you arrived there or when you
5 were called by Marshal Moff?

6 A The only reference to a time in either my notes or
7 my report are reflected on the waiver that I had
8 Mr. Denson sign; and how I do that is when he signs it,
9 then I sign it and I date it as of that time. I do not
10 have a reference in my notes as to what time Deputy
11 Marshal Moff contacted me.

12 Q But you were called out after the guns had been
13 discovered; is that correct?

14 A Yes, sir.

15 Q And that was the reason why you were called out?

16 A I believe that's correct.

17 MR. HENRY: Okay. I have nothing further,
18 Your Honor.

19 THE COURT: I don't know what's going to
20 happen to this case; but I assume, unless you all bring
21 it up, that there isn't any real question about the fact
22 that these were in fact firearms within the definition.

23 MR. TREASTER: As far as the Government is
24 concerned, they are, Your Honor.

25 MR. HENRY: I think Mr. Tierney's report on

1 that shows that they were operable.

2 THE COURT: And interstate commerce and all of
3 that business. I mean, we don't have to get into that.

4 MR. HENRY: Not at this time. Not for the
5 Motion to Suppress, Your Honor.

6 THE COURT: All right. Anything further.

7 MR. TREASTER: No, Your Honor. Thank you.

8 THE COURT: All right.

9 MR. TREASTER: And I have no further
10 witnesses, Your Honor.

11 THE COURT: Mr. Denson, this is a Motion to
12 Suppress and the Government has the burden of proof; but
13 you have the right to testify here today or call
14 witnesses if you want to do so. Do you understand that
15 right?

16 DEFENDANT: Yes, sir.

17 THE COURT: And it's your decision. You can,
18 of course, discuss it with Mr. Henry; but you have to
19 decide whether you want to or not. Have you had an
20 opportunity to do that?

21 DEFENDANT: Yes, sir.

22 THE COURT: You understand that if you don't
23 testify, I won't hold it against you.

24 DEFENDANT: Okay.

25 THE COURT: All right. What do you want to

1 do? Do you want to testify?

2 DEFENDANT: I would like to testify if need
3 be, sir.

4 THE COURT: What?

5 DEFENDANT: I would like to testify if need
6 be.

7 THE COURT: I don't know what that means. You
8 better talk with Mr. Henry.

9 MR. HENRY: No, Your Honor. I would -- I'll
10 call Mr. Denson to the stand. I have nothing further
11 from Agent Tierney.

12 THE COURT: All right.

13 MR. HENRY: I would start off and offer
14 Defendant's Exhibit 2. It is the lease for that
15 residence. Didn't know if the Court or Government would
16 raise standing issues. And we had the landlord here but
17 we agreed beforehand that he didn't need to wait around
18 on my case. And he brought in the lease and I've shown
19 it to Matt and --

20 THE COURT: Is there any question about
21 standing here?

22 MR. TREASTER: I have none, Your Honor.

23 THE COURT: Okay.

24 MR. HENRY: And this shows different dates,
25 Your Honor, as far as it's a February start date; but

1 it's a little different from the utilities being turned
2 on, but it's a lease that reflects both Ms. Miller and
3 my client on the front.

4 THE COURT: That's fine. It's received.

5 MR. HENRY: Thank you. Mr. Denson.

6 **STEVEN J. DENSON**

7 Having been first duly sworn to tell the truth, the
8 whole truth and nothing but the truth, testified as
9 follows on:

10 **DIRECT EXAMINATION**

11 BY MR. HENRY:

12 Q Please state your name for the Court.

13 A Steven Jerome Denson.

14 Q And are you the Defendant in this case?

15 A Yes, sir.

16 Q I'm handing you what's been marked as Defendant
17 Exhibit 2. Do you recognize that?

18 A Yes, sir. It's my lease for my apartment on ----
19 (numbers redacted) North Hillside.

20 Q And who did you lease that apartment from?

21 A Syeed Akram.

22 Q And was there anyone else on the lease with you?

23 A Yes, my fiance, girlfriend, Keeana Miller.

24 Q And her name is reflected on there along with yours?

25 A Yes, sir.

1 Q And that document reflects a start date of February
2 21st of 2013; is that correct?

3 A Yes, sir.

4 Q Thank you. Now, the address that you were living
5 at, the address that's on Defendant's Exhibit 2, was
6 that ---- (numbers redacted) North Hillside?

7 A Yes, sir.

8 Q And is that a standalone residence or is it a
9 duplex?

10 A It is a duplex and I was staying on the south side.

11 Q South side. And this address is actually on the
12 west side of Hillside; is that correct?

13 A Yes, sir.

14 Q So the southeast bedroom where the firearms were
15 found in a closet, that would have been the front left
16 bedroom if you walked into the front through the front
17 door; is that correct?

18 A Yes, sir.

19 Q And that bedroom was empty?

20 A Yes, sir, it was.

21 Q Okay. Now, the -- I believe Officer Bansemer --
22 Bansemer -- excuse me -- had testified that you had said
23 that you had gotten in an argument with Keeana that
24 evening; is that correct?

25 A Yes. I had gotten into an argument with her earlier

1 that night.

2 Q And, again, when you say earlier in the day, it was
3 an argument at night, though; is that correct?

4 A Yeah, earlier that night before.

5 Q Okay. And as far as that argument, I'm going to
6 show you what's been marked as Government Exhibit 1.

7 And do you recognize that residence?

8 A Yes. This is the house -- the duplex I was living
9 in and those are Keeana's belongings that I had that I
10 had put out on the property.

11 Q On the front porch. I was going to ask you about
12 that. There are items that appear to be on the front
13 porch outside the front door of your side of the duplex;
14 is that correct?

15 A Yes, sir.

16 Q So this argument led to her leaving the residence;
17 is that correct?

18 A Yes, sir.

19 Q And then you ended up packing up a bunch of her
20 stuff and throwing it out on the front porch; is that
21 right?

22 A Yes, sir, I did.

23 Q Now, there is a -- if you're able to tell, is there
24 a colorful diaper box that is on Government Exhibit 1?

25 A Yes, it is.

1 Q I'm going to see if I can find another picture of
2 the front but -- but, anyway, this appears to be the
3 same one that's in Defendant Exhibit 1. But the
4 colorful box that's up there, there appears to be some
5 either luggage and then the colorful box. What kind of
6 a box is that?

7 A That would be the diaper box that was actually in
8 that closet in the southeast bedroom.

9 Q Okay. So that -- now, you had lived there for at
10 least a week or two; is that correct?

11 A Yes, sir.

12 Q The front southeast bedroom was essentially empty;
13 is that correct?

14 A Yes, it was.

15 Q No furniture in there?

16 A No furniture.

17 Q But this diaper box that you put out on the front
18 porch, where was that located in the house prior to
19 putting it out there?

20 A That diaper box was located in the closet right as
21 you walk in. You see the closet. It's right there in
22 plain sight.

23 Q Okay.

24 A I had took it out of there and put it out on the
25 porch.

1 Q That night you actually did that before the --

2 A That night.

3 Q -- police came in?

4 A Before the police came in. I took it out of that
5 closet and put it on the front porch.

6 Q And during the time that you lived there, how was
7 the door to that closet? Was it open or closed?

8 A I always left the closet door open.

9 Q It was always open?

10 A Always open.

11 Q And, in fact, was it open when you went to get the
12 diaper box that night?

13 A It was open when I went to get the diaper box that
14 night.

15 Q And did you ever close that door?

16 A Never closed that door.

17 Q As far as the officers coming in and arresting you
18 that morning, you were not visible to them from the
19 front porch, were you?

20 A No, sir.

21 Q You were -- you remained laying in bed?

22 A I was in bed.

23 Q Okay. Had you stayed up late that night arguing
24 with Keeana?

25 A Yes, I had.

1 Q So you were actually quite tired?

2 A Yes, I was.

3 Q When they came in and -- well, let me ask you this.

4 Did you hear them out on the porch?

5 A At first I didn't hear them on the porch.

6 Q Okay. But did you actually hear them announcing

7 their presence?

8 A I did eventually. At first I thought I was dreamin'

9 because I was sleeping so hard. And then I -- the

10 banging got louder and I snapped out of it a little bit

11 and heard 'em.

12 Q So while they're announcing their presence on the

13 porch, though, you remain in bed; is that correct?

14 A Yes, sir, I did.

15 Q And ultimately they come into the house; is that

16 correct?

17 A Yes, they did.

18 Q So how long would you say that they were out on the

19 porch after you woke up when you actually heard them

20 announcing their presence?

21 A Approximately five, maybe ten minutes.

22 Q Now, once they come in, tell the Court what actually

23 happened?

24 A Once they come in, they come in through the living

25 room and through the little hallway, which is really --

1 it is really small. It's a small hallway. And guns are
2 drawn. They're telling me to hold my hands up, so I was
3 rising up holding my hands up. Then they get out of the
4 bed -- they tell me to get out of the bed. I get out of
5 the bed and I'm cuffed up and took into the living room
6 and sat on --

7 Q You're cuffed behind --

8 A I'm cuffed behind my back.

9 Q With your hands behind your back?

10 A My hands behind my back and taken into the living
11 room. As I'm taken into the living room, they clear the
12 living room for any weapons, or whatever they gotta do,
13 and they set me on the couch that's closest to the front
14 door. And I'm sitting on the couch to where I can see
15 in my bedroom and see in the kitchen area.

16 Q Okay. What's going on during this time while you're
17 sitting on the couch?

18 A During the time that I'm sitting on the couch this
19 officer in there with me, I don't know which one it was,
20 and the rest of 'em are in the rooms, in my room, in the
21 southwest bedroom, the room that I was found in,
22 searching the room, flipping the mattress, going through
23 the drawers, lifting my clothes up off the floor, all
24 that, going through the closets. And one's going in the
25 kitchen, clearing the kitchen or whatever. And then I

1 guess there was somebody in the back room. I guess they
2 was Marshal Moff in the back room.

3 Q The back room. Now this is --

4 A The southeast.

5 Q The other empty bedroom?

6 A Yeah, the empty bedroom.

7 Q But there's a back room in your duplex off the
8 kitchen that leads to the back door; is that correct?

9 A Yes, it is.

10 Q And the -- so when you say the other room. Did you
11 see Deputy Moff go into the empty bedroom?

12 A I seen the deputy go in there. I'm not for sure who
13 it was. But I seen the deputy go in the room, say
14 clear.

15 Q Okay. And then he came out?

16 A Came out.

17 Q Okay. And then what happened?

18 A After that, they continued to, I guess, search some
19 more, and then I hear the marshal, another marshal, the
20 same voice, say come in here, or call for another
21 officer to come in the room, the southwest bedroom
22 again.

23 Q How many minutes had elapsed during that time for
24 the second time by Deputy Moff?

25 A I was sittin' on the couch probably 6 to 10 minutes

1 again, sittin' on the couch.

2 Q So the -- and during this time, your room, you can
3 see your room being searched by a number of officers; is
4 that correct?

5 A Yes, it was being searched.

6 Q And could you tell what -- I mean, did they turn
7 over the bed? Did they --

8 A Turned over the mattress. They was -- I had clothes
9 by my bed that was dirty but they was going through
10 those, opening closet doors, going through my dresser
11 drawer. There was a closet that they couldn't get to
12 cause the TV was in front of it; but it was open, kind
13 of cracked where you could just flash a light in there.

14 Q And they were going through your dresser drawers; is
15 that right?

16 A Yeah.

17 Q Did they flip your bed?

18 A Yes, they did.

19 Q Now, all that took some time; is that correct?

20 A Yes.

21 Q And did they -- but the first room they searched was
22 the living room where you were placed in; is that
23 correct?

24 A Yes.

25 Q And then what was the next room that they searched?

1 A I would say the kitchen and --

2 Q And then after that?

3 A My room. And then the southeast bedroom. I don't
4 even remember them going in the bathroom; but if they
5 did, they did.

6 Q Okay. And there's pictures here that you've seen
7 that have been admitted as Defendant Exhibit 1 that
8 reflect a view looking into the bathroom where there are
9 some shelves on the outside before you go into the
10 bathroom; is that correct?

11 A Yes.

12 Q And that's the hallway that's in between the two
13 bedrooms?

14 A Yes, sir.

15 Q Did they go through those drawers and shelves as
16 well?

17 A Yes, they did. They went through all that.

18 Q This duplex isn't very large?

19 A No.

20 Q Okay. But the -- but the order of the searching of
21 the different rooms, the southeast bedroom was the last
22 one to be searched?

23 A Yes, sir.

24 Q And that was done by Deputy Moff; is that correct?

25 A Yes, sir.

1 Q And that was after three other rooms had been
2 searched, including your bedroom, which took the
3 longest; is that correct?

4 A Yes, sir.

5 Q So you're saying at least six to ten minutes went by
6 before you heard Deputy Moff call out and say for
7 somebody to come in there because the guns had been
8 discovered?

9 A Yes, sir.

10 Q Okay. So it was not within the first 15 or 30
11 seconds or one minute or two minutes, was it?

12 A No.

13 Q The --

14 MR. TREASTER: Your Honor, he's leading the
15 witness.

16 THE COURT: I don't care. We've got to move
17 this along. I've got another hearing starting in a few
18 minutes here.

19 MR. HENRY: Actually, Your Honor, I'll end it
20 there. Thank you.

21 THE COURT: Cross-examination.

22 **CROSS EXAMINATION**

23 BY MR. TREASTER:

24 Q Now, you said there was a diaper bag in this closet?

25 A Yes, there was.

1 Q And there was also two guns there; right?

2 A Yes, there was.

3 Q And you put the guns there?

4 A Yes, I did.

5 Q Okay. You had a hard night the night before?

6 A Yes. I had a pretty rough night arguing, fighting.

7 Q And you told Special Agent Tierney about using
8 cocaine the nights before this, too, didn't you?

9 A That was two nights before.

10 Q Okay. Now, where you're sitting in the living room,
11 you can see your bedroom; right?

12 A Yes.

13 Q But you can't see the southeast bedroom, can you?

14 A No, sir.

15 Q So you don't know when Deputy Moff found the guns,
16 do you?

17 A No, sir.

18 Q But you saw him go back there or not?

19 A I did see a deputy go back there.

20 Q And he went back there immediately upon you coming
21 out of that bedroom, didn't he?

22 A Not immediately upon me going.

23 Q What's that?

24 A Not immediately.

25 Q What was he doing?

1 A He was standing in the hallway.

2 Q Then what did he do?

3 A Then he went back there.

4 Q So it's a matter of seconds; right?

5 A He said clear before they searched the room.

6 Q Well, he's got to go in there to look; right?

7 A Yeah.

8 Q So you saw him go in there?

9 A Yeah.

10 Q And if you looked in that closet, would he see the
11 guns?

12 A If he would have looked in the closet, yeah, he
13 would have seen the guns. If he would have looked.

14 Q Because that was the only thing in the closet;
15 right?

16 A Yes.

17 MR. TREASTER: No further questions, Your
18 Honor.

19 **REDIRECT EXAMINATION**

20 BY MR. HENRY:

21 Q Agent Moff yelled clear from essentially the doorway
22 looking into this empty room; is that correct?

23 A Yes, he did.

24 Q He ended up -- initially was in the room when you
25 were arrested and then you were taken to the living

1 room; but while -- before you were taken to the living
2 room, he just looked in there and yelled clear; is that
3 correct?

4 A Yes, sir.

5 Q And that's what you -- you were -- you actually saw
6 him when he yelled clear or it was just right as you
7 were being passed in the --

8 A It was as I was being passed off into the living
9 room.

10 Q He wasn't all the way into that room where that
11 closet door is? You need to answer out loud.

12 A No, sir.

13 Q Okay. He was -- essentially, he was right -- he was
14 fairly close to you when he gave the all clear sign?

15 A Just about in the doorway.

16 Q Okay. And then it was only about 6 to 10 minutes
17 later after your place had been searched that he's back
18 in there and asks for --

19 A Someone to come in the room.

20 Q Okay.

21 MR. HENRY: I have nothing further.

22 THE COURT: Anything further of Mr. Denson?

23 MR. TREASTER: No, Your Honor.

24 THE COURT: Thank you, Mr. Denson. You may
25 resume your seat. Next witness, please.

1 MR. HENRY: I have nothing further, Your
2 Honor.

3 THE COURT: Any rebuttal.

4 MR. TREASTER: Yes. Quickly, Your Honor. I'd
5 like to call back Officer Bansemer.

6 THE COURT: You're still under oath, sir.

7 A Yes, sir.

8 **BRANDON BANSEMER**

9 Having been previously duly sworn to tell the truth, the
10 whole truth and nothing but the truth, testified further
11 as follows on:

12 **CONTINUED DIRECT EXAMINATION**

13 BY MR. TREASTER:

14 Q You heard the Defendant's testimony; correct?

15 A Yes, sir.

16 Q He talked about officers going into his bedroom,
17 flipping the bed over, going through dresser drawers.
18 Did you participate in any of that?

19 A No, sir.

20 Q Did you see any officers doing anything like that?

21 A They went in and cleared the closet; looked under
22 the bed. I mean, it was like a futon. There wasn't
23 much property in that room to be going through.

24 Q Were they in there for seconds or minutes or what
25 were they --

1 A Initially, they were in there for probably, I don't
2 know, 20 seconds tops. Just enough to clear the closet.
3 Like he said, there was a dresser pushed up against
4 another closet. But you were able to get a flashlight
5 back there and check behind the dresser and closet.

6 Q From what you saw, did it look like they were
7 looking for people?

8 A They were looking for, yeah, more people, anybody
9 hiding.

10 Q Did you go through and hand-search the kitchen?

11 A We went through, looked under the sink, make sure no
12 one was hiding in there. Looked in a little back
13 walkway area. There was nobody back there.

14 Q Same thing for the bathroom? Did you go through any
15 drawers in the bathroom?

16 A I never made it to the bathroom. Other officers
17 cleared that portion in the house. I stayed in the
18 living room and kitchen.

19 Q You didn't open up any drawers in the kitchen other
20 than you said you looked under the sink?

21 A I looked under the sink. I've found people in the
22 past hiding underneath the cabinet space. That was
23 about it.

24 MR. TREASTER: No further questions, Your
25 Honor. Thank you.

CROSS EXAMINATION

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BY MR. HENRY:

Q So would it be safe to say that you had two rooms to search: The living room and the kitchen area, while the other two officers were in the southwest bedroom looking at the place where my client was arrested?

A I cleared through the living room to get to the kitchen portion to let Deputy Lemer in. We did a quick sweep of the kitchen, found nobody was in there. It's not that big of a kitchen. I walked back in the living room as they were passing out Mr. Denson to us and we quickly searched the couch for any weapons so we could set him down and clear the rest of the house.

Q And your report reflects an arrest at 8:50 and then another time entered at 9:05?

A Yeah. The 8:50, like I said, sir, I don't know where -- I mean, that's what it was told to me at the time for in custody. And then I got the actual dispatch time when we radioed that we had one in custody. So I just used that for the initial one.

Q Okay. Now, are you saying that the other two officers, Jones and Richardson, didn't go through my client's clothes in the bedroom?

A I did not see them do that. On the initial entry. I mean, we went through there. They did their thing in

1 that back room. I was, of course, tied up with
2 Mr. Denson in the living room portion. Then I was
3 notified by Deputy Moff to come become there and look.

4 Q Okay. And you believe that that was one to two
5 minutes into the entry?

6 A I mean, we were looking from -- I mean, anywhere 30
7 seconds to a minute. It could be longer. I'm not
8 really for sure. I didn't keep count.

9 Q One to two minutes from the arrest or from the
10 entry? Do you know?

11 A Probably from the entry.

12 Q And, again, there's a wall between the living room
13 and the kitchen; is that correct?

14 A Yeah. It's like a partial wall. I mean, on the
15 other side is a fridge and a stove.

16 Q And I believe there's a picture of that in
17 Defendant's Exhibit 1. I'll mark that as 1-B.

18 A Might be a better one in there if you want me to
19 find it for you.

20 Q Okay.

21 A On these photos here, there's the wall and the
22 entryway would be about right there. It was pretty much
23 close to that little couch.

24 Q You're looking at the two couches in the living
25 room?

1 A From the front door.

2 Q From the front door looking to the west?

3 A Yes, sir.

4 Q And the -- and then the kitchen, though -- but from
5 the kitchen that you were searching -- and let me just
6 go ahead and mark these for purposes of the record.

7 A Yes, sir.

8 Q 1-B, Defendant's 1-B, is the kitchen that looks to
9 the west that includes the back door that you allowed
10 Marshal Lemer to enter; is that correct?

11 A Yes, sir.

12 Q And then the other one -- but from the kitchen area,
13 you cannot see into the southwest bedroom, can you?

14 A From here?

15 Q Yes. From the kitchen area.

16 A Not from the way the -- I mean, it's kind of a weird
17 structured house. But here's, like, the other wall that
18 feeds into the kitchen.

19 Q And I'm going to go ahead and mark that as
20 Defendant's 1-C. That's the little hallway looking down
21 towards the bathroom and those shelves that are in the
22 hallway?

23 A Yes, sir. And you go to the right to the bedroom he
24 was in. The shelving in the bathroom.

25 Q So where my client was seated at on the couch, he

1 was on the eastern part of the couch which is the -- and
2 you're pointing to the three-seat couch, not the
3 two-seat love seat couch, on Defendant's Exhibit 1-D; is
4 that correct?

5 A Yes, sir.

6 Q Let me get that marked.

7 And so he would have been toward the front door on
8 the couch that looked directly into the southwest
9 bedroom that was being searched?

10 A I don't know. You're referring to the bedroom over
11 here; right?

12 Q No. The southeast is the empty room. Where he was
13 arrested at that was being searched --

14 A That's the --

15 Q -- that would have been the southwest one because,
16 remember, the light's coming in in the morning on the
17 southeast one that's empty?

18 A I mean, I guess you could see. I never really
19 looked at his vantage point. I mean, if he is sitting
20 there, he could probably see into this hallway and this
21 room here.

22 Q The kitchen is further west and you would not have
23 been able to see into that bedroom?

24 A Not from the kitchen, no, sir.

25 Q Okay. And that was one of the rooms that you were

1 clearing and searching?

2 A Yes, sir. I came in through here. And it's a small
3 kitchen. There's the stove; the fridge. And then the
4 sink and cabinets are over here. Then there's like a
5 small walkway. That's pretty much what you see.
6 There's the door opens against the wall. There's not
7 much over there.

8 MR. HENRY: Okay. Thank you.

9 THE COURT: Anything further?

10 MR. HENRY: No, Your Honor. Thank you.

11 MR. TREASTER: No, Your Honor. Thank you.

12 THE COURT: Thank you. All right. I'll take
13 this under advisement. Get out an order in due course.
14 Thank you very much.

15 MR. TREASTER: Judge, there is one new case
16 that just came out yesterday. If I could just cite it
17 for the record. It's *United States vs. Mabry*,
18 M-A-B-R-Y. Tenth Circuit case. It's actually out of --
19 it's from Judge Melgren's court. It's case number 12 --

20 THE COURT: We have it.

21 MR. TREASTER: I do have a copy, Your Honor.

22 THE COURT: We have a copy. Make sure Tim has
23 a copy of it though.

24 MR. TREASTER: He does, Your Honor.

25 MR. HENRY: We do. And I saw it this morning

1 before coming over.

2 MR. TREASTER: Thank you, Your Honor.

3 (Adjourned at 12:30 p.m.)

4

5

6 **C E R T I F I C A T E**

7

8 I, Cindy L. Schwemmer, United States Court
9 Reporter in and for the District of Kansas, do hereby
10 certify:

11 That the above and foregoing proceedings were
12 taken by me at said time and place in stenotype;

13 That thereafter said proceedings were
14 transcribed under my direction and supervision by means
15 of computer-aided transcription, and that the above
16 and foregoing constitutes a full, true and correct
17 transcript of said proceedings;

18 That I am a disinterested person to the said
19 action.

20 IN WITNESS WHEREOF, I hereto set my electronic
21 signature on this the 27th day of January, 2014.

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24

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s/ Cindy L. Schwemmer

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Cindy L. Schwemmer
United States Court Reporter