

No. 08-2294

**In The
United States Court of Appeals
for the Seventh Circuit**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DAVID R. OLOFSON,

Defendant-Appellant.

**On Appeal from the United States District Court
for the Eastern District of Wisconsin**

Appendix B

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August 25, 2008

Counsel for Appellant

CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 30(d)

IT IS HEREBY CERTIFIED:

1. That the appendices (Appendix A and Appendix B) to the Brief of Appellant comply with the requirements of Seventh Circuit Rule 30(a) and (b) listing the required contents of appendices.

2. That, in addition to hard copy, Appendix A (bound with the Brief of Appellant) and Appendix B (separately bound) have been furnished digitally with the Brief of Appellant to the Clerk of Court and to counsel for the appellee, except for appendix documents not available in a non-scanned pdf format.

William J. Olson
Attorney for Appellant

Dated: August 25, 2008

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APPEAL, CLOSED, RCMND

**United States District Court
Eastern District of Wisconsin (Milwaukee)
CRIMINAL DOCKET FOR CASE #: 2:06-cr-00320-CNC-1**

Case title: USA v. Olofson

Date Filed: 12/05/2006

Other court case number: 08-2294 USCA Olofson
5/18/08

Date Terminated: 05/15/2008

Magistrate judge case number: 2:06-mj-00486-WEC

Assigned to: Judge Charles N
Clevert, Jr

Appeals court case number:
'08-2294' 'Seventh Circuit'

Defendant (1)

David R Olofson

TERMINATED: 05/15/2008

represented by **Brian P Mullins**

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ATTORNEY TO BE NOTICED

Pending Counts

18:922(o) and 924(a)(2) VIOLENT
CRIME/DRUGS/MACHINE GUN
(1)

Disposition

SENT: 30 mos. imprisonment.
SUPERVISED RELEASE: 2 Yrs.
SA: \$100.

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

**Highest Offense Level
(Terminated)**

None

Complaints

18:922(o)

Disposition

Plaintiff

USA

represented by **Gregory J Haanstad**
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*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
11/17/2006	<u>1</u>	COMPLAINT signed by Magistrate Judge William E Callahan Jr as to David R Olofson (1). (kmf) [2:06-mj-00486-WEC] (Entered: 11/21/2006)
11/20/2006	<u>2</u>	Minute Entry (WEC) Initial Appearance as to David R Olofson held on 11/20/2006. Crt. advised deft. of rights. Govt. advised deft. of charges, penalties and fines. A & P/Prelim. hrg. to be set before Judge Goodstein on 12/6/06. Parties will be notified as to time of hrg. Govt. not seeking detention but w/request deft. have no contact w/firearms. Deft. requests exemption when deft. is w/reserve unit. Govt. does not obj. Crt. statements before ruling. Crt. sets O/R bond w/conditions: 1). Travel is restricted to the E.D. of WI. 2). Report to PTS as directed. 3). No firearms unless when active in Reserves. 4). Surrender all firearms to ATF. 5). Deft. may not go to firing range. (Tape #3:56:15-4:08:22/4:15:04-4:20:30) (kmf) [2:06-mj-00486-WEC] (Entered: 11/21/2006)
11/20/2006	<u>3</u>	ORDER Setting Conditions of Release as to David R Olofson. Signed by Judge William E Callahan Jr on 11/20/06. (cc: all counsel) (kmf) [2:06-mj-00486-WEC] (Entered: 11/21/2006)
11/21/2006	<u>4</u>	NOTICE OF HEARING as to David R Olofson. Prelim./A & P hrg. set for 12/6/2006 at 10:00 AM before Magistrate Judge Aaron E Goodstein. (cc: all counsel, via US mail to Atty. Rose)(kmf) [2:06-mj-00486-WEC]
11/21/2006	<u>5</u>	Warrant, executed on 11/20/06, returned as to David R Olofson. (kmf) [2:06-mj-00486-WEC]
11/22/2006	<u>6</u>	NOTICE OF HEARING as to David R Olofson. Preliminary/Arrestment and Plea hrg. reset for 12/6/2006 at 02:00 PM before Magistrate Judge Aaron E Goodstein. (cc: all counsel)(kmf) [2:06-mj-00486-WEC]
11/30/2006	<u>7</u>	CJA 20 as to David R Olofson: Appointment of Attorney Christopher W Rose for David R Olofson. Signed by Judge William E Callahan Jr on 11/28/06. (cc: all counsel) (jc) [2:06-mj-00486-WEC] (Entered: 12/06/2006)
12/05/2006	<u>9</u>	INDICTMENT as to David R Olofson (1) count(s) 1. (Attachments: # <u>1</u> information sheet) (bdf) (Entered: 12/08/2006)

12/06/2006	10	Minute Entry for proceedings held before Judge Aaron E Goodstein : Arraignment as to David R Olofson (1) Count 1 held on 12/6/2006. Defendant advised of rights, charges, penalties and fines. Plea entered by David R Olofson Not Guilty on counts 1. Speedy Trial Date 3/6/07 and trial est: 1 week. Referred to Magistrate Judge William E Callahan, Jr. Court orders GJ materials disclosed no later than 1 business day prior to trial. Motions due by 12/26/2006, 1/5/07 and 1/10/07. Final Pretrial Conference set for 2/13/2007 08:30 AM in Courtroom 425 before Judge J P Stadtmueller. Jury Trial set for 2/20/2007 08:30 AM in Courtroom 425 before Judge J P Stadtmueller. (Tape #2:10:47-2:18:23) (bdf) (Entered: 12/08/2006)
12/06/2006	11	PRETRIAL ORDER as to David R Olofson Motions due: 12/26/06 Response due: 1/5/07 Reply due: 1/10/07 Signed by Judge William E Callahan Jr on 12/6/06. (cc: all counsel) (bdf) (Entered: 12/08/2006)
12/06/2006	12	NOTICE OF HEARING as to David R Olofson. (cc: all counsel) Final Pretrial Conference set for 2/13/2007 08:30 AM in Courtroom 425 before Judge J P Stadtmueller. Jury Trial set for 2/20/2007 08:30 AM in Courtroom 425 before Judge J P Stadtmueller. (bdf) (Entered: 12/08/2006)
12/06/2006	13	SCHEDULING ORDER as to David R Olofson (see order for details) Signed by Judge J P Stadtmueller on 12/6/06. (cc: all counsel) (bdf) (Entered: 12/08/2006)
12/07/2006	8	LETTER from Atty.Christopher W.Rose to: <i>Judge Stadtmueller re Rescheduling</i> (Rose, Christopher) [2:06-mj-00486-WEC]
12/26/2006	14	First MOTION for Extension of Time to File <i>Pretrial Motions</i> by David R Olofson.(Rose, Christopher)
12/26/2006	15	AFFIDAVIT of Atty.Christopher W.Rose by David R Olofson <i>in Support of Motion to Extend</i> (Rose, Christopher)
12/27/2006	16	ORDER signed by Judge William E Callahan Jr on 12/27/06 granting in part and denying in part 14 Motion for Extension of Time to File as to David R Olofson (1). Pretrial motions are due 1/5/07, responses are due by 1/16/07 and replies are due by 1/22/07. (cc: all counsel) (bdf)
01/05/2007	17	LETTER from Atty. Christopher W.Rose to <i>U.S. Magistrate William Callaghan</i> (Rose, Christopher)
01/05/2007	18	First MOTION to Exclude <i>Evidence</i> by David R Olofson.(Rose, Christopher)
01/05/2007	19	AFFIDAVIT of Christopher W.Rose by David R Olofson <i>In support of Motion to Exclude</i> (Rose, Christopher)

01/05/2007	20	BRIEF by David R Olofson in Support re 18 First MOTION to Exclude Evidence In Support of Motion to Exclude Evidence (Rose, Christopher)
01/16/2007	21	RESPONSE by USA as to David R Olofson (Haanstad, Gregory)
01/23/2007	22	ORDER RE: PRETRIAL MOTION TO EXCLUDE EVIDENCE as to David R Olofson Signed by Judge William E Callahan Jr on 1/23/07. (cc: all counsel) (bdf)
01/24/2007		Case as to David R Olofson no longer referred to William E Callahan, Jr. File Transmitted to Judge J P Stadtmueller. (bdf)
01/25/2007	23	Second MOTION to Adjourn Trial by David R Olofson.(Rose, Christopher)
01/25/2007	24	AFFIDAVIT of Christopher W.Rose by David R Olofson in support of Motion to Adjourn Trial (Rose, Christopher)
01/25/2007	25	LETTER from Atty.Christopher W.Rose re:Motion to Adjourn trial (Rose, Christopher)
02/01/2007	26	LETTER from Atty. Christopher W.Rose to Judge J.P.Stadtmueller (Rose, Christopher)
02/01/2007	27	Third MOTION to Appoint Expert Mike Bykowski by David R Olofson. (Rose, Christopher)
02/08/2007	28	Joint PRETRIAL REPORT by USA as to David R Olofson (Haanstad, Gregory)
02/13/2007	29	Minute Entry for proceedings held before Judge J P Stadtmueller : Hearing Minutes as to David R Olofson held on 2/13/2007 Status Conference set for 2/22/2007 08:30 AM in Courtroom 425 before Judge J P Stadtmueller. (Court Reporter Sheryl Stawski) (Burkland, Melissa) (Entered: 02/15/2007)
02/15/2007	30	LETTER from Atty.Christopher W.Rose to Magistrate William Callahan,Jr. (Rose, Christopher)
02/22/2007	31	NOTICE OF HEARING as to David R Olofson. Final Pretrial Conference set for 3/15/2007 01:30 PM in Courtroom 425 before Judge J P Stadtmueller. Jury Trial set for 3/19/2007 08:30 AM in Courtroom 425 before Judge J P Stadtmueller. Final Pretrial Report is due as per previously issued order of December 6, 2006 (Docket # 13).(Blackburn, Pat)
02/22/2007	32	Minute Entry for proceedings held before Judge J P Stadtmueller : Status Conference as to David R Olofson held on 2/22/2007. Trial date set for March 19-20, 2007, at 8:30 a.m.; final pretrial conference set for

		March 15, 2007, at 1:30 p.m. (Court Reporter John Schindhelm) (Chambers-jps, 2)
03/13/2007	33	Fourth MOTION to Adjourn <i>Trial</i> by David R Olofson.(Rose, Christopher)
03/13/2007	34	AFFIDAVIT of Christopher W. Rose by David R Olofson <i>in Support of Motion to Adjourn Trial</i> (Rose, Christopher)
03/13/2007	35	Fifth MOTION to Suppress <i>Evidence & Allow Late Filing</i> by David R Olofson.(Rose, Christopher)
03/13/2007	36	AFFIDAVIT of David R. Olofson by David R Olofson <i>to Suppress Evidence</i> (Rose, Christopher)
03/13/2007	37	Fifth MOTION for Discovery <i>to Prohibit Introduction of Evidence</i> by David R Olofson.(Rose, Christopher)
03/15/2007	38	Minute Entry for proceedings held before Judge J P Stadtmueller : Pretrial Conference as to David R Olofson held on 3/15/2007. Defendant's attorney discharged from representing Mr. Olofson; the court orders that this matter be reassigned to another branch of the court for the purpose of trial. (Court Reporter Cindy Bohman) (Burkland, Melissa) Corrected minute sheet added on 3/20/2007 (bet)
03/16/2007		Case as to David R Olofson Referred to Magistrate Judge William E Callahan, Jr. (bdf)
03/21/2007	39	TRANSCRIPT of the Final Pretrial Conference held on 3/15/07 in the matter as to David R Olofson. (IN PAPER FORMAT) (kmf)
03/22/2007	40	NOTICE OF ATTORNEY APPEARANCE: Brian P Mullins appearing for David R Olofson (Mullins, Brian)
03/22/2007	41	LETTER from Brian P. Mullins <i>Requesting Additional Time To File Pretrial Motions</i> (Mullins, Brian)
03/23/2007	42	Minute Entry (WEC) Telephone Conference as to David R Olofson held on 3/23/2007. Deft. not participating. Defense counsel is newly appointed and requests an opportunity to review the discovery to determine if he w/proceed with motions previously filed by prior counsel or if additional motions need to be filed. Crt. sets the following briefing schedule: 4/12/07, 4/23/07, 4/27/07. Def. w/file a letter w/court indicating whether he will be filing additional motions or adopt motions previously filed by prior counsel.(Tape #3:54;54-4:06:41) (kmf) (Entered: 03/27/2007)
03/27/2007	43	SCHEDULING ORDER as to David R Olofson Final/Joint Pretrial Report due by 5/4/2007 Final Pretrial Conference set for 5/11/2007 11:30 AM in Courtroom 222 before Judge Charles N Clevert Jr. Jury

		Trial set for 5/21/2007 08:30 AM in Courtroom 222 before Judge Charles N Clevert Jr. Signed by Judge Charles N Clevert Jr on 3/27/07. (cc: all counsel) ((mj), C. N. CLEVERT, JR.)
04/02/2007	44	TRANSCRIPT of Final Pretrial Conference held on 2/13/07 as to David R Olofson (kmf) (IN PAPER FORMAT)
04/12/2007	45	MOTION to Suppress <i>Statements and Fruits Derived Therefrom and Request for Evidentiary Hearing</i> by David R Olofson.(Mullins, Brian)
04/12/2007	46	MOTION to Dismiss <i>Indictment</i> by David R Olofson.(Mullins, Brian)
04/23/2007	47	RESPONSE by USA as to David R Olofson re 46 MOTION to Dismiss <i>Indictment</i> (Haanstad, Gregory)
04/24/2007	48	Joint MOTION to Adjourn <i>Trial and Final Pretrial</i> by USA as toDavid R Olofson.(Haanstad, Gregory)
05/02/2007	49	LETTER <i>RE/PERMISSION TO TRAVEL</i> (Mullins, Brian)
05/03/2007		MARGIN ORDER as to David R Olofson granting def't's request to travel to the Western District of Wisconsin from 5/3/07 thru 5/7/07. Signed by Judge William E Callahan Jr on 5/3/07. (cc: all counsel) (bdf) (Entered: 05/04/2007)
05/03/2007	50	Minute Entry (WEC) Bond Hearing as to David R Olofson held on 5/3/2007. Deft. requests leave to travel to Camp McCoy for army duty and training from 5/3-5/7. Deft. was supposed to report today. Govt. does not oppose request. Crt. w/GRANT def't.'s request to travel to the W.D. of Wisconsin. Evidentiary Hearing set for 5/31/2007 at 01:30 PM before Magistrate Judge William E Callahan Jr. (Tape #4:19:11-4:29:18) (kmf) (Entered: 05/07/2007)
05/29/2007	51	Minute Entry for proceedings held before Judge William E Callahan Jr: Evidentiary Hearing as to David R Olofson held on 5/29/2007. Testimony taken. Exhibit #3 O&R. Parties are to file simultaneous briefs by 6/15/07 if a response is to be filed they are to seek leave of the court. (Court Reporter Heidi Trapp) (dmm)
05/30/2007	52	ORDER signed by Judge Charles N Clevert Jr on 5/30/07 granting 48 Motion to Adjourn as to David R Olofson (1). (cc: all counsel) ((mj), C. N. CLEVERT, JR.)
05/30/2007		Set/Reset Hearings as to David R Olofson: Final Pretrial Conference set for 7/24/2007 09:30 AM in Courtroom 222 before Judge Charles N Clevert Jr. Jury Trial set for 8/6/2007 08:30 AM in Courtroom 222 before Judge Charles N Clevert Jr. ((mj), C. N. CLEVERT, JR.)
06/11/2007	53	LETTER from Brian P. Mullins <i>Regarding Request to Adjourn Trial</i> (Mullins, Brian)

06/12/2007	54	ORDER Granting Request to Reschedule Trial as to David R Olofson Final Pretrial Conference reset for 9/11/2007 09:00 AM in Courtroom 222 before Judge Charles N Clevert Jr. Jury Trial reset for 9/17/2007 08:30 AM in Courtroom 222 before Judge Charles N Clevert Jr. Signed by Judge Charles N Clevert Jr on 6/12/07. (cc: all counsel) ((mj), C. N. CLEVERT, JR.)
06/15/2007	55	MEMORANDUM by David R Olofson in Support re 45 MOTION to Suppress <i>Statements and Fruits Derived Therefrom and Request for Evidentiary Hearing</i> DEFENDANTS POST-EVIDENTIARY HEARING MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS STATEMENT (Mullins, Brian)
06/15/2007	56	BRIEF in Opposition by USA as to David R Olofson re 45 MOTION to Suppress <i>Statements and Fruits Derived Therefrom and Request for Evidentiary Hearing</i> (Haanstad, Gregory)
06/21/2007	57	REPORT AND RECOMMENDATIONS as to David R Olofson recommending that 46 MOTION to Dismiss Indictment and 45 MOTION to Suppress Statements and Fruits Derived Therefrom be denied. Signed by Judge William E Callahan Jr on 6/21/07. (cc: all counsel) (bdf) (Entered: 06/22/2007)
06/22/2007		Case as to David R Olofson no longer referred to William E Callahan, Jr. File Transmitted to Judge Charles N. Clevert, Jr. (bdf)
07/06/2007	58	OBJECTION TO REPORT AND RECOMMENDATIONS 57 by David R Olofson (Attachments: # 1 Attachment)(Mullins, Brian)
08/17/2007	59	TRANSCRIPT of Evidentiary Hearing held on 5/29/07 as to David R Olofson. (IN PAPER FORMAT) (kmf)
08/21/2007	60	NOTICE OF ATTORNEY APPEARANCE: Brian T Fahl appearing for David R Olofson (Fahl, Brian)
08/28/2007	61	ORDER signed by Judge Charles N Clevert Jr on 8/28/07 denying 45 Motion to Suppress as to David R Olofson (1); denying 46 Motion to Dismiss as to David R Olofson (1); adopting Report and Recommendations re 57 as to David R Olofson (1). (cc: all counsel) ((mj), C. N. CLEVERT, JR.)
09/10/2007	62	LETTER <i>RE/Request for discovery</i> (Mullins, Brian)
09/11/2007	63	MINUTES: Pretrial Conference held on 9/11/07 as to David R OLOFSON. Court finds that the interests of justice warrant an adjournment of the jury trial scheduled for 9/17/07. FPT is reset to 11/9/07 at 11:00 AM and the JURY TRIAL is reset to 11/19/07 at 8:30 AM. Pursuant to the defendant's oral waiver of his rights to a speedy trial, time under STA is tolled to 11/19/07. Defendant is to file a written

		speedy trial waiver. (Tape #9:14:14 to 9:16:56) ((kwb), C. N. Clevert, Jr.) (Entered: 09/24/2007)
11/06/2007	64	MOTION to Adjourn <i>TRIAL</i> by David R Olofson.(Fahl, Brian)
11/13/2007		Set/Reset Hearings as to David R Olofson: Final Pretrial Conference reset for 1/3/2008 02:00 PM in Courtroom 222 before Judge Charles N Clevert Jr. Jury Trial reset for 1/7/2008 08:30 AM in Courtroom 222 before Judge Charles N Clevert Jr. ((mj), C. N. CLEVERT, JR.)
12/28/2007	65	First MOTION for Discovery by David R Olofson. (Attachments: # 1 Exhibit Discovery Letter# 2 Exhibit Second Discovery Letter)(Fahl, Brian)
01/03/2008	66	AMENDED PRETRIAL REPORT. (kmf) (Entered: 01/07/2008)
01/03/2008	71	MINUTES: Final Pretrial Conference held 1/3/08 as to David R OLOFSON. Trial will commence on 1/7/08 at 8:30 AM. Defendant's Motion to Compel 65 as to Paragraphs 1, 3, 7 and 8 are WITHDRAWN and held in abeyance as to Paragraphs 2 and 4 through 6. Discussion re potential Daubert Hearing and proposed jury instructions. See Minutes for additional information. (Tape #2:08:40 to 3:16:55) ((kwb), C. N. Clevert, Jr.) (Entered: 01/14/2008)
01/07/2008	72	MINUTES: JURY TRIAL commenced 1/7/08. Completed Voir Dire, Jury Selection, Opening Statements and Witness Testimony of R. Kiernicki, J. Keeku, P. Harding, M. Kingery and L. Savage. Trial to resume 1/8/08. (Court Reporters Sheryl Stawski and John Schindhelm) ((kwb), C. N. Clevert, Jr.) (Entered: 01/16/2008)
01/08/2008	68	Minute Entry (CNC) Day 2 of Jury Trial held on 1/8/2008. the jury returned a verdict of guilty. PSR due 4/1/07; obj. due 4/15/08. Sentencing set for 5/8/2008 at 02:30 PM before Judge Charles N Clevert Jr. Deft. remaind on bond subject to the conditions as previously set. (Court Reporter John Schindhelm) (kmf) (Entered: 01/11/2008)
01/08/2008	69	JURY INSTRUCTIONS as to David R Olofson. (kmf) (Entered: 01/11/2008)
01/08/2008	70	JURY VERDICT finding deft. David R Olofson GUILTY on Count 1. (kmf) (Entered: 01/11/2008)
01/08/2008	74	JURY NOTES, w/court response, as to David R Olofson. (kmf) (Entered: 01/18/2008)
01/10/2008	67	EXHIBITS received for USA; exhibit list filed. (eeb)
01/17/2008	73	MOTION for Acquittal by David R Olofson.(Fahl, Brian)

01/18/2008	75	NOTICE OF HEARING as to David R Olofson. Bond Hearing reset for 1/24/2008 on 01:30 PM before Magistrate Judge Aaron E Goodstein. (cc: all counsel)(kmf)
01/30/2008	109	TRANSCRIPT of Trial (Volume 1) as to David R Olofson held on January 7, 2008, before Judge Clevert. Court Reporter/Transcriber Sheryl Stawski. (bdr) (Entered: 06/24/2008)
01/31/2008	76	TRANSCRIPT of Jury Trial (Vol. 2) held on 1/7;/08 as to David R Olofson. (IN PAPER FORMAT) (kmf) (Entered: 02/01/2008)
01/31/2008	77	TRANSCRIPT of Jury Trial (Vol. 3) held on 1/8/08 as to David R Olofson. (IN PAPER FORMAT) (kmf) (Entered: 02/01/2008)
02/05/2008	78	LETTER from Brian T. Fahl <i>requesting travel outside the Eastern District of Wisconsin</i> (Fahl, Brian)
02/07/2008	79	ORDER Granting Motion to Travel as to David R Olofson Signed by Judge Charles N Clevert Jr on 2/7/08. (cc: all counsel) ((mj), C. N. CLEVERT, JR.)
03/13/2008	80	RESPONSE by USA as to David R Olofson re 73 MOTION for Acquittal (Haanstad, Gregory)
04/16/2008	100	OBJECTIONS TO PRESENTENCE INVESTIGATION REPORT by David R Olofson. (kmf) (Entered: 05/19/2008)
04/30/2008	81	REPLY by David R Olofson (Fahl, Brian)
05/01/2008	82	MOTION to Compel <i>Disclosure of Evidence</i> by David R Olofson. (Fahl, Brian)
05/01/2008	83	MEMORANDUM by David R Olofson in Support re 82 MOTION to Compel <i>Disclosure of Evidence</i> (Fahl, Brian) Modified per filer on 5/2/2008 (kmf).
05/01/2008	84	MEMORANDUM by David R Olofson in Support re 82 MOTION to Compel <i>Disclosure of Evidence With Attachment</i> (Attachments: # 1 Exhibit ATF Memo)(Fahl, Brian)
05/01/2008	85	MOTION for New Trial by David R Olofson.(Fahl, Brian)
05/06/2008	86	Minute Entry for Status Conference held before Judge Charles N Clevert, Jr. held on 5/6/2008 as to David R Olofson. Sentencing will be adjourned to allow the government time to respond to two motions filed on 5/1/08. ((mj), C. N. CLEVERT, JR.) (Entered: 05/07/2008)
05/06/2008		Set/Reset Hearings as to David R Olofson: Sentencing reset for 5/13/2008 02:30 PM in Courtroom 222 before Judge Charles N Clevert Jr. ((mj), C. N. CLEVERT, JR.) (Entered: 05/07/2008)

05/09/2008	87	SENTENCING MEMORANDUM by David R Olofson (Attachments: # 1 Letter Letters)(Fahl, Brian)
05/12/2008	88	RESPONSE by USA as to David R Olofson re 82 MOTION to Compel <i>Disclosure of Evidence</i> , 85 MOTION for New Trial (Haanstad, Gregory)
05/12/2008	89	SENTENCING MEMORANDUM by USA as to David R Olofson (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Haanstad, Gregory)
05/12/2008	90	MEMORANDUM by David R Olofson in Support re 82 MOTION to Compel <i>Disclosure of Evidence</i> (Attachments: # 1 Attachment)(Fahl, Brian)
05/13/2008	91	LETTER (Attachments: # 1 Attachment - Transcript)(Fahl, Brian)
05/13/2008	92	RESPONSE by USA as to David R Olofson <i>RE: Defendant's Motion to Stay Execution of Sentence</i> (Haanstad, Gregory)
05/13/2008	95	MINUTES: Sentencing Hearing held on 5/13/08 as to David R OLOFSON. Court denies all motions. See separate order. Defendant is sentenced to 30 Months Imprisonment and 2 Years Supervised Release as to the 1-Ct Indictment. Conditions of Supervised Release are imposed. SEE Judgment for additional details. Clerk is to file a Notice of Appeal. (Tape #2:34:44 to 3:26:00 and 3:37:47 to 5:04:23) ((kwb), C. N. Clevert, Jr.) (Entered: 05/15/2008)
05/13/2008	96	Document sealed (kmf) (Entered: 05/16/2008)
05/15/2008	93	LETTER from Brian Mullins <i>Requesting Permission for Olofson to travel to Western District of Wisconsin</i> (Mullins, Brian)
05/15/2008	94	ORDER signed by Judge Charles N Clevert, Jr on 5/15/08 denying 65 Motion for Discovery as to David R Olofson (1); denying 73 Motion for Judgment of Acquittal as to David R Olofson (1); denying 82 Motion to Compel as to David R Olofson (1); denying 85 Motion for New Trial as to David R Olofson (1) and Denying Defendant's Motion for Stay Pending Appeal. (cc: all counsel) ((mj), C. N. CLEVERT, JR.)
05/15/2008	97	JUDGMENT as to David R Olofson (1). SENT: 30 mos. imprisonment. Deft. shall surrender for service of sentence as notified. SUPERVISED RELEASE: 2 Yrs. Conditions of Supervised Release imposed. See judgment for additional details. SA: \$100. Signed by Judge Charles N Clevert, Jr on 5/15/08. (cc: all counsel) (kmf) (Entered: 05/16/2008)
05/16/2008	98	ORDER Denying Defendant's Letter Request to Travel to Western District of Wisconsin as to David R Olofson Signed by Judge Charles N Clevert, Jr on 5/16/08. (cc: all counsel) ((mj), C. N. CLEVERT, JR.)

05/18/2008	99	NOTICE OF APPEAL by David R Olofson re Judgment 97 . ((kwb), C. N. Clevert, Jr.)
05/22/2008	101	7th Circuit Information Sheet re: 99 Notice of Appeal (dmm)
05/22/2008	102	Attorney Cover Letter re: 99 Notice of Appeal (dmm)
05/22/2008	103	Transmission of Notice of Appeal and Docket Sheet as to David R Olofson to US Court of Appeals re 99 Notice of Appeal. (cc: all counsel) (dmm)
05/22/2008	104	DOCKETING STATEMENT by David R Olofson re 99 Notice of Appeal (dmm)
05/22/2008	105	NOTICE of Intent to Appeal In forma Pauperis by David R Olofson (dmm)
05/22/2008		DOCKET ANNOTATION as to David R Olofson: Copy of Docketing statement and Notice of intent to appeal in forma pauperis mailed to the Court of Appeals. (dmm) (Entered: 05/23/2008)
05/23/2008		CRIMINAL APPEAL RECORD PREPARED for David R Olofson consisting of 1 vol of pleadings, 5 vols of transcripts, 1 envelope of exhibits, 2 In Camera re 99 Notice of Appeal. (dmm)
05/28/2008	106	USCA Case Number 08-2294 re: 99 Notice of Appeal filed by David R Olofson. (dmm)
06/10/2008	107	TRANSCRIPT of Final Pretrial Conference as to David R Olofson held on 1/3/2008, before Judge Charles N. Clevert, Jr.. Court Reporter/Transcriber John Schindhelm, Telephone number johns54@sbcglobal.net. Transcripts may be purchased through the court reporter using the Transcript Order Form found here or viewed at the court public terminal. NOTICE RE REDACTION OF TRANSCRIPTS: If necessary, within 7 business days each party shall inform the Court of their intent to redact personal identifiers by filing a Notice of Intent to Redact. Please read the policy located on our website www.wied.uscourts.gov ; Redaction Statement due 7/1/2008. Redacted Transcript Deadline set for 7/11/2008. Release of Transcript Restriction set for 9/8/2008. (Schindhelm, John)
06/10/2008	108	TRANSCRIPT of Sentencing as to David R Olofson held on 5/13/2008, before Judge Charles N. Clevert. Court Reporter/Transcriber John Schindhelm, Telephone number johns54@sbcglobal.net. Transcripts may be purchased through the court reporter using the Transcript Order Form found here or viewed at the court public terminal. NOTICE RE REDACTION OF TRANSCRIPTS: If necessary, within 7 business days each party shall inform the Court of their intent to redact personal identifiers by filing a Notice of Intent to Redact. Please read the policy

	located on our website www.wied.uscourts.gov ; Redaction Statement due 7/1/2008. Redacted Transcript Deadline set for 7/11/2008. Release of Transcript Restriction set for 9/8/2008. (Schindhelm, John)
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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA

v.

CRIMINAL COMPLAINT

DAVID R. OLOFSON

CASE NUMBER: 06-M-486

I, Jody M. Keeku, the undersigned complainant, being duly sworn, state that the following is true and correct to the best of my knowledge and belief. On or about July 13, 2006, in the State and Eastern District of Wisconsin, David R. Olofson knowingly transferred a machinegun, to wit, an Olympic Arms, Model CAR-AR, .223 caliber rifle bearing serial number F7079, all in violation of Title 18, United States Code, Section 922(o).

I further state that I am a Special Agent with the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and this complaint is based on the following facts:

Please see the attached affidavit.

Continued on the attached sheet and made a part hereof: X Yes ___ No

Jody M. Keeku
Signature of Complainant
Jody M. Keeku

Sworn to before me and subscribed in my presence,

November 17th 2006
Date

The Honorable WILLIAM E. CALLAHAN, JR.
United States Magistrate Judge
Name & Title of Judicial Officer

at Milwaukee, Wisconsin
City and State
William E. Callahan
Signature of Judicial Officer

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

JODY M. KEEKU, being duly sworn, deposes and states as follows:

1. I am a Special Agent of the Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and have been so employed since July of 2001. I am also trained as a Firearms Interstate Nexus Expert. I am currently assigned to the Milwaukee Field Office of the St. Paul Field Division. My duties consist of investigating violations of federal firearms laws, including but not limited to Title 18 U.S.C. 922(o).
2. I have also received training in the area of firearms investigation. More specifically, I have been trained in the areas of illegal firearms training and firearms identification.
3. All of the information contained herein is based upon my personal knowledge and investigation or upon information supplied to me by other law enforcement officers or citizen witnesses, all of whom I believe to be truthful and reliable. In particular, I believe Robert J. Kiernicki to be truthful and reliable because in the past he has provided reliable statements to City of Berlin Police Department officers and to ATF agents.

INVESTIGATIVE INFORMATION ESTABLISHING PROBABLE CAUSE

4. I believe that the following information establishes probable cause to believe that, on or about July 13, 2006, David R. Olofson knowingly transferred a machinegun to another individual, in violation of 18 U.S.C. § 922(o).
5. On July 13, 2006, I spoke with officer Officer Robert Zache of the City of Berlin Police Department, who explained that Officer Splittegerber (also of the City of Berlin Police Department) earlier that day had responded to the Berlin Conservation Club, in Berlin, Wisconsin. Officer Spittleberger interviewed three individuals there: Brian J. Malzhan; Cory L. Cihlar; and Robert J. Kiernicki. Kiernicki was in possession of an Olympic Arms, SGW Rifle, Model CAR-AR, .223 caliber, serial number F7079. Office Splittegerber inspected the firearm and documented the identifying information.
6. At approximately 9:30 a.m. on July 13, 2006, Officer Zache spoke with Kiernicki at his home. Kiernicki stated that the Olympic Arms, serial number F7079 belonged to David Olofson. Officer Zache inspected the firearm, and found that it was the same one that Officer Splittegerber had inspected at the range.

7. Kiernicki explained that the firearm had a selector switch that could be placed in any of three positions. One position was marked "Safe," one was marked "Fire," and one was unmarked. According to Kiernicki, when the selector switch was in the unmarked third position, the firearm fired in a three-round burst. That is, the firearm was designed so that, when the switch was in the third position, the firearm would automatically fire three shots with a single pull of the trigger. Kiernicki said that he had fired the firearm in the three-round burst position twice, and that it had jammed after the third try.
8. Kiernicki explained that Olofson had loaned the firearm to him until Kiernicki takes possession of one he ordered from Olofson. Kiernicki explained that he had ordered a firearm from Olofson sometime earlier in 2006. After the firearm arrives, Olofson will contact Kiernicki and then the two of them would assemble it. Kiernicki told Olofson he didn't want the extra "pin" in it like the Olympic Arms, serial number F7079, to make it fire three round burst.
9. Officer Zache took the firearm into custody until I could inspect it.
10. On that same day Kiernicki called Olofson to advise him that the Berlin Police Department had taken the Olympic Arms, serial number F7079 into custody. Kiernicki told Olofson that he had been firing the Olympic Arms, serial number F7079 on three round burst and someone reported it to the police. Kiernicki told Olofson that a Berlin Police Department officer had come to his house and taken the firearm. Olofson stated that he had been to the Conservation Club and fired automatic firearms and had never been bothered by the police.
11. On July 14, 2006, Olofson contacted Berlin Police Department Captain Kevin Block to inquire about his firearm in their custody. Captain Block explained to Olofson that the firearm had been taken from Kiernicki and that the case was now being investigated by ATF. Olofson stated that the Police Department didn't even know what they had (referring to the firearm). He stated that if ATF thought that his Olympic Arms, serial number F7079 was something, they should see the other firearms he has. Olofson told Captain Block that he had hundreds of firearms, including a .50 caliber sniper rifle.
12. Olofson explained to Captain Block that the Olympic Arms, serial number F7079 was his "loaner" firearm. If people wanted to buy a firearm from him, he allowed them to use the Olympic Arms to see if they like it. Olofson claimed that the selector switch did not work on the Olympic Arms.

13. On July 17, 2006, I inspected the Olympic Arms, serial number F7079 and found that the selector switch moved through all three positions. I then inspected the bolt and observed that it had been filed down. I then performed a functions check and found that the firearm functioned in all three positions, including the unmarked third position.
14. Case agents then interviewed Kiernicki at the Berlin Police Department where Kiernicki gave a sworn statement. Kiernicki said that, on Thursday, July 13, 2006, he borrowed the Olympic Arms, serial number F7079 and obtained .223 caliber ammunition from Olofson. He then went to the Berlin Conservation Club and fired the firearm. Kiernicki explained that Olofson told him not to fire the weapon in three round burst because it might malfunction. Kiernicki decided to try the three round burst and fired it twice in that selection before it jammed.
15. Kiernicki explained that he was borrowing the Olympic Arms, serial number F7079 because he had ordered an AR 15 rifle from Olofson that had not come in yet. When the firearm arrived, Olofson and Kiernicki were going to assemble it; Kiernicki would then pay Olofson \$550.00 for the rifle. Kiernicki had already given Olofson his 30/30 Marlin Rifle for a down payment.
16. Kiernicki advised that Olofson gets old firearms and then remanufactures them and sells them over the internet on EBAY. Kiernicki also said that Olofson's computer was located in his basement. Kiernicki stated that the manufacturing room was in the basement also. He had seen into Olofson's manufacturing room, which contained a bench with screwdrivers, pliers, vice grips, and a hammer. Olofson told Kiernicki that they would assemble the AR 15 Kiernicki ordered in that room.
17. On November 6, 2006, a Firearms Enforcement Officer with ATF test fired the Olympic Arms, serial number F7079. The Officer used 60 rounds of commercially available, .223 caliber ammunition. Three tests were performed, each with twenty rounds of ammunition. When the selector switch was placed in the unmarked third position, the firearm fired all twenty rounds automatically in each of the three tests.
18. Based on his test firing, the ATF Officer concluded that the Olympia Arms .223 caliber rifle, bearing serial number F7079
 - a. is a weapon that expels a projectile by the action of an explosive, and is therefore a "firearm" as that term is defined in 18 U.S.C. § 921(a)(3)(A);
 - b. is a weapon that shoots automatically more than one shot, without manual reloading, by a single function of the trigger, and is

therefore a “machinegun” as that term is defined in 26 U.S.C. § 5845(b); and

- c. because it is a machinegun, is also a “firearm” as defined in 26 U.S.C. § 5845(a)(6).
19. On July 13, 2006, I caused a search to be conducted of the National Firearms Registry for David R. Olofson (M/W, DOB 06/12/1971). There is no record of any firearms being registered to Olofson. Also, the Olympic Arm, SGW, Model CAR-AR, serial number F7079 is not registered to anyone
 20. A search of the Federal Firearms Licensee database shows that David R. Olofson is not a licensed manufacturer or dealer of firearms.
 21. On July 19, 2006, case agents executed a search warrant at Olofson’s residence. During the search, agents located thousands of rounds of ammunition of various calibers.
 22. During the search of Olofson’s residence, agents also located and seized the firearms listed in Attachment A to this affidavit.
 23. Agents also seized a computer from Olofson’s residence. A forensic examination of the computer has revealed, among other things, a spreadsheet listing various types of firearms parts (including upper and lower receivers), prices, and parts numbers. The computer also contained saved e-mail correspondence in which Olofson quotes other individuals prices for the firearms parts listed in the spreadsheet. Other e-mail correspondence on the computer indicates that Olofson was engaging in the unauthorized use of a federal firearms licensee number assigned to another individual or entity.
 24. The foregoing information is set forth for the limited purpose of establishing probable cause to support the issuance of a criminal complaint. The foregoing information does not represent all of the information known to case agents regarding David R. Olofson’s illegal firearms-related activities.

ATTACHMENT A: FIREARMS SEIZED

OTHER FIREARM, MNF: UNKNOWN MANUFACTURER, TYPE: RIFLE, MODEL: FAL, CAL: **, SN: NS
RIFLE, MNF: RUGER, TYPE: RIFLE, MODEL: 10/22, CAL: 22, SN: 239-14918
SHOTGUN, MNF: REMINGTON ARMS COMPANY, INC., TYPE: SHOTGUN, MODEL: 870 WINGMASTER, CAL: 12, SN: S264442M
SHOTGUN, MNF: SPRINGFIELD FIREARMS CORPORATION, TYPE: SHOTGUN, MODEL: 1929, CAL: 410, SN: NONE
SHOTGUN, MNF: WINCHESTER, TYPE: SHOTGUN, MODEL: 12, CAL: 12, SN: 738906
RIFLE, MNF: WINCHESTER, TYPE: RIFLE, MODEL: 190, CAL: 22, SN: 344969
SHOTGUN, MNF: ITHACA GUN CO., TYPE: SHOTGUN, MODEL: NONE, CAL: 12, SN: 230749
SHOTGUN, MNF: MARLIN FIREARMS CO., TYPE: SHOTGUN, MODEL: NONE, CAL: 410, SN: 2388
RIFLE, MNF: MARLIN FIREARMS CO., TYPE: RIFLE, MODEL: GLENFIELD MODEL 30, CAL: 30-30, SN: 69 88839
SHOTGUN, MNF: LEFEVER, TYPE: SHOTGUN, MODEL: NITRO SPECIAL, CAL: 16, SN: 197471
RIFLE, MNF: REMINGTON ARMS COMPANY, INC., TYPE: RIFLE, MODEL: MODEL 24, CAL: 22, SN: 25208
SHOTGUN, MNF: REMINGTON ARMS COMPANY, INC., TYPE: SHOTGUN, MODEL: WINGMASTER 870, CAL: 12, SN: V953261X
HANDGUN, MNF: SMITH & WESSON, TYPE: REVOLVER, MODEL: 18-4, CAL: 22, SN: 92K2963
HANDGUN, MNF: SMITH & WESSON, TYPE: REVOLVER, MODEL: 29-3, CAL: 44, SN: AYC4724
HANDGUN, MNF: SIG-SAUER, TYPE: PISTOL, MODEL: P226, CAL: 9, SN: U156310
RIFLE, MNF: MAUSER, TYPE: RIFLE, MODEL: 98, CAL: 32, SN: 7242
HANDGUN, MNF: MAUSER, TYPE: PISTOL, MODEL: HSC, CAL: 765, SN: 745058
HANDGUN, MNF: RUGER, TYPE: RIFLE, MODEL: MARK I, CAL: 22, SN: D328161
HANDGUN, MNF: SAVAGE, TYPE: PISTOL, MODEL: 516, CAL: 308, SN: F778513

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID R. OLOFSON,

Defendant.

'06 DEC -5 2:51:13

06 CR320

Case No. 06-CR-
[Title 18, U.S.C., §§ 922(o) and 924(a)(2)]

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

1. On or about July 13, 2006, in the State and Eastern District of Wisconsin,

DAVID R. OLOFSON

knowingly transferred a machinegun.

2. The firearm involved in this offense was an Olympic Arms, .223 caliber SGW Rifle, model CAR-AR, bearing serial number F7079.

All in violation of Title 18, United States Code, Sections 922(o) and 924(a)(2).

A TRUE BILL:


FOREPERSON

Date: 12-5-06


STEVEN M. BISKUPIC
United States Attorney

320
JRS

Name of Defendant: David R. Olofson		Address: City, State and Zip Code): Unknown		
Date of Birth: 1971		Occupation: Unknown		
Name of Defendant's Attorney: Terry Rose <i>Christopher Rose</i>		Address of Defendant's Attorney:		
Name of U.S. Attorney: Gregory J. Haanstad				
Has warrant been issued?	When?	By Whom?	When?	
Yes	11/17			
Has warrant been executed?	When?	Where?		
Yes				
Has defendant appeared before a Magistrate?	When?	Who?		
Yes	11/20	WEC		
Is the defendant in custody?	Where?			
No				
Pretrial Scheduling Conference Necessary? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				
Issue: WARRANT	SUMMONS	NOTICE XX	MISDEMEANOR	FELONY XX
Milwaukee Case <input checked="" type="checkbox"/>		Green Bay Case <input type="checkbox"/>		
Minor Offense				
Petty Offense				
Arraignment & plea before:		Judge:	Magistrate:	

(The above information to be furnished in duplicate (1 copy for file and 1 copy for Marshal with 2 conformed copies of indictment and/or information of defendant))

THE ABOVE INFORMATION TO BE FURNISHED IF KNOWN

Charge: **18 U.S.C. §922(o) Maximum penalties:** 10 years' imprisonment; \$250,000 fine; 3 years SR; \$100 SA18 U.S.C. § 924(a)(2)

Agency/Agent: **S/A Jody Keeku, ATF**

OCDEF: **No**

Defense Request for Staples Instruction

Transcript of Final Pretrial Conference

January 3, 2008

Page 25, line 8 – page 27, line 12; page 34, line 15 – page 35, line 12

[Page 25]

THE COURT: Mr. Fahl?

MR. FAHL: Yes. Perhaps I can clarify. I don't believe that Mr. Savage is going to deny that under the restrictions of the test it fired multiple times. The question is whether or not multiple firings qualifies it as a machine gun. And there's a malfunction, whether or not this gun malfunctioned, and whether or not that malfunction could be brought about by using soft primered ammunition.

As to otherwise what else has been considered under ATF rulings and individual determinations in his experience of negotiating the placement or displacement of weapons on an NFTA registry, whether or not this gun, based on even the tests that have already been done, should be placed on that registry. It's his opinion that this is not a machine gun.

This is the same exact firearm -- same exact model of firearm that was issued in the case Staples vs. United States. And this issue was kind of litigated through the courts there, and I think there was a similar concern about the nature of the [Page 26] firearm as to whether or not it should be classified as a firearm.

So, we can arrange, we have at this point a refundable ticket with Mr. Savage coming in on Sunday afternoon. I don't believe an extensive examination of the firearm would be needed. Something we could probably even do over a break on Monday before the expert testimony takes place, which I would hope it would alleviate some of Mr. Haanstad's concerns.

MR. HAANSTAD: Judge, Mr. Fahl says that some of the testimony, or one way in which this proposed expert testimony is going to be useful will be in determining whether multiple firings qualify a firearm as a machine gun. The statute provides that that's the case. That is, Title 26 USC Section 5845(b) provides that a machine gun is any weapon which shoots automatically more than one shot by a single function of the trigger. And that's the jury instruction that the defense has agreed to.

MR. FAHL: There's actually a comment, I noticed -- I just noticed now that we submitted some language from the Staples case which talks about firing until the trigger is released or until the magazine is emptied. That language is from Staples and then was adopted by the Seventh Circuit in the Fleischli case which I don't believe is necessarily the case. There was five-round bursts and then it jammed, in which case the firearm did not fire until the trigger was released or until [Page 27] it emptied the magazine.

Then I believe that was the instruction that I submitted to Mr. Haanstad yesterday afternoon, but I just now noticed it wasn't in the amended final pretrial report.

THE COURT: You're saying that in the test firing here there was a jam.

MR. FAHL: I believe so. One of the test fires there was a jam.

THE COURT: All right.

MR. FAHL: And the factual witnesses from the people who were firing the weapon at the Berlin conservatory all talked about it firing at five-round bursts and then it jammed.

* * *

[Page 34] MR. FAHL: And I just want to make clear, I'm not sure what we stood on including in the definition. of machine gun, the definition of fully automatic and the trigger [Inaudible] firing until its completed. That's from footnote 1 in Staples vs. United States. We'd

like that in there and I don't know if the government is conceding that should be in there or if they're taking a contrary position.

THE COURT: Mr. Haanstad?

MR. HAANSTAD: At this point the government's position is that it should not be in there. It's not required under the plain reading of the statute, but -- I have to say I haven't [Page 35] looked at footnote 1 of Staples. Like I said, I, for whatever reason, I apparently missed that reference in the proposed instructions that were sent by the defense. So I'll take another look and see whether I'm persuaded.

But at this point, again, it just seems to be inconsistent with the statutory definition which provides that a machine gun is any weapon that shoots more than one shot without manual reloading by a single function of the trigger. More than one shot obviously doesn't, on its face at least, require the complete emptying of the cartridge.

THE COURT: I'll look at Staples also. So we'll reserve judgment on that. Is there anything else?

United States District Court
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No: 06-CR-320

DAVID OLOFSON,

Defendant.

COURT MINUTES
HONORABLE CHARLES N. CLEVERT, JR., PRESIDING

Date: January 3, 2008

Proceeding: Final Pretrial Conference

Deputy Clerk: Kris Wilson

FTR Start Time: 2:08:40 p.m.

FTR End Time: 3:16:55 p.m.

Appearances: Plaintiff: Assistant United States Attorney Gregory J. Haanstad
Defendant: David Olofson (not in custody) with Attorneys Brian Mullins
and Brian Fahl

Disposition: The parties are prepared to proceed to trial on 1/7/08 at 8:30 a.m.

Notes: The court addresses defendant's motion to compel filed 12/28/07. [65]
65-1: Withdrawn
65-2: The government will confer with ATF
65-3: Withdrawn (as it does not constitute *Brady* material)
65-4: The government will confer with ATF
65-5: The government will confer with ATF
65-6: The government will confer with ATF
65-7: Withdrawn (non-discoverable under *Brady*)
65:8 Withdrawn (non-discoverable under *Brady*)

The defendant contends that the firearm at issue was not a “machine gun” under the statutes, and if there were multiple firings it was the result of a malfunction.

Any Daubert examination of defense expert Len Savage will be held after the government’s case-in-chief.

Discussion regarding jury instructions.

Definition of “machine gun” is at issue. The government proposes the language of 26 U.S.C. § 5845(b). The defendant will re-craft its proposal.

The court reserves judgment with regard to the defendant’s request to include language from *Staples*- footnote 1.

The government objects to instructing the jury on “possession” as the defendant is charged with transference only. Defendant withdraws his request for a “possession” instruction.

Oral Order on Motion to Compel
Transcript of Trial (Volume 1)
January 7, 2008
Page 2, line 12 – page 6, line 23

[Page 2]

THE COURT: Good morning to you, as well. The jury has been checked in, and they should be ready within the next few minutes. Before we begin, however, I'd like to get an update with respect to the matters we discussed last week. Mr. Haanstad?

MR. HAANSTAD: Your Honor, people in general counsel's offices, the ATF officers have worked a lot on this; and I'll start with items four, five and six because the responses to those are similar.

With respect to number four, there is one responsive letter that ATF has. I had spoken on the contents of the letter, and it's -- the Government is satisfied that it's not compelled under Brady to disclose that; and a problem that's arisen with respect [Page 3] to all three of these requests is that they also implicate Section 6103 entitled -- I think there's information in some of these documents, actually most of the documents, that's considered tax information, Without securing an appropriate ex parte order, it's the Government's position we would not be able to disclose them; but, again, the 6103 issue aside, with respect to number four, again, the Government is satisfied there's nothing exculpatory in that one responsive letter.

With respect to numbers -- numbers five and six, apart -- taken apart from the 6103 issue, there's a practical problem; and that is that what ATF is being asked to do there is to search a monstrous database in a way that's really not possible. They can search that database by -- by name, or they can search that database by serial number of a particular firearm; but to search the database in a manner as proposed by numbers five and six is not possible.

And if we had a little bit better sense maybe of why it was that the defense thinks that there's exculpatory information of five and six, we might be able to move along with it further. The reason I say that is if, for example, they wanted to inquire as to this particular firearm, that is the firearm that underlies the charges in this case, or if they wanted to [Page 4] search these databases with respect to the defendant, Mr. Olofson, it would alleviate two problems; that is, you can search by name like that and you can search by serial number; and also to the extent that Mr. Olofson is making all these requests, he's the taxpayer; so there wouldn't be a 6103 problem.

THE COURT: Is there anything else?

MR. HAANSTAD: No, Your Honor.

THE COURT: Mr. Fahl?

MR. FAHL: Yes, Your Honor. With regard to item number four, the letter, my understanding is that it's a letter confirming that weapons -- this particular model weapon that's at issue here today, was -- they recognize -- ATE' recognizes that it was made with M-16 internal parts. As I believe the Government's case in chief is, part of their proof, I believe, is to show that this is a machine gun because it has those internal parts.

The letter, I believe, indicates that there are -- acknowledges that there are these internal M-16 parts; acknowledges, I believe, that there are malfunctions, and suggested that these guns be recalled or sent back to have those parts fixed so that the guns would not malfunction.

So if the Government's proof is going to be [Page 5] that the presence of these internal M-16 parts are what constitutes or makes this gun a machine gun, then I think the letter is -- is exculpatory and discoverable underneath Brady; and I'm not sure necessarily on how the 6103 tax records would protect this kind of document. It doesn't seem to me to disclose any financial assets of SGW Olympic Arms; but without seeing the document, I can't -- I can't speak to that.

THE COURT: How do you reply to that last portion of the defense argument, Mr. Haanstad?

MR. HAANSTAD: The 6103 argument?

THE COURT: Yes.

MR. HAANSTAD: To be honest with you, Your Honor, what I'm relying is the experts in this area in Washington to tell me that this contains 6103 information; and that was sort of a secondary response of ours, that is -- again, even putting that aside, there are practical problems with five and six; and even with Mr. Fahl's explanation as to number four, I continue to be unable to see how that's exculpatory information; that is, even if, assuming for the sake of argument, the gun was entirely manufactured as a machine gun, and Mr. Olofson is in possession of that machine gun, again, from the factory and then transferred it, that would still constitute the same offense under [Page 6] Section 922(o) .

THE COURT: Subsection o. Mr. Fahl, based upon what I've heard today as well as during our last hearing and after reviewing your motion to compel discovery, I cannot conclude that the information you're requesting is, in fact, exculpatory.

There is no doubt that you are aware of the existence of certain materials that may, of course, have an impact on the Government's case in chief and any cross-examination of the Government's witnesses who may be called to testify with respect to the weapon at issue; but there is nothing that you've said that suggests to me that the Government is required under Brady to provide you with this information. Hence, your motion to compel is denied.

Let me add that the Government has asserted, and I have no reason to challenge the Government's claims, that there is tax information contained in the letters -- the letter referenced by Mr. Haanstad; and there is no reason at this juncture for the Court to require en camera

production of the letter for examination to determine whether or not it should be disclosed to the defense at this stage.

Oral Order on Excluding Expert Witness from the Courtroom

Transcript of Trial (Volume 2)

January 7, 2008

Page 90, line 10 – page 96, line 2

[Page 90]

MR. FAHL: Mr. Haanstad informed me that he would like to sequester our expert during their expert's testimony and I thought that was something we should discuss prior to the jury coming out.

THE COURT: All right.

MR. HAANSTAD: My concern, Your Honor, is that if their proposed expert witness sits in through our entire -- they've sat through our case so far, and if that witness now sits through and hears our expert testimony, I think the obvious concern is that he's going to sort of weave his testimony in through what he heard our witness testify to. And it's particularly the case where this witness hasn't prepared a written report of any kind in connection with this case.

I know that within the last couple of months this exact same proposed expert witness, Mr. Savage, encountered a similar situation in I believe it was the District of South [Page 91] Carolina and was excluded from testifying on that basis, and I think the concern is the same here.

THE COURT: Mr. Fahl?

MR. FAHL: First of all, I had talked to Mr. Haanstad earlier and we decided that we would allow our witnesses in throughout the entire trial. And that's why when you stopped us before and we came to side bar I mentioned that we had agreed that witnesses would not be sequestered during the hearing. Apparently now that's changed.

But under Rule 703 it's clear that an expert can testify to factual data and it can be basis for an opinion that are just made known to the expert that day or just before the hearing.

So I think under Rule 703 Mr. Savage should be allowed to be present to hear the government's expert's testimony because some of those facts may be relevant to any opinion which he would in fact give.

Mr. Savage has examined the firearm this afternoon. His testimony will be -- mostly consist of what it is he saw in the gun and what, including the internal parts of this gun, and what they consist of. However, there are some malfunctions that I think will be at issue in Mr. Kingery's testimony.

I would like to have Mr. Savage present so he can hear what Mr. Kingery testifies to regarding those malfunctions so that if the information concerning those malfunctions is in our [Page 92] eyes not complete or incorrect, we have the ability to either rebut or add information to that.

THE COURT: Mr. Haanstad, I'm curious about your position with respect to the exclusion of the defense expert in light of your prior statement that all witnesses could be in the courtroom during the course of testimony.

MR. HAANSTAD: Our concern was not so much with the fact witnesses that were testifying earlier as with the witness who is going to be providing the same type of expert testimony that this proposed expert --

THE COURT: Well, you could have certainly said that at the beginning of the trial, but you didn't. So have you in effect duped the defense by saying on the one hand everyone can be in and suggesting to the defense that there will be no problem with its expert and now changing course?

MR. HAANSTAD: No, Your Honor. And I want to make something clear. And that's why -- there are two related issues here, and I know I can't have it both ways and I wouldn't ask to have it both ways.

We are not at this point satisfied that Mr. Savage is qualified to present expert testimony. So I think maybe it would make sense, and I know we talked at the final pretrial about having a Daubert hearing of some sort. And I understand that the government should have to choose one or the other. That is, if its position is that this person is not qualified as [Page 93] an expert then the harm in him sitting through the trial is obviously much less.

On the other hand -- so I don't want to hold back and suggest that I'm not opposing his expert testimony because the government is still opposing that testimony.

THE COURT: Well, I certainly recall that was your position earlier. Now, with respect to Mr. Savage remaining in the courtroom, why has there been a change in heart?

MR. HAANSTAD: Your Honor, I didn't mean to commit to his being here through the testimony of our proposed expert. In fact, I wasn't sure that we were going to get this far today. This is our last witness and I didn't anticipate that we would finish, but obviously it moved a lot more quickly than I thought it would.

THE COURT: That still wouldn't change the earlier statement by the government in response to my question at side bar regarding the exclusion of witnesses.

MR. HAANSTAD: Right. And, Your Honor, all I can say is that I didn't mean to -- and I'm certainly not trying to sandbag the defense in any way. I'm not sure I see how the two things are related. I'm not sure I see how they're prejudiced if he's not allowed to sit through this testimony whereas he was allowed to sit through the prior nonexpert testimony.

THE COURT: Mr. Fahl?

MR. FAHL: Well, in this discussion we had part of the [Page 94] concern was Mr. Haanstad's expert Mr. Kingery, and Mr. Vasquez who could be in fact called on to rebut Mr. Savage, have been allowed to sit through the entire trial. I had talked to him, are we going to sequester witnesses or not. He said I don't see a need to, so we didn't. And I -- so I called Mr. Savage and told him to come up.

As far as a Daubert hearing, as I said, his testimony is to be based on any expert opinion he bases, be based upon a visual inspection of the firearm which is the same method that Mr. Kingery will use for some of his testimony.

THE COURT: If that is so, if his testimony is going to be based upon his examination of the document -- of the firearm --

MR. FAHL: As one part. And in that sense I don't think it's a Daubert issue. I mean, if he wants to talk about the credibility of Mr. Savage, I mean, I think that goes to admissibility and not to whether or not he can come in.

THE COURT: That's certainly not a Daubert question.

MR. FAHL: Okay. He may want to -- or I may ask him to testify, one, about this soft primered ammunition versus hard primered ammunition, or two malfunctions that may be occurring in this particular rifle. Those are going to be based upon his general knowledge as a gunsmith and owner of a gun shop and his work designing and producing firearms for his own company and other companies.

[Page 95] THE COURT: If he's offering opinion testimony regardless of the source of his knowledge, if he's expressing opinions, then he's testifying essentially as an expert. He's not just giving objective testimony based upon facts that are clearly observable and can be testified to by the average Joe.

In light of what has been said I'm going to do this. I will exclude Mr. Savage from the trial during, at least during that portion of the trial where the government is offering what it believes to be expert testimony. When the government's witness completes his testimony, that witness will also be excluded from the courtroom.

The witness offered by the government as an expert and Mr. Savage may not discuss their testimony with anyone until they're advised this case has been completed. That is, tonight or tomorrow they cannot talk about their testimony with the government or with the defense.

So if the government's witness is called to rebut what your witness has to say, he cannot confer with the government prior to any rebuttal testimony that that witness wishes to offer.

MR. FAHL: Can that go as well for Mr. Vasquez who at this point I haven't heard that --

THE COURT: If there is any expert testimony to be offered by the government, yes. Now, with respect to other government witnesses, if there's another witness the government [Page 96] anticipates calling either as part of its case in chief or as rebuttal, that witness or witnesses cannot be in the courtroom.

Jury Instructions on Elements of Offense

Transcript of Trial (Volume 3)

January 8, 2008

Page 217, line 22 – page 218, line 6; page 219, line 11 – page 220, line 11

[Page 117]

The defendant is charged in the indictment as follows:

Count one.

The grand jury charges that: On or about July 13th, 2006, in the State and Eastern District of Wisconsin, David R. [Page 118] Olofson, knowingly transferred a machine gun.

The firearm involved in this offense was an Olympic Arms, .223 caliber SGW Rifle, model CAR-AR, bearing serial number F7079.

All in violation of Title 18, United States Code, 922(o) and 924(a)(2).

* * *

[Page 219]

The indictment charges that the offense was committed on or about July 13th, 2006. The government must prove that the offense happened reasonably close to that date, but is not required to prove that the alleged offense happened on that exact date.

When the word "knowingly" is used in these instructions, it means that the defendant realized what he was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake or accident. Thus, to obtain a conviction, the government must prove that the defendant knew of the features of the gun that made it a machine gun as defined by federal law when he transferred the gun. You may not conclude that the defendant had knowledge if he was merely negligent in not discovering the truth.

A machine gun is any weapon which shoots, is designed [Page 220] to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.

To sustain the charge of transferring a machine gun, the government must prove the following propositions:

First, that the defendant knowingly transferred a machine gun; and, second, that the defendant knew, or was aware of, the essential characteristics of the firearm which made it a machine gun.

The term "transfer" includes selling, loaning, giving away, or otherwise disposing of.

Oral Order on Motion for Judgment of Acquittal

Transcript of Sentencing Hearing

May 13, 2008

Page 9, line 19 – page 21, line 14

[Page 9]

THE COURT: Well, then, considering the motion for judgment of acquittal the Court went back and reviewed the transcript and the evidence. One piece of evidence was the video which was shown to the jury and considered during the course of the trial. I'd like to run that video at this time.

You may proceed.

(Video file played in open court.)

[Page 10] THE COURT: Having seen that I moved then toward further consideration of the defendant's arguments. It's the position of Mr. Olofson that no rational jury could find he knowingly transferred a machine gun, and that Section 5845(b) of Title 26 which defines a machine gun is unconstitutionally vague.

A federal grand jury returned a one count indictment in this case charging that on or about July 13, 2006, in the State and Eastern District of Wisconsin, this defendant, David R. Olofson, knowingly transferred a machine gun. The firearm involved in this offense was an Olympic Arms .223 caliber SGW Rifle, model CAR-AR, bearing serial number F-as-in-frank 7079, all in violation of Title 18, United States Code, Sections 922 (o) and 924 (a) (2) .

Title 18, Section 922(o) defines a machine gun as any weapon which shoots, is designed to shoot, or can be readily restored to shoot automatically more than one shot without manual reloading by a single function of the trigger. The Court observed the test as did the jury. Now, I

do note that there were two parts of this test and I believe during the trial the latter was what was shown; is that correct?

MR. HAANSTAD: Your Honor, there were actually three tests overall of this particular gun. One I believe was in October of 2006. That one was not videotaped. One was later in 2006, that test also was not videotaped. This particular test [Page 11] fire, this third test fire is the only one that was videotaped and that was conducted in February of 2007.

THE COURT: I do not recall clearly whether both segments of the DVD were shown, but I do know the portion where the agent had each person identify himself or herself was indeed shown; is that correct?

MR. HAANSTAD: That's correct, Your Honor, and actually the entire DVD on both segments were shown at trial.

THE COURT: I do recall clearly the portion respecting the firing where the agent mentioned the 20 rounds was in fact shown.

But regardless, the video shows the weapon firing multiple times on what appear to have been a single depression of the trigger.

Nonetheless - - or a single function of the trigger.

Nonetheless, Mr. Olofson argues that the definition of a machine gun is not fluid, it is either a machine gun or it is not a machine gun, if it isn't a machine gun, if it fires automatically once or twice.

In support of all of this Mr. Olofson cites Officer Kingery's testimony and argues that Kingery testified that the rifle exhibited a malfunction called hammer follow-through, where the hammer follows the bolt carrier as it chambers another round and accidentally strikes the newly chambered round of ammunition.

[Page 12] When soft ammunition was used the weapon fired multiple rounds with a single pull of the trigger. Again, I am quoting the argument of the defense.

Next, the defendant continues: Kingery also testified that the SGW Olympic Arms AR-15's were manufactured with some of those M-16 parts.

Further, defendant submits: Defense expert Len Savage testified that he had contacted Bob Schuetzen, that's S C H U E T Z E N, owner of Olympic Arms, and that during that same period AR-15 rifles had been manufactured with an M-16 trigger, hammer, disconnect, and selector. While these parts do not create a machine gun, they may contribute to a malfunction.

I note here Mr. Savage did not testify from firsthand knowledge. He was utilizing hearsay.

Continuing: Defendant asserts his conversion book -- that is a document which was received in evidence -- stated that an auto sear, S E A R, must be added and there is no evidence that an auto sear was used in this case.

Moreover, there was no M-16 bolt carrier which was required to convert the AR-15 to a machine gun.

Earlier today the defendant submitted a letter to the Court with a transcript of a proceeding from the Western District of Pennsylvania. That proceeding was -- involved a defendant by the name of James P. Corcoran, C O R C O R A N, in criminal case 88-11. It was before U.S. District Judge Donald [Page 13] Ziegler on April 5th of 1988.

In that case the Court indicated: The auto sear, known by various trade names including AR-15 auto sear, drop-in auto sear and auto sear 2, is a combination of parts designed and intended for use in converting a weapon to shoot automatically more than one shot without manually reloading by a single function of the trigger. Consequently, the auto sear is a machine

gun as defined by 26 United States Code, Section 5845 -- I'm sorry, I'm talking here about ATF ruling 81-4.

In light of that ruling Judge Ziegler concluded it was inescapable that without the auto sear the AR-15 is not a machine gun and need not be registered.

It should be noted that this reference to the ATF ruling 81-4 is not something new in this case. There was testimony respecting the same. Indeed, Special Agent Kingery was asked whether or not he was familiar with this ruling and said yes, he had, and he went on to summarize the ruling essentially by-saying 81-4 refers to drop-in auto sears in conjunction with a combination of M-16 machine gun fire control components.

He was then asked essentially, is it correct to say that the addition of the auto sear to an AR-15, and it can be an AR auto sear, drop-in auto sear or an auto sear 2, when you add that to a machine gun with the M-16 internal parts, that's what makes it a machine gun, correct?

[Page 14] He responded: No, sir, not as you just asked the question. If it's a machine gun it's a machine gun. If you add them to an AR semiautomatic rifle, they would make that semiautomatic rifle a machine gun.

Further, Agent Kingery testified that an auto sear is not required before ATF will determine that a firearm is a machine gun.

Giving further consideration to the defendant's argument that there was insufficient evidence and that the weapon in this case merely malfunctioned, the Court notes the following evidence:

A witness and customer of Mr. Olofson testified that in March or April of 2006 he responded to an ad that Mr. Olofson placed on the bulletin board of a Subway restaurant located within a gas station in Berlin, Wisconsin. When the customer responded to the ad which offered

to sell an AR-15 Colt, he spoke with the defendant Mr. Olofson who said the AR-15 was gone but that he could get him another one. Olofson indicated that he could order it, all the parts, the kit. According to the customer Olofson said he could put it together. As a result, Olofson and the customer planned to put the AR-15 together in Olofson's basement which contained, as the witness described, guns, gun parts, and ammunition.

Now, while awaiting on the kit, Olofson loaned the customer an AR-15 four times for periods of approximately two [Page 15] weeks. He also, that is Olofson also provided the customer with free ammunition. And I'll come back to that later.

Olofson gave the customer 100 rounds on each of the first three occasions. On the latter occasion he gave the customer 500 rounds.

The customer then went to the Conservation Club in Berlin, Wisconsin when he observed that the borrowed weapon contained a selector switch with three positions, which are: Safety, fire, and unmarked.

Now, Olofson had informed the customer that he knew that it was an automatic function. Olofson mentioned to the customer that he had fired the weapon in the three-round burst position and the weapon had jammed on him. There Olofson is stating that he not only operated this rifle in the automatic mode, but he had done so prior to turning it over to this customer for firing.

Now, when the customer was at the Conservation Club on July 13, 2006, he placed the weapon into the unmarked position and testified that he -- that it shot three rounds or four rounds when he pulled the trigger, and that he did this at least twice, and that it jammed while his finger was on the trigger.

Subsequently, that is, later that day, local police responded to a phone call that there was automatic machine gun fire in the area. They spoke with the customer, that is, the person to

whom Olofson had delivered the weapon in question, [Page 16] there at the Conservation Club. They took down the serial number of the weapon. And, they also looked at two other guns that this customer had with him at the Conservation Club. They then told the customer that they wanted to make sure that the weapons had not been stolen.

The local police advised the customer and several of his friends who were there at the Conservation Club that someone had called in and said that there was automatic machine gunfire. The police then asked if he was the person doing that and the customer responded yes.

Then, the officers took Mr. Olofson's AR-15 and then contacted the Bureau of Alcohol, Tobacco and Firearms.

On the 16th of July, the Bureau of Alcohol, Tobacco and Firearms contacted Mr. Olofson after receiving a call from the Berlin Police Department. During his interview by the ATF, Mr. Olofson commented that he had owned an Olympic Arms .223 caliber SGW Rifle, model CAR-AR, with serial number F7079 and lent it to the customer so the customer could maintain his firearm skills.

The customer was planning to purchase a firearm kit through Olofson and they were going to assemble it.

And this is according to Mr. Olofson's statement to the BATF agent.

Olofson further advised that he had loaned firearms to numerous people and that he did not keep records of who he had [Page 17] loaned firearms out to because it would be dangerous.

Finally, Mr. Olofson told the agent that he knew what a machine gun was and that he knew how to convert a nonautomatic rifle into a machine gun.

At some point, subsequent to the initial contact at the Conservation Club, the local police contacted Mr. Olofson's customer who mentioned that -- I should say at some point after the

police contacted Mr. Olofson's customer, the customer contacted Mr. Olofson and mentioned that he had spoken to the police, and he told Mr. Olofson what had happened and mentioned that the local police had mentioned that the gun had been firing automatically and Olofson responded to his customer he's never had trouble with the police while shooting an automatic gun at the Conservation Club in Berlin.

During trial there was documentary evidence and of course the video that we just viewed. The documentary evidence included a PDF document which was located on Mr. Olofson's computer hard drive. It's entitled, AR-15 to M-16 Conversion Books.

Within that document there's a discussion at page 10 regarding the four AR-15 parts to be discarded: the bolt carrier, the hammer, the trigger, the selector, and the disconnecter.

Also found on the computer hard drive was an e-mail exchange dated June 28th, 2005 in which there was some [Page 18] give-and-take between Mr. Olofson and someone else over M-16 associated weapons and parts.

Yet another e-mail included a statement by a person who asked Mr. Olofson regarding untaxed registering of a machine gun, and Mr. Olofson said in response, and this is a quote:

MG's are just the small toys one can get. Remember, as a sovereign you are unhindered by the regulations that the federal citizens have to follow. There is a separate set of paperwork dealers must fill out to cover their, J G R E, butts on where the weapons and other items went. That is what a sovereign alien I.D. number does for him. It's just a way of accounting for where it went. Yes, you can build any weapon you like. You can learn more, especially details on the paperwork. You should learn more about sovereignty first. After some basic knowledge we will walk you through everything the first time to help you get the hang of it. Finding real freedom for the first time is like a baby's first step. You haven't really done it before so you don't know what

it's like. But we can change that. Then you can literally do most anything you want so long as it interferes with no other's rights or person. Near Wisconsin by chance?

That's Exhibit 11.

The jury also heard the special agent who examined the gun, who testified that the AR-15 rifle had been assembled with four machine gun components: the trigger, the hammer, the [Page 19] disconnecter and the selector switch. These four components installed on the AR-15 would allow the weapon to fire automatically.

He added that it is not necessary to discard and replace all five AR-15 parts identified in Mr. Olofson's conversion manual.

It was also pointed out, as Mr. Olofson has maintained, that there was a malfunction of the weapon which was loaned to Mr. Olofson's customer, and that in the test performed by ATF in October of 2006 the rifle did not fire automatically because military grade ammunition had been used and it has a much harder primer than standard civilian ammunition. As Mr. Haanstad has noted, there were two other tests the results of which have already been discussed.

The special agent added that he was aware that SWG/Olympic Arms manufactured its rifles with internal M-16 parts but testified that they never used this combination of M-16 parts, that is, SWG never used such combination.

There was further testimony by the agent that there was no malfunction of the AR-15 rifle after examining the parts. If there had been a malfunction he would expect to see that the hammer had been worn, significantly rounded, or the spaces between them would have been opened up such that the parts would not function as capturing the hammer.

Mr. Olofson has placed considerable reliance on a [Page 20] Supreme Court case, United States vs. Staples, 511 U.S. 600. The court concludes that that case is not on all fours with case.

In Staples there was an AR-15 involved which was made to fire only one bullet with each pull of the trigger. Therefore, it was not a machine gun and not normally within the statutory definition of firearm under Section 5861(d).

The Staples weapon had been modified to fire fully automatically. And the government in Staples argued that it was a machine gun and the defendant possessed it -- and that the defendant's possession of it was enough to convict under the statute. The Supreme Court disagreed and concluded that the government should have been required to prove that the defendant knew the features of this AR-15 that brought it within the statute.

It was on that basis that upon remand the Tenth Circuit Court of Appeals concluded that no reasonable jury could find the defendant guilty beyond a reasonable doubt.

Here, of course, it is clear based upon the evidence that I've reviewed, that Mr. Olofson knew the weapon at issue here could fire automatically. That was not the case in Staples.

In addition, other evidence demonstrates that Mr. Olofson knew and continues to know the difference between his rifle and an automatic weapon and knew how to convert the [Page 21] AR-15 to an M-16.

The information on Mr. Olofson's computer, Mr. Olofson's conversations with the agent, Mr. Olofson's statements to his customer, as well as the evidence that was clearly viewed by the jury in looking at the video the Court just had shown, satisfies the Court that a reasonable jury could conclude beyond a reasonable doubt on legal admissible evidence that this defendant is guilty as charged in the indictment in this case.

Mr. Olofson, despite his argument that he owned a legal albeit malfunctioning AR-15, was, on the basis of this evidence, found guilty, and the Court cannot on this record overturn that jury determination. As a consequence, the motion for judgment of acquittal is denied.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 06-CR-320

DAVID R. OLOFSON,

Defendant.

ORDER

DENYING DEFENDANT'S MOTION FOR DISCOVERY (DOC. # 65), DENYING DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL (DOC. # 73), DENYING DEFENDANT'S MOTION TO COMPEL DISCLOSURE OF EVIDENCE (DOC. # 82) , DENYING DEFENDANT'S MOTION FOR A NEW TRIAL PURSUANT TO FED. R. CRIM. P. 33 (DOC. # 85), AND DENYING DEFENDANT'S MOTION FOR STAY PENDING APPEAL (DOC. # 85)

On Tuesday, May 13, 2008, this court convened for the purpose of ruling on all pending motions and for sentencing the defendant. Also, in the interest of completeness, the court ordered the government to produce the document which was the subject of defendant's motion to compel, conducted an in camera review, and directed that the document, Ex. 14, be sealed. The court found the document was not exculpatory and proceeded with sentencing.

For the reasons set forth on the record,

IT IS ORDERED that defendant's motion for discovery is denied.

IT IS FURTHER ORDERED that defendant's motion for judgment of acquittal is denied.

IT IS FURTHER ORDERED that defendant's motion to compel disclosure of

evidence is denied.

IT IS FURTHER ORDERED that defendant's motion for a new trial is denied.

IT IS FURTHER ORDERED that defendant's motion to stay his sentence pending appeal is denied.

Dated at Milwaukee, Wisconsin, this 15th day of May, 2008.

BY THE COURT

s/ C. N. CLEVERT, JR. _____

C. N. CLEVERT, JR.

U. S. DISTRICT JUDGE

U.S. DEPARTMENT OF THE TREASURY
Bureau of Alcohol,
Tobacco and Firearms



Guide to Investigating Illegal Firearms Trafficking

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OCTOBER 1997

FOREWORD

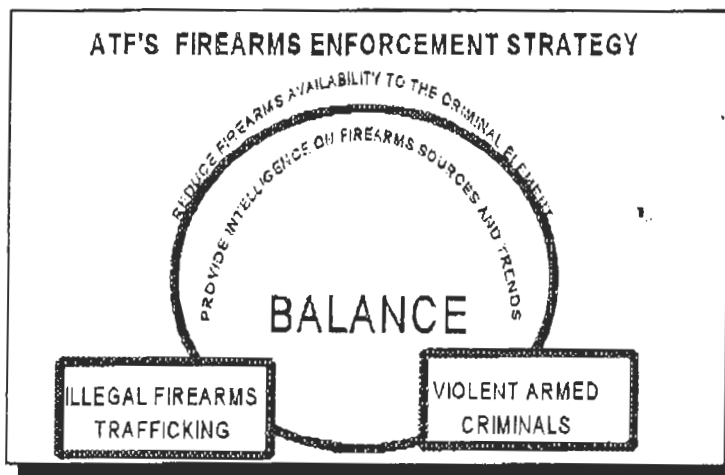
Firearms-related violence is one of this Nation's primary concerns. Firearms-related violence, spurred by an indifference to human life can deplete the cultural and economic resources of our society and erode the basic quality of life for many Americans. The Bureau of Alcohol, Tobacco and Firearms (ATF), in response to this problem and the fact that illegal firearms trafficking investigations often exceed the jurisdictional boundaries or information resources of other State, local, and Federal agencies, developed and deployed a comprehensive national firearms trafficking effort that all law enforcement agencies may participate in. This effort complements ATF's long standing efforts to reduce armed violent crime through direct investigation and prosecution of armed violent criminals and gang offenders. Striking a balance between the two approaches best serves both efforts.

ATF's firearms trafficking efforts reduce armed violent crime by investigating and prosecuting those individuals who are illegally supplying firearms to the violent criminals, gang offenders, and juveniles responsible for committing firearms-related crimes.

Focused enforcement is key to this effort. Eliminating the flow of firearms to violent criminals, gang offenders, and juveniles will reduce the overall violent crime rate as well as the armed violent crime rate in general. Firearms make it very easy to commit violent crime. Firearms reduce the personal interaction between a criminal and victim, and they lessen the need for a physical confrontation. When firearms access is removed from violent criminals, gang offenders, and juveniles, violent crime rates can be reduced.

This guide is designed as a reference for criminal investigators to use to

enhance their ability to recognize the signs of illegal firearms trafficking, identify illegal firearms traffickers, and thoroughly investigate illegal firearms trafficking violations.

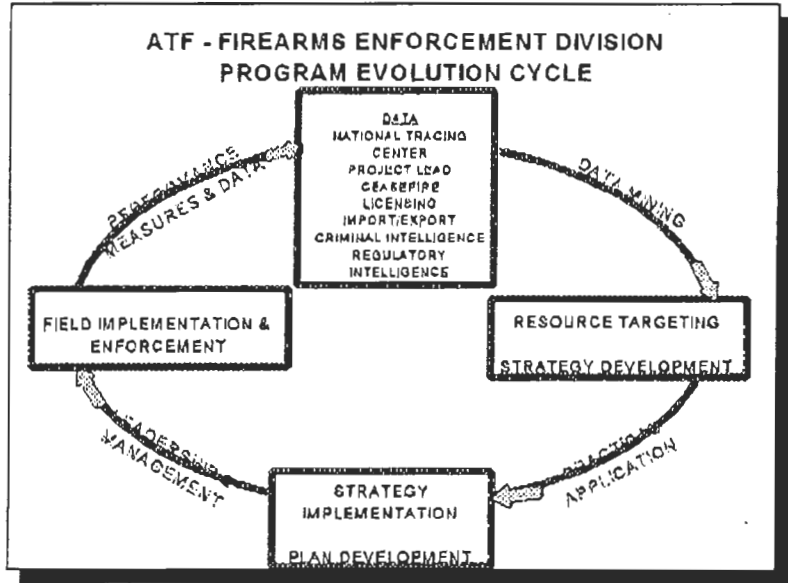


ATF is committed to the fight against armed violent crime and stands ready to provide the investigative, technical, and legal expertise as well as one-of-a-kind firearms information to fulfill this commitment. ATF is working for a sound and safer America through innovation and partnerships.

PURPOSE OF THIS GUIDE

The purpose of this guide is to provide criminal investigators with a practical instrument to assist their efforts during preliminary identification of illegal firearms trafficking indicators and the thorough investigation of illegal firearms trafficking violations. This guide also serves to promote uniformity in the illegal firearms trafficking terminology and the meanings of that terminology (as used by the law enforcement community).

that it assist the law enforcement community in the development of new law enforcement strategies designed to impact on the illegal source of firearms to criminals, gang offenders, and juveniles.



Although it is impossible to include everything necessary to conduct a complex illegal firearms trafficking investigation, this guide provides terminology, investigative

It is our intention to make this guide a functional tool that criminal investigators may carry with them in the field when conducting illegal firearms trafficking investigations. It is also the intent of the developers of this guide

techniques, sources of information, available resources, information on existing State systems, legal information, information on ATF's unique assets, and other general advice regarding those areas most often involved in illegal firearms trafficking investigations.

that an FFL may be corrupt. For example, it is possible that the FFL could have been the victim of a robbery, and the stolen inventory is now turning up in crimes and being traced. Other factors may be the proximity of an FFL to a major interstate or State border as well as the volume of sales an FFL produces.

□ Wild-Card Searches(Queries) -The wild-card search capability allows a user to fill-in-the-blanks as they need to produce customized reports. Once the specific information to be queried is entered by the user, Project LEAD searches for all the pertinent data that fits the defined criteria. For example, a user can query Project LEAD to identify all the firearms traces or multiple sales associated with "123 Main Street, Birmingham, Alabama." The user can also query Project LEAD to identify any traced firearms that were purchased, for example, in Florida and recovered in New York. These are just a few examples of Project LEAD's wild-card capabilities.

□ Purchase Date Range - This predefined report is another unique function of Project LEAD. A user can specifically identify all the traced firearms purchased at a specific FFL on a specific day by using this feature. For example, two individuals from Alabama visit the same FFL on the same day. Each one purchases a firearm. These two firearms are later recovered in crimes in New York and traced. The likelihood that those individuals are associated with one another is high, and Project LEAD is able to identify these important links and indicators for the investigator.

The preceding Project LEAD outline only describes a small portion of the systems capabilities. Project LEAD is the cornerstone of ATF's illegal firearms trafficking efforts. Any law enforcement agency that wants to utilize information from Project LEAD should contact its nearest ATF office to coordinate efforts.

ENHANCING INFORMATION RESOURCES:

Tracing of Firearms. Project LEAD's overall effectiveness in being able to identify recurring trends and patterns indicative of illegal firearms trafficking activity is directly affected by the number of firearms trace requests submitted to the NTC. Firearms trace data feeds Project LEAD. In order to maximize the potential of this unique asset, all recovered crime guns should be traced through the NTC. In those instances when an investigator already knows where a firearm came from, the submission of a Firearms Recovery Form should still be completed as this information needs to be placed into Project LEAD. *(ATF personnel should conduct firearms trace requests in accordance with ATF O 3310.4B, chapter F.)*

FIREARMS IDENTIFICATION AND TERMINOLOGY:

A description of firearms-related terminology used by ATF for tracing purposes follows:

Ammunition. Any cartridge cases or shot shells, primers, bullets or shot, or propellant powder designed for use in a firearm. *(See 18 U.S.C. § 921 (a) (17)(A).)*

Autoloading. A firearms action in which the propellant gases or recoiling forces created by the firing cartridge are used to open and close the mechanism of a firearm. The autoloading mechanism extracts each fired case from the chamber, ejects the spent case from the firearm, and chambers a loaded cartridge in preparation for the next shot.

Automatic (Fully Automatic). An autoloading action that will fire a succession of cartridges, so long as the trigger is depressed, or until the ammunition supply is exhausted. Automatic weapons are machineguns subject to the provisions of the National Firearms Act (NFA). The term automatic is often incorrectly applied to semiautomatic rifles, pistols, and weapons.

Bolt Action. A firearms action in which the user of the firearms must manually operate the bolt mechanism which extracts each fired shell case from the chamber, ejects the spent shell case from the firearm, and chambers a loaded cartridge in preparation for the next shot. This action must be repeated prior to each firing and is most commonly found on rifles.

Caliber. A term used to describe ammunition. Caliber is the approximate diameter of a projectile. In the United States, caliber is usually written in inches (e.g., .30 caliber). In most other countries of the world, caliber is usually written in millimeters (e.g., 7.62mm). When describing ammunition, an investigator must be more specific than just citing the diameter of the projectile, as there are, for example, many

different .30 caliber cartridges. Therefore, additional descriptive information is used to describe specific ammunition. There is no standard system for describing ammunition. In the United States, a specific cartridge may be described by its caliber plus the year of its introduction (.30/06), the caliber plus the name of the weapon for which designed (.30 Carbine), the caliber plus the name of the designer (.30 Newton), and so forth. Most other countries identify specific ammunition by its diameter plus the overall length of the cartridge (7.62 x 63mm). There are many other terms that are used to further describe specific ammunition.

Conversion of Calibers to Millimeters:
The following list provides the caliber, followed by its general equivalent in the metric system. It is not all inclusive but contains the more commonly found calibers that are referred to in decimal or metric measurement. In some cases, the conversions are not fully accurate but are the normally used terminology.

- .22, .222, or .223 caliber can be called 5.56mm.
- .25 caliber = 6.35mm.
- .264 caliber = 6.5mm.
- .284 caliber = 7mm.
- .30 and .308 caliber = 7.62mm.
- .32 caliber = 7.65mm.
- .380 caliber = 9mm short (sometimes called "Corto" or "Kurz").
- .45 caliber - 11mm or 11.4mm.

NOTE: .38 and .357 do not have metric equivalents; 9mm Parabellum does not have a decimal equivalent.

ATF Ruling 2004-5

August 18, 2004

26 U.S.C. 5845(b): DEFINITIONS (MACHINEGUN)

27 CFR 479.11: MEANING OF TERMS

The 7.62mm Aircraft Machine Gun, identified in the U.S. military inventory as the "M-134" (Army), "GAU-2B/A" (Air Force), and "GAU-17/A" (Navy), is a machinegun as defined by 26 U.S.C. 5845(b). Rev. Rul. 55-528 modified.

ATF Rul. 2004-5

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has examined the 7.62mm Aircraft Machine Gun, commonly referred to as a "Minigun." The Minigun is a 36 pound, six barrel, electrically powered machinegun. It is in the U.S. military inventory and identified as the "M 134" (Army), "GAU 2B/A" (Air Force), and "GAU 17/A" (Navy). It is a lightweight and extremely reliable weapon, capable of discharging up to 6,000 rounds per minute. It has been used on helicopters, fixed-wing aircraft, and wheeled vehicles. It is highly adaptable, being used with pintle mounts, turrets, pods, and internal installations.

The Minigun has six barrels and bolts which are mounted on a rotor. The firing sequence begins with the manual operation of a trigger. On an aircraft, the trigger is commonly found on the control column, or joystick. Operation of the trigger causes an electric motor to turn the rotor. As the rotor turns, a stud on each bolt travels along an elliptical groove on the inside of the housing, which causes the bolts to move forward and rearward on tracks on the rotor. A triggering cam, or sear shoulder, trips the firing pin when the bolt has traveled forward through the full length of the bolt track. One complete revolution of the rotor discharges cartridges in all six barrels. The housing that surrounds the rotor, bolts and firing mechanism constitutes the frame or receiver of the firearm.

The National Firearms Act defines "machinegun" as "any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger." 26 U.S.C. 5845(b). The term also includes "the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of the person." *Id.*; see 18 U.S.C. 921(a)(23); 27 CFR 478.11, 479.11.

ATF and its predecessor agency, the Internal Revenue Service (IRS), have historically held that the original, crank-operated Gatling Gun, and replicas thereof, are not automatic firearms or machineguns as defined. See Rev. Rul. 55-528, 1955-2 C.B. 482. The original Gatling Gun is a rapid-firing, hand-operated weapon. The rate of fire is regulated by the rapidity of the hand cranking movement, manually controlled by the operator. It is not a "machinegun" as that term is defined in 26 U.S.C. 5845(b) because it is not a weapon that fires automatically.

The Minigun is not a Gatling Gun. It was not produced under the 1862 - 1893 patents of the original Gatling Gun. While using a basic design concept of the Gatling Gun, the Minigun does not incorporate any of Gatling's original components and its feed mechanisms are entirely different. Critically, the Minigun shoots more than one shot, without manual reloading, by a single function of the trigger, as prescribed by 26 U.S.C. 5845(b). See *United States v. Fleischli*, 305 F.3d 643, 655-656 (7th Cir. 2002). See also *Staples v. United States*, 511 U.S. 600, 603 (1994) (automatic refers to a weapon that "once its trigger is depressed, the weapon will automatically continue to fire until its trigger is released or the ammunition is exhausted"); GEORGE C. NONTE, JR., *FIREARMS ENCYCLOPEDIA* 13 (Harper & Rowe 1973) (the term "automatic" is defined to include "any firearm in which a single pull and continuous pressure upon the trigger (or other firing device) will produce rapid discharge of successive shots so long as ammunition remains in the magazine or feed device in other words, a machinegun"); WEBSTER'S II NEW RIVERSIDE -UNIVERSITY DICTIONARY (1988) (defining automatically as "acting or operating in a manner essentially independent of external influence or control"); JOHN QUICK, PH.D., *DICTIONARY OF WEAPONS AND MILITARY TERMS* 40 (McGraw-Hill 1973) (defining automatic fire as "continuous fire from an automatic gun, lasting until pressure on the trigger is released").

The term "trigger" is generally held to be the part of a firearm that is used to initiate the firing sequence. See *United States v. Fleischli*, 305 F.3d at 655-56 (and cases cited therein); see also ASSOCIATION OF FIREARMS AND TOOLMARK EXAMINERS (AFTE) GLOSSARY 185 (1st ed. 1980) ("that part of a firearm mechanism which is moved manually to cause the firearm to discharge"); WEBSTER'S II NEW RIVERSIDE- UNIVERSITY DICTIONARY (1988) ("lever pressed by the finger in discharging a firearm").

Held, the 7.62mm Minigun is designed to shoot automatically more than one shot, without manual reloading, by a single function of the trigger. Consequently, the 7.62mm Minigun is a machinegun as defined in section 5845(b) of the National Firearms Act. See *United States v. Fleischli*, 305 F.3d at 655-56. Similarly, the housing that surrounds the rotor is the frame or receiver of the Minigun, and thus is also a machinegun. *Id.*; see 18 U.S.C. 921(a)(23); 27 CFR 478.11, 479.11.

To the extent this ruling is inconsistent with Revenue Ruling 55-528 issued by the IRS, Revenue Ruling 55-528, 1955-2 C.B. 482, is hereby modified.

Date signed: August 18, 2004

Carl J. Truscott
Director

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing Brief of Appellant, including Appendix A (bound with the Brief of Appellant) and Appendix B (separately bound), was made, this 25th day of August, 2008, to the Clerk of Court, electronically, and by FedEx overnight delivery, and to appellee by e-mail to greg.haanstad@usdoj.gov and by submitting sufficient hard copies thereof by FedEx overnight delivery, addressed to counsel for the appellee as follows:

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