

No. _____

**In The
SUPREME COURT OF THE UNITED STATES**

THOMAS F. KUZMA
Petitioner,
v

UNITED STATES OF AMERICA,
Respondent.

*On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit*

**APPENDIX FOR
PETITION FOR WRIT OF CERTIORARI**

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967 F.3d 959
United States Court of
Appeals, Ninth Circuit.

UNITED STATES of
America, Plaintiff-Appellee,

v.
Thomas F. **KUZMA**,
Defendant-Appellant.

No. 18-10042

|
Argued and Submitted October
4, 2019 San Francisco, California

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Filed August 3, 2020

Synopsis

Background: Defendant was convicted in the United States District Court for the District of Arizona, [Rosemary Marquez, J.](#), [2017 WL 11466621](#), of possession of a machinegun and possession of an unregistered machinegun. Defendant appealed.

Holdings: The Court of Appeals, [Collins](#), Circuit Judge, held that:

definition of machinegun applicable to statutes of conviction was not impermissibly vague in violation of due process;

any error in jury instruction defining machinegun was not plain;

any error in not allowing discovery of recordkeeping information was harmless;

any Confrontation Clause error in admitting record search certificate was harmless; and

possession of machinegun was lesser-included offense of possession of unregistered machinegun.

Affirmed in part and remanded with instructions.

Procedural Posture(s): Appellate Review; Post-Trial Hearing Motion.

West Codenotes

Recognized as Unconstitutional

[18 U.S.C.A. §§ 16\(b\)](#), [924\(c\)\(3\)\(B\)](#),
[924\(e\)\(2\)\(B\)](#)

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Appeal from the United States District Court for the District of Arizona, [Rosemary Márquez](#), District Judge, Presiding, D.C. No. 4:17-cr-00855-RM-JR-2

Before: [Richard A. Paez](#) and [Daniel P. Collins](#), Circuit Judges, and [Jennifer Choe-Groves](#),^{*} Judge.

* The Honorable Jennifer Choe-Groves, Judge for the United States Court of International Trade, sitting by designation.

OPINION

COLLINS, Circuit Judge:

Defendant-Appellant Thomas Kuzma appeals his convictions for possession of a machinegun in violation of [18 U.S.C. § 922\(o\)](#) and possession of an unregistered machinegun in violation of [26 U.S.C. § 5861\(d\)](#). He argues that the statutory definition of “machinegun” underlying both counts is unconstitutionally vague and that, to the extent the term does have any determinate meaning, the device he possessed does not qualify as a machinegun. We disagree with these contentions and with most of the other challenges that [*962](#) Kuzma raises to his convictions. However, because we agree that Kuzma's two convictions are improperly multiplicitous, we remand to the district court with instructions to vacate one of the two convictions.

I

A

Thomas Kuzma was the manager of D&D Sales and Manufacturing (“D&D”), a supplier of gun parts in Tucson, Arizona. D&D operated out of a residence owned by its cofounder, Donald Tatom, and at all relevant times, Kuzma lived

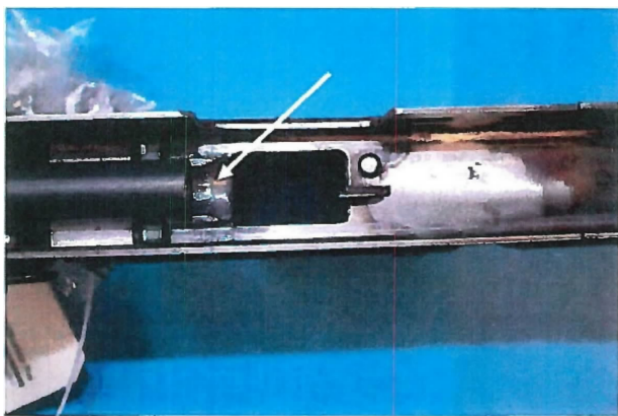
alone in that residence. After an investigation suggested that D&D might be involved with unlawful machineguns, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) obtained a search warrant for D&D's premises in early 2017. The search warrant was executed on March 21, 2017, and during the search, ATF agents found an “Uzi-type” receiver on a shelf in the garage, which functioned as D&D's workshop.¹ The receiver was later marked as Government's Exhibit 12 at trial, and we therefore will refer to it as “Exhibit 12.” As shown in a photograph attached to the report of the Government's firearms expert (William Swift), Exhibit 12 looked like this at the time ATF seized it:



¹ A “receiver” is the part of a firearm that “provides housing” for the hammer, bolt, and firing mechanism, and that “is usually threaded at its forward portion to receive the barrel.” [27 C.F.R. § 478.11](#). A “bolt” is a “sliding metal bar that positions the cartridge” at the “breech” (back) end of the barrel, “closes the breech, and ejects the spent cartridge” after each shot is fired. *Bolt*, AMERICAN HERITAGE DICTIONARY (5th ed. 2018). As we explain below, the relevant statutory

definition of “machinegun” includes, not just a fully operational machinegun, but also the “frame or receiver” of such a weapon. *See infra* at ——— ———.

In the condition in which it was found, Exhibit 12 could not shoot at all, much less shoot automatically.² The device was missing certain components needed to make it operable, including the bolt, some springs, *963 and the top cover. It did, however, contain a machinegun barrel at the front, as well as a machinegun feed ramp. Swift's report contained the following photograph showing the position of the machinegun feed ramp:

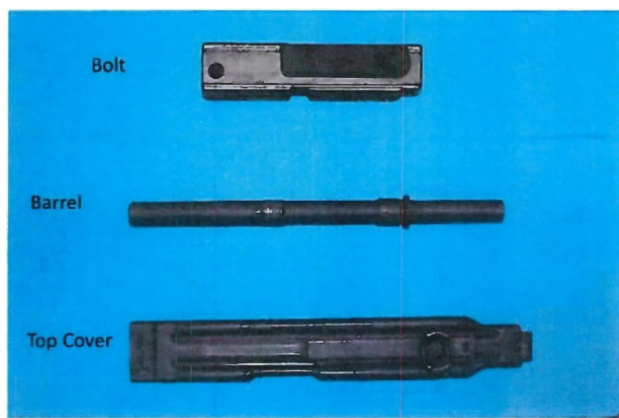


² Automatic firing means that the weapon can fire “more than one shot, without manual reloading, by a single function of the trigger.” 26 U.S.C. § 5845(b). By contrast, a weapon fires semi-automatically if it “requir[es] a squeeze of the trigger for each shot” but each such squeeze “[e]ject[s] a shell and load[s] the next round of ammunition automatically.” *Semiautomatic*, AMERICAN HERITAGE DICTIONARY (5th ed. 2018).

Exhibit 12 lacked a “blocking bar,” which is a piece of metal that is welded into the receiver of a semi-automatic firearm to prevent an unmodified machinegun bolt from being used. A blocking bar, however, is not a foolproof method for preventing automatic operation. As Swift testified at trial, there are machinegun bolts that “have a slot machined into them,” which allows them to fit in a gun with a blocking bar. Nonetheless, ATF has generally taken the position that a receiver with a blocking bar will not be deemed to be a machinegun. The following photograph from Swift's report shows where the holes were on Exhibit 12 for installing a blocking bar:



About a month after Exhibit 12 was seized, Swift tested it at an ATF facility. Using parts from that facility, Swift added the missing features needed to make Exhibit 12 an operable weapon. He installed an automatic bolt, as well as a machinegun *964 top cover. Because the barrel that was on Exhibit 12 when it was seized was fitted for .45 caliber ammunition and Swift did not have a compatible bolt, Swift removed that barrel and replaced it with a 9mm barrel. He also added a compatible magazine. His report included this photograph of the pieces he added:



Swift tested the fully assembled weapon, and it fired automatically. As shown in the photograph accompanying Swift's report, Exhibit 12 looked like this when it was fully assembled (the arrow identifies the position of the device's selector switch, which was set for automatic operation):



During and after the search, Kuzma made several statements to ATF investigators. To facilitate the execution of the search warrant at D& D, Agent Alexander Tisch used a ruse to get Kuzma to meet him about a quarter-mile away from the property. When Kuzma arrived, Tisch asked him to sit in Tisch's vehicle so that he could explain what was going to happen. Tisch stated that the ATF agents would be looking for machineguns, and Kuzma replied that they would find one on *965 a shelf in the garage. When Tisch asked whether that device would function as a machinegun,

Kuzma responded, "Yes, it will." Kuzma also admitted to Tisch that he did not have the "special" firearms license that would allow him to deal in machineguns. After this conversation, Tisch left Kuzma to participate in the search, but he subsequently went back to Kuzma to show him Exhibit 12 as well as another firearm that had been found. Kuzma identified Exhibit 12 as the machinegun that he had referred to earlier, and he stated that the other firearm was only a semi-automatic. In distinguishing between the two weapons, Kuzma noted that Exhibit 12's blocking bar had been removed, but the other device still had one welded in.

The next day, Tisch again spoke with Kuzma, this time by phone. Kuzma again stated that Exhibit 12 was a machinegun, and he added that it had not had a blocking bar for "[a]bout a month." Tisch spoke again with Kuzma in person on March 29, and Kuzma admitted that, although Donald Tatom had asked him to get the sort of license that would cover certain special types of firearms (such as machineguns), Kuzma had "just forgot[ten]" to do that.

B

Kuzma was indicted on two counts based on his possession of Exhibit 12 at D& D. Specifically, Kuzma was charged with possession of a "machinegun" in violation of [18 U.S.C. § 922\(o\)](#) and with possession of an unregistered machinegun in violation of [26 U.S.C. § 5861\(d\)](#).

In attempting to demonstrate at trial that Exhibit 12 was a "machinegun" for purposes

of § 922(o) and § 5861(d), the Government relied principally on Tisch's testimony concerning Kuzma's statements and the search, as well as on Swift's examination and testing of Exhibit 12. In trying to show that Exhibit 12 was unregistered, the Government relied on Tisch to describe the National Firearms Registration and Transfer Record ("NFRTR") created under 26 U.S.C. § 5841. Tisch explained that certain types of firearms regulated under the National Firearms Act ("NFA"), such as machineguns, must be registered in the NFRTR. Tisch testified that he inquired as to whether Exhibit 12 was registered to Kuzma in the NFRTR, and in response he received a "Record Search Certificate" prepared by another ATF employee, stating that there was no record that a device bearing Exhibit 12's serial number was registered to Kuzma.

Kuzma testified in his own defense at trial. He stated that he knew that ATF considered Exhibit 12 to be a machinegun due to the lack of a blocking bar, but he claimed that in the initial interview with Agent Tisch, he had said that Exhibit 12 was *not* a machinegun. On cross-examination, however, Kuzma acknowledged that he "[a]pparently ... did" tell Tisch that Exhibit 12 was a machinegun, but he stated that he "didn't recall that until [he] read the transcript" of that interview.

Kuzma further claimed that a September 23, 2005 letter from ATF to Donald Tatom "exempt[ed] us from that"—*i.e.*, ATF's view that Uzi-type receivers without blocking bars were machineguns—"until we sell these to the public." That letter explained that a particular "Uzi-type receiver *stamping*"³ submitted by

D& D to *966 ATF did *not* constitute a "machinegun," but the letter also warned that, if the stamping was assembled into a "complete UZI receiver," it "must have a bolt blocking bar installed." The letter therefore cautioned D& D to advise its customers "that a bolt blocking bar must be installed to prevent the possession of an unregistered machinegun." Kuzma asserted that, even though Exhibit 12 was a complete Uzi-style receiver, it was equivalent to the *stamping* discussed in the September 2005 letter and therefore, under his reading of that letter, such a device is "not a machine gun until it was sold to the public."

3 As Swift explained at trial, a receiver "stamping" consists of the main "metal channel without the trunnion"—which he described as the part at the front of the receiver "that holds the barrel in place"—and without the "rear back plate." It is called a "stamping," because it generally consists of a stamped piece of metal that is folded into shape with holes cut out for other items to be added. *See Stamping*, WEBSTER'S NEW INTERNATIONAL DICTIONARY (2d ed. 1934) ("Something stamped out of another piece, as by machinery, or pressed or drawn into a definite shape from a blank.").

Kuzma acknowledged that D&D was never licensed to manufacture NFA firearms, a category that includes machineguns. He and other witnesses at trial referred to the necessary license as an "SOT," after the Special Occupational Tax that accompanies such licensing. He claimed that he did not think that he needed such a license for the "testing"

that he was doing, which in his view did not involve “manufacturing.”⁴ In this regard, Kuzma insisted that, when he told Timothy Sink, a D& D employee, to remove the blocking bar from Exhibit 12, he did so only to enable D& D to test bolts. Kuzma insisted that Exhibit 12 “was never intended for anything but shop testing.” Kuzma testified that he told Sink to put the blocking bar back into the receiver after the testing was completed, but Sink failed to do so.



⁴ Tisch testified that, during one of his interviews, Kuzma stated that Tatom had “been telling him for two to three years to get an SOT,” but that he “just never got around to it.” D&D’s office manager (Tammy Loeffler) testified at trial that she had prepared the necessary applications, but they “just hadn’t been mailed yet” at the time that the search warrant was executed.

As to whether Exhibit 12 had been registered in the NFRTR, Kuzma testified that he “didn’t register it because it wasn’t a machine gun.”

Relying on the September 2005 letter, Kuzma requested a jury instruction on the affirmative defense of entrapment by estoppel. In a written pre-trial order, however, the district court had concluded that there was insufficient evidence to permit such a defense because the device discussed in that letter was not the same as Exhibit 12. After the close of the evidence at trial, the district court again reached the same conclusion, and the court therefore denied the requested instruction.⁵

⁵ Kuzma does not challenge this ruling on appeal.

After less than two hours of deliberation, the jury returned a verdict of guilty on both counts. Both before and after the verdict, Kuzma moved for a judgment of acquittal on the ground that, *inter alia*, there was insufficient evidence that Exhibit 12 was a machinegun, but the district court denied these motions.

At sentencing, Kuzma argued that he could only be sentenced on one of the two counts because the  § 922(o) count was a lesser-included offense of the  § 5861(d) count. The district court rejected that argument and sentenced Kuzma to concurrent sentences of three years’ probation on both counts.

Kuzma timely appealed, and we have jurisdiction under 28 U.S.C. § 1291.

II

Kuzma’s primary contention on appeal is that one aspect of the statutory definition of “machinegun” is unconstitutionally vague and that, because both counts rest on that same definition, his convictions must be reversed.⁶ Alternatively, Kuzma *967 argues that his convictions rest on an erroneously expansive reading of the term “machinegun” and that, under the correct definition, there is insufficient evidence to show that Exhibit 12 was a machinegun. We reject these contentions.

⁶ In the district court, Kuzma never squarely raised the contention that

the definition of machinegun was unconstitutionally vague, and arguably we could deem the issue forfeited and therefore subject only to plain error review. But the Government has not argued that Kuzma's vagueness challenge is forfeited, thereby itself forfeiting that objection. *See, e.g.,* [United States v. Schlesinger](#), 49 F.3d 483, 485 (9th Cir. 1994) (“This court will not address waiver if not raised by the opposing party.”). Moreover, Kuzma's arguments on this score overlap significantly with his contentions below that ATF's line-drawing in this area was arbitrary and standardless. Accordingly, we will proceed to consider this issue *de novo*, which both sides agree is the applicable standard of review.

A

The Due Process Clause prohibits the Government from “taking away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.” [Johnson v. United States](#), 576 U.S. 591, 135 S. Ct. 2551, 2556, 192 L.Ed.2d 569 (2015). In assessing whether a statute is impermissibly vague, “the touchstone is whether the statute, *either standing alone or as construed*, made it reasonably clear at the relevant time that the defendant's conduct was criminal.” [United States v. Lanier](#), 520 U.S. 259, 267, 117 S.Ct. 1219, 137 L.Ed.2d 432 (1997) (emphasis added). Because

analysis of the statutory text in light of the applicable canons of construction may negate or eliminate the claimed vagueness, we begin by considering the proper construction of the challenged provision. *See* [McDonnell v. United States](#), — U.S. —, 136 S. Ct. 2355, 2375, 195 L.Ed.2d 639 (2016) (statutory construction of relevant terms may “avoid[] the vagueness concerns raised” by a defendant).

1

For purposes of [18 U.S.C. § 922\(o\)](#), which is the basis for Kuzma's first count of conviction, “[t]he term ‘machinegun’ has the meaning given such term in section 5845(b) of the National Firearms Act ([26 U.S.C. 5845\(b\)](#)).” *See* [18 U.S.C. § 921\(a\)\(23\)](#). Kuzma's second count of conviction rests on § 5861(d) of the NFA, which makes it unlawful for a person “to receive or possess a firearm which is not registered to him” in the NFRTR. *See* [26 U.S.C. § 5861\(d\)](#). For purposes of the NFA, a “firearm” means only certain particular categories of weapons, including “a machinegun.” [Id. § 5845\(a\)\(6\)](#). The NFA's definition of “machinegun” in [§ 5845\(b\)](#) therefore applies to both counts.

[Section 5845\(b\)](#), in turn, provides as follows:

The term “machinegun” means 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 term shall also include 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 a person.

26 U.S.C. § 5845(b). The Government does not contend that Exhibit 12, in the state in which it was found, is *itself* a “weapon” that “shoots, is designed to shoot, or can be readily restored to shoot” automatically. *Id.* Rather, both in the district court and in this court, the Government has placed dispositive weight on the theory that Exhibit 12 is the “frame or receiver” of such a weapon. In providing that the “frame or receiver of any such weapon” is also a *968 machinegun, the second sentence of § 5845(b) clearly refers back to the “weapon” described in the first sentence, *i.e.*, “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.” *Id.* (emphasis added); *see also* *United States v. Wonschik*, 353 F.3d 1192, 1197–98 (10th Cir. 2004). Exhibit 12 is thus a “machinegun” under this definition if it is the

“frame or receiver” of a weapon that “shoots, is designed to shoot, or can be readily restored to shoot” automatically.⁷

⁷ The remaining portions of the statutory definition are not relevant here. The Government has not contended that Exhibit 12 qualifies as a “machinegun” on the theory that it is a “part designed and intended solely and exclusively ... for use in converting a weapon into a machinegun.” 26 U.S.C. § 5845(d) (emphasis added). At trial, the Government's examination of Swift did appear to suggest that Exhibit 12 could be deemed to be a machinegun on the theory that, together with other items in the garage, it constituted a “combination of parts from which a machinegun can be assembled,” *id.*, but the Government has not pressed this theory on appeal. Moreover, Swift's unadorned assertion that the D& D garage somewhere contained some unspecified parts that, together with Exhibit 12, could be assembled into a machinegun is too conclusory to provide sufficient evidence to sustain Kuzma's conviction on that basis.

Kuzma argues only that the second category—*i.e.*, a weapon that “is *designed* to shoot” automatically—is unconstitutionally vague, and so that is the key phrase whose meaning we must consider. Because “designed to shoot” is not further defined by the statute, we give that phrase its ordinary meaning. *Johnson v. United States*, 559 U.S. 133, 138, 130 S.Ct. 1265, 176 L.Ed.2d 1 (2010). In addressing a vagueness challenge to a local ordinance that

regulated any item “*designed ... for use with illegal cannabis or drugs,*” the Supreme Court noted that a “principal meaning of ‘design’ is ‘[t]o fashion according to a plan.’ ” [Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.](#), 455 U.S. 489, 491, 501, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982) (quoting Webster’s New International Dictionary 707 (2d ed. 1957)) (emphasis added). Given that primary meaning of “designed,” the Court explained that “[i]t is therefore plain that the standard encompasses at least an item that is principally used with illegal drugs *by virtue of its objective features, i.e., features designed by the manufacturer.*” [Id.](#) at 501, 102 S.Ct. 1186 (emphasis added); see also [id.](#) (“the phrase refers to *structural characteristics* of an item”) (emphasis added). An item’s “design” thus focuses on its objective “pattern or configuration of elements.” See *Design*, Black’s Law Dictionary (11th ed. 2019).

We therefore reject Kuzma’s contrary contention that, to the extent “designed to shoot” has a discernible meaning, it refers to the *subjective* “intent or purpose of the designer or manufacturer” and therefore does not apply to a device that the maker did not subjectively intend to be used to shoot. Indeed, a different portion of the same “machinegun” definition expressly covers “parts designed *and intended*[] for use in converting a weapon into a machinegun.” [26 U.S.C. § 5845\(b\)](#) (emphasis added). That the relevant phrase *here* is “designed to shoot”—and not “designed and intended to shoot”—supports our conclusion that this phrase requires a purely objective examination of the design features of the device and not an inquiry into the manufacturer’s

subjective intent. See [Russello v. United States](#), 464 U.S. 16, 23, 104 S.Ct. 296, 78 L.Ed.2d 17 (1983) (“‘[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate *969 inclusion or exclusion.’ ”) (citation omitted).

Although (as Kuzma notes) [Hoffman Estates](#) described the term “designed” as referring “to the design of the manufacturer,” [455 U.S. at 501, 102 S.Ct. 1186](#) (emphasis added), the Court made clear that the subjective intent of the manufacturer is relevant only insofar as it is reflected in the “objective features” of the product, [id.](#) Quoting from the brief of the ordinance’s challengers, the Court noted that they had essentially conceded as much: “if any intentional conduct is implicated by the phrase, it is the intent of the ‘designer’ (i.e. patent holder or manufacturer) whose intent for an item or ‘design’ is *absorbed into the physical attributes, or structural ‘design’ of the finished product.*” [Id.](#) at 501 n.19, 102 S.Ct. 1186 (emphasis added). Likewise, in [United States v. Reed](#), 726 F.2d 570 (9th Cir. 1984), we addressed whether a device was “designed ... for use as a weapon”—and thus might qualify as a “destructive device” under [26 U.S.C. § 5845\(f\)](#)—by “look[ing] to the *apparent* purpose for which the device was created” and considering whether it bore the “traditional indicia of a weapon.” [Id.](#) at 576 (emphasis added).⁸

8

Kuzma's reliance on [United States v. Fredman](#), 833 F.2d 837 (9th Cir. 1987), is unavailing. There, we addressed the separate portion of [§ 5845\(f\)](#) that classifies as a destructive device “any combination of parts either *designed or intended* for use in converting any device into a destructive device.” [26 U.S.C. § 5845\(f\)\(3\)](#) (emphasis added). We concluded that, “*absent proof of original design or redesign* for use as a weapon,” subjective “[i]ntent is a necessary element” and that the defendant's intent had “not been established.” [833 F.2d at 839](#) (emphasis added). [Fredman](#)'s emphasis on the user's subjective intent thus did not rest on [§ 5845\(f\)\(3\)](#)'s use of the word “designed” but rather on its use of the word “intended.” The portion of the definition of “machinegun” at issue here, by contrast, uses only the word “designed” and not the word “intended.” See *supra* at ——— – ———.

We note, however, that because the design of an item turns on its *apparent* purpose as reflected in its particular configuration of structural features, see [Reed](#), 726 F.2d at 576, a device remains “designed” for a particular use even though, due to a readily fixable defect, the device cannot at the moment be put to that use: a car with a dead battery is still “designed” to be driven. See [United States v. McCauley](#), 601 F.2d 336, 338, 341 (8th Cir. 1979) (construing “designed to shoot ... automatically” as including defendant's “type-96 machinegun” even though it “lacked the magazine necessary for automatic firing,” given that the trial

evidence showed that such magazines could be obtained). This construction of the phrase “weapon which ... is designed to shoot” also avoids rendering it wholly redundant with the phrase “weapon which shoots.” See [Ratzlaf v. United States](#), 510 U.S. 135, 140–41, 114 S.Ct. 655, 126 L.Ed.2d 615 (1994). However, for such a non-operational device to be “designed to shoot ... automatically,” it must be apparent from the device's specific arrangement of objective design features that the device would ordinarily shoot automatically but for some minor flaw that temporarily impedes that function. By contrast, we agree with the Eighth Circuit in [McCauley](#) that if the deficiency that impedes automatic operation is significant and not readily repaired, then it cannot fairly be said that the device is one that is “designed to shoot ... automatically.” See [601 F.2d at 341](#) (explaining that “designed to shoot ... automatically” does not include “devices lacking ‘irreplaceable’ parts necessary to shoot automatically” or “a device that no reasonable effort could render capable of automatic fire”).

We therefore conclude that a weapon is “designed to shoot” automatically if it has a specific configuration of objective structural *970 features that, in the absence of any minor defect, would give the weapon the capacity to shoot automatically.

2

Having thus considered the proper construction of the challenged statutory phrase, we have little difficulty rejecting Kuzma's contention that the phrase is unconstitutionally vague on

its face.⁹ By focusing on whether a device has a specific configuration of *objective* features that, absent a minor defect, would give it the capacity to shoot automatically, the phrase a “weapon which ... is designed to shoot ... automatically” provides both sufficient notice as to what is prohibited and sufficient guidance to prevent against arbitrary enforcement. In [Hoffman Estates](#), the Supreme Court rejected a facial vagueness challenge to a comparable phrase (“designed ... for use”) precisely on the ground that the phrase’s focus on the “objective features” and “structural characteristics” of an item was sufficient to provide fair warning for purposes of a facial challenge. [455 U.S. at 501–02, 102 S.Ct. 1186](#). The Court concluded that, while that objective standard could give rise to “ambiguities” as applied in some specific contexts, any such residual issues were “of no concern in this facial challenge.” [Id. at 502, 102 S.Ct. 1186](#). Applying similar reasoning here, we conclude that the challenged phrase is not unconstitutionally vague on its face. If anything, it is *Kuzma*’s reading of the statute that would raise serious vagueness concerns: by focusing on the manufacturer’s *subjective* intention in making a device, *Kuzma*’s construction would make it difficult, if not impossible, for subsequent possessors of the device to determine whether it had been “designed to shoot” automatically in that subjective sense. Cf. [Flipside, Hoffman Estates, Inc. v. Village of Hoffman Estates, 639 F.2d 373, 381 & n.18 \(7th Cir. 1981\)](#) (addressing the subjective reading of “designed ... for use” that the Supreme Court later rejected and observing that, “[i]f this were a criminal ordinance, subjecting retailers and customers to prosecution based solely on the

design intent of a third party, the manufacturer, there would be little question as to the law’s invalidity”).

⁹ We likewise reject *Kuzma*’s contention that [§ 5845\(b\)](#) is vague as applied to him. We address that issue separately below, together with *Kuzma*’s challenge to the sufficiency of the evidence. *See infra* at ——— – ———.

Kuzma relies on the Supreme Court’s recent decisions facially invalidating several statutory provisions that relied on impermissibly vague descriptions of predicate offenses, but none of this caselaw warrants a different conclusion from the one suggested by [Hoffman Estates](#). In [Johnson](#), for example, the Court addressed the so-called “residual clause” of the Armed Career Criminal Act, which defined as a “violent felony” (which warrants enhanced punishment) four enumerated felonies and any other felony that “ ‘otherwise involves conduct that presents a serious potential risk of physical injury to another.’ ” [135 S. Ct. at 2555–56](#) (quoting [18 U.S.C. § 924\(e\)\(2\)\(B\)](#)). Under the “categorical approach” that applied to evaluating which predicate offenses qualified as “violent felon[ies]” under the residual clause, a court was required “to picture the kind of conduct that the [predicate] crime involves in ‘the ordinary case’ ”—and not the conduct actually involved in the defendant’s case—“and to judge whether that abstraction presents a serious potential risk of physical injury.” [Id. at 2557](#) (emphasis added). That inquiry, the Court held, was too “indetermina[te]” to satisfy due process standards. [Id.](#) In reaching that conclusion, the

Court placed dispositive weight on the fact that this inquiry involved application of an *971 “imprecise ‘serious potential risk’ standard” to a “judge-imagined abstraction”—*i.e.*, the “judicially imagined ‘ordinary case’ of a crime”—rather than to “real-world facts.” *Id.* at 2557–78; *see also* *United States v. Davis*, — U.S. —, 139 S. Ct. 2319, 2326–27, 204 L.Ed.2d 757 (2019) (applying comparable reasoning to “residual clause” in 18 U.S.C. § 924(c)(3)(B)); *Sessions v. Dimaya*, — U.S. —, 138 S. Ct. 1204, 1214–15, 200 L.Ed.2d 549 (2018) (applying similar reasoning as to “residual clause” of 18 U.S.C. § 16(b)). Nothing comparable is involved here, in which an objective standard about the actual features of a device is to be applied to the real-world facts of the defendant's specific device.¹⁰

¹⁰ The facial invalidations in these three cases do, however, refute the Government's assertion that, outside the First Amendment context, only as-applied vagueness challenges may be considered.

Kuzma nonetheless argues that, as illustrated in the testimony of the ATF expert at trial, ATF has taken a series of internally contradictory and arbitrary positions concerning which devices do and do not count as “designed to shoot” automatically. This contention is ultimately irrelevant to Kuzma's facial challenge. Although inconsistency in ATF's position on the classification of a particular device could perhaps be an indicator of an *as-applied* vagueness problem, it has no bearing on the statute's underlying meaning or whether that meaning is impermissibly vague on its

face. This is not a situation in which an agency has been delegated authority to promulgate underlying *regulatory* prohibitions, which are then enforced by a criminal statute prohibiting willful violations of those regulations. *See, e.g.*, 49 U.S.C. § 5124(a) (imposing criminal penalties on any “person ... willfully or recklessly violating ... a regulation ... issued under this chapter”). On the contrary, the text of the applicable prohibitions and definitions is set forth in *statutory* language. Because “criminal laws are for courts, not for the Government, to construe,” the Supreme Court has repeatedly rejected the view “that ‘the Government's reading of a criminal statute is entitled to any deference.’ ” *Abramski v. United States*, 573 U.S. 169, 191, 134 S.Ct. 2259, 189 L.Ed.2d 262 (2014) (quoting *United States v. Apel*, 571 U.S. 359, 369, 134 S.Ct. 1144, 186 L.Ed.2d 75 (2014)). Thus, in *Abramski*, the Supreme Court explained that it “put aside” ATF's about-face in how the agency construed the statutory provision at issue there by pointedly observing: “We think ATF's old position no more relevant than its current one—which is to say, not relevant at all.” *Id.* at 191, 134 S.Ct. 2259.

Lastly, we reject Kuzma's contention that the challenged phrase (“designed to shoot ... automatically”) is impermissibly vague when *combined* with § 5845(b)'s inclusion of “receiver[s]” in the definition of “machinegun.” As explained earlier, the definition of “machinegun” includes, not just a “weapon which shoots, [or] is designed to shoot ... automatically,” but also the “frame or receiver of any such weapon.” 26 U.S.C. § 5845(b). Thus, a defendant need not be shown to have possessed a fully assembled

machinegun, but may be shown to have possessed just the frame or receiver of such a weapon. As Kuzma's counsel confirmed at oral argument, Kuzma has not raised a vagueness challenge to the statute's use of the term “receiver,” and we perceive no basis for concluding that that term, when combined with the phrase “designed to shoot ... automatically,” renders the resulting definition vague on its face. Under the plain language of the statute, a device can only be said to be the “frame or receiver” of a “weapon which ... is designed to shoot ... *automatically*”—as opposed to the *972 frame or receiver of a “weapon which ... is designed to shoot” *simpliciter*—if the receiver *itself* contains a configuration of objective features that (when the remainder of the firearm is added to the receiver) would give the weapon the specific capacity to fire automatically. See 26 U.S.C. § 5845(b) (emphasis added). Consequently, a receiver that is in all respects merely a common-denominator subcomponent of *either* a semiautomatic weapon or an automatic weapon cannot be said to be a receiver of a “weapon which ... is *designed* to shoot ... *automatically*.” Because the challenged phrase continues to rely on the objective features of the device even when it is combined with the phrase “frame or receiver,” it is not void for vagueness in that context either.

* * *

We therefore reject Kuzma's argument that the phrase “weapon which ... is designed to shoot ... automatically” in § 5845(b) is unconstitutionally vague on its face.

B

Kuzma also raises a variety of challenges concerning the application of § 5845(b) in his particular case, but we conclude that all of them are meritless.

1

As an initial matter, Kuzma challenges the particular definition of “machinegun” that was used in the jury instructions in this case—even though his own counsel was the one who suggested adding the very language that Kuzma now attacks as legally erroneous. Citing *United States v. Guthrie*, 931 F.2d 564, 567 (9th Cir. 1991), the Government argues that, as a result, review of this issue is barred by the invited-error doctrine. But in *United States v. Perez*, 116 F.3d 840 (9th Cir. 1997) (en banc), this court distinguished *Guthrie* and held that an error “induced or caused” by the defendant remains subject to plain error review unless, in inviting the error, “the defendant intentionally relinquished or abandoned a known right.” *Id.* at 845. The parties dispute whether the record reflects such a relinquishment here, but we need not resolve this issue. Even applying plain error review, we find no basis for reversal on account of this instruction.


The jury instructions in this case defined “machinegun” by repeating verbatim the entire text of the definition contained in § 5845(b). The instructions, however, also contained some additional language, including the following

portion that Kuzma belatedly challenges on appeal:

The “designed” definition includes weapons which have not previously functioned as machineguns but possess specific machinegun design features which facilitate automatic fire by simple alteration or elimination of existing component parts.

Kuzma contends that this definition was erroneous because, in his view, the statute requires a focus on the manufacturer's subjective intention in creating the device. We have already rejected that contention, and so there was no plain error in the instruction's objective focus on “specific machinegun design features which facilitate automatic fire.”


We likewise find no plain error here in the instruction's reference to features that facilitate automatic fire “by simple alteration or elimination of existing component parts.” On the one hand, this phrase arguably could be read to go beyond the statute's reach by literally including devices that can *acquire* an automatic capacity, *not already reflected in their existing design*, “by simple alteration or elimination of existing component parts.” On the other hand, the latter phrase could perhaps be ***973** narrowly construed as referring merely to the correction of minor flaws or defects that may prevent a particular device from functioning in accord with its *existing* objectively apparent

design, which would be consistent with the statute. We need not resolve this issue because, even assuming that this aspect of the instruction was erroneous, it did not affect Kuzma's substantial rights. See  [United States v. Olano](#), 507 U.S. 725, 734–35, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993). As we explain below, on the facts of this case, any automatic capacity that inhered in the objective design of Exhibit 12 *already* existed at the time Kuzma possessed it. See *infra* at ———. There is thus no reasonable possibility that the jury here relied on an impermissibly expansive reading of this instruction in convicting Kuzma.

2

Applying the correct definition of “machinegun,” we conclude that Kuzma had fair notice that Exhibit 12 qualified as such a device based on its configuration of objective features. We therefore reject his as-applied vagueness challenge, as well as his contention that the evidence was insufficient to sustain his convictions.

a

Because it is not a complete weapon that, by itself, was designed to shoot, Exhibit 12 qualifies as a “machinegun” only if it is the “frame or receiver” of a weapon that “shoots, [or] is designed to shoot ... automatically.”¹¹  26 U.S.C. § 5845(b). As we have explained, Congress's directive that the “frame or receiver” of a “machinegun” also qualifies as a “machinegun” unmistakably

confirms that the statute reaches the core *subcomponent* of an automatic weapon, even if that device by itself cannot shoot at all. But to count as the relevant core of a machinegun (as opposed to some other firearm), a frame or receiver must itself contain a configuration of objective design features that facilitate automatic fire, as demonstrated by the fact that, when the remaining missing features of a complete firearm are *added* to the receiver, the resulting weapon shoots, or is designed to shoot, automatically. *See supra* at ———. Under this standard, Exhibit 12 was plainly a machinegun.

11 Because Exhibit 12 had not previously been part of a complete automatic weapon, it was concededly not the “frame or receiver” of a “weapon which ... [could] be readily *restored* to shoot[] automatically.” 26 U.S.C. § 5845(b) (emphasis added). And as explained earlier, none of the other clauses of § 5845(b)'s definition applied to Exhibit 12. *See supra* note 7.

Kuzma does not contest that Exhibit 12 had enough of the core features of a firearm to qualify as a “frame or receiver.” And because Exhibit 12 had its blocking bar removed, its objective design features facilitated automatic firing, as shown by the fact that, when Swift added the few remaining features needed to complete an operational firearm (namely, a bolt and top cover), Exhibit 12 fired automatically. *See supra* at ———. This conclusion is not altered by the fact that, in adding the remaining features, Swift swapped out the existing barrel for a different one that matched one of the bolts he had available. A barrel is not itself part of

a receiver, and so the swap cannot have altered the design of the receiver. In any event, such an even swap of features does not materially alter the functionality of the resulting operable firearm and has no bearing on whether it does or does not qualify as a machinegun. Moreover, Kuzma himself admitted in his statements to Tisch that he knew that the features of Exhibit 12 were such that, when the remaining missing pieces to create an operable firearm were installed on Exhibit 12, the device would shoot automatically. *974 Cf. *Staples v. United States*, 511 U.S. 600, 619, 114 S.Ct. 1793, 128 L.Ed.2d 608 (1994) (holding that the Government must show that the defendant knew the device had the characteristics that brought it within the scope of the NFA); *United States v. Rogers*, 94 F.3d 1519, 1523 (11th Cir. 1996) (same as to § 922(o)), *cert. dismissed*, 522 U.S. 252, 118 S.Ct. 673, 139 L.Ed.2d 686 (1998). The trial evidence was thus sufficient to show that, at the time Kuzma possessed it, Exhibit 12 had the objective features necessary to establish that it was the “frame or receiver” of a “weapon which shoots, [or] is designed to shoot ... automatically.” 26 U.S.C. § 5845(b).¹² It therefore was a “machinegun” within the plain language of § 5845(b).¹³

12 At oral argument, Kuzma suggested that, in the context of an operational firearm that is assembled from a receiver, the receiver alone, in its earlier state, can be said to have been the receiver of a weapon which *will* shoot automatically, but not of one which “*shoots* ... automatically.”

26 U.S.C. § 5845(b) (emphasis added); cf. 18 U.S.C. § 921(a)(3) (defining “firearm” as, *inter alia*, “any weapon ... which will or is designed to or may readily be converted to *expel a projectile*”) (emphasis added). We doubt that the use of the present tense rather than the future tense in § 5845(b) makes any difference, *see, e.g.*, 1 U.S.C. § 1 (“unless the context indicates otherwise[,] ... words used in the present tense *include the future* as well as the present”) (emphasis added), but the point is ultimately irrelevant. Exhibit 12 would clearly remain covered under § 5845(b) as the “frame or receiver” of a “weapon which ... is designed to shoot ... automatically.”

- 13 We reject Kuzma's contention that the district court erred in permitting Swift to offer his opinion that Exhibit 12 was a machinegun as defined by § 5845(b). Because Kuzma failed to raise this objection in the district court, we review only for plain error, *see Olano*, 507 U.S. at 730, 113 S.Ct. 1770 (citing *FED. R. CRIM. P. 52(b)*), and we find none. *See United States v. Bishop*, 926 F.3d 621, 632–33 (10th Cir. 2019) (finding no plain error in allowing expert to testify that device was a machinegun when expert “adequately explained the basis for his opinion”); *see generally United States v. Diaz*, 876 F.3d 1194, 1197–99 (9th Cir. 2017) (finding no error when

expert was asked questions “adopt[ing] the language of the elements”).

b

Kuzma nonetheless contends that the statute is vague as applied to him, because ATF issued contradictory guidance concerning receivers just like Exhibit 12, thereby confirming that the statute's coverage of such devices was fatally unclear even to ATF. The trial evidence showed that ATF had indeed sent two inconsistent letters to D& D concerning whether a certain receiver *stamping* qualified as a “machinegun,” but nothing in this evidence concerning the classification of that qualitatively different device bespeaks ambiguity as to the statute's coverage of Exhibit 12.

Only the second letter was received into evidence at trial, and it stated that ATF's prior letter to D& D had contained “an erroneous determination regarding the classification of your previously submitted UZI-type receiver stamping.” Specifically, the letter stated that “[o]ur original classification of this item as a *machinegun* was not accurate.” As the letter explained, the item ATF examined consisted of the folded metal receiver stamping, which had “various holes and slots, but no additional parts installed.” The letter concluded that this receiver stamping, “as examined, does not possess the design features of an UZI-type machinegun receiver that facilitate automatic fire by simple modification of existing parts.” However, the letter warned that, if this receiver stamping is “assembled into a *complete UZI receiver* by the installation of a back plate, barrel trunnion, and other receiver components, [it] must have a bolt

blocking bar installed” and, “[i]f not, it will be considered a machinegun *975 receiver.” While the letter might suggest some subjective confusion on ATF’s part as to exactly how to classify *stampings* that lack almost any other parts,¹⁴ that does not somehow create uncertainty as to how the statutory language objectively applies to Exhibit 12, which was *not* a mere stamping. On the contrary, because Exhibit 12 was a “complete UZI receiver” with “a back plate, barrel trunnion, and other receiver components,” the letter’s reasoning would likewise classify Exhibit 12 as “a machinegun receiver.” The letter thus does nothing to suggest that the statute’s application to Exhibit 12 creates an as-applied vagueness issue.


¹⁴ For example, the letter could be read as taking the view that the folded stamping was too barebones to count as a “receiver,” although that reading is hard to square with the letter’s simultaneous insistence that the stamping was a “firearm.” (The stamping could not possibly fit the definition of a “firearm” in [18 U.S.C. § 921\(a\)\(3\)](#) unless it was a “receiver.”) Alternatively, the letter could perhaps be read to suggest that, by itself, the stamping was too much of a least-common-denominator device to count as a *machinegun* receiver. *Cf. supra* at ———. But as Kuzma notes, at trial Swift appeared at one point to suggest that a folded receiver stamping with no additional parts *was* a machinegun receiver, thus seemingly contradicting ATF’s own about-face on

that issue. Because it ultimately has no impact on the result in this case, we express no view as to which (if any) of these conflicting views about receiver stampings is correct.

Kuzma argues that the statute is still vague as applied here because in his view ATF improperly attaches talismanic significance to the presence or absence of a blocking bar. But in assessing Kuzma’s as-applied vagueness challenge, we need not address whether Swift correctly answered all of Kuzma’s counsel’s various hypotheticals as to which other devices with which other components would or would not count as machinegun receivers. In an as-applied challenge, the only question is whether the statute “‘is impermissibly vague in the circumstances of this case.’” [United States v. Purdy](#), 264 F.3d 809, 811 (9th Cir. 2001) (citation omitted). Even if Kuzma is correct in contending that design features *other* than blocking bars may sufficiently impede automatic operation so as to prevent a receiver from being classified as a machinegun receiver, that would not create any basis for finding [§ 5845\(b\)](#) vague as applied here. As Swift explained, Exhibit 12 did not have *any* such alternative design features “that could have prevented it from functioning as a machine gun.” Indeed, had Exhibit 12 possessed such features, it would not have fired automatically when Swift tested the fully assembled weapon.

“Because the controlling standard of conduct is reasonably clear and [Kuzma] clearly violated that standard, we hold that [[§ 5845\(b\)](#)] is not unconstitutionally vague as applied to [Kuzma].” [United States v. Agront](#), 773 F.3d 192, 199 (9th Cir. 2014).


III



Kuzma also raises several challenges that apply only to his conviction for possession of an unregistered firearm under  26 U.S.C. § 5861(d), but none of these points warrants reversal.

Prior to trial, Kuzma repeatedly sought to obtain information from the Government concerning the reliability of the recordkeeping in the NFRTR, but the district court declined to order such discovery. Kuzma renewed his objection to those prior rulings at trial when the Government sought to introduce a “Record Search Certificate” from ATF employee Jon Coleman stating that, “after [a] diligent search” of the NFRTR, Coleman “found no evidence” that a firearm bearing Exhibit 12's serial number was registered to Kuzma. Moreover, in doing so, Kuzma's *976 counsel also specifically objected to the admission of that certificate, explaining that “it's not an accurate regist[er], the federal regist[er], and I don't have an opportunity to cross examine the person that's introducing it as to the accuracy of the federal regist[er].” Kuzma renews these points on appeal, arguing that discovery should have been ordered and that the introduction of the no-record certificate over his objection violated his rights under the Confrontation Clause.

Even if the district court erred in either or both of these respects, any error would be harmless. Kuzma expressly admitted at trial that he had not registered Exhibit 12, and he made the same admission in his earlier statements to Tisch. Whether the Government's registration

records were adequate to show the absence of this concededly non-existent registration would thus not have altered the outcome.

 *United States v. Larson*, 495 F.3d 1094, 1107–08 (9th Cir. 2007) (en banc) (holding that Confrontation Clause error was harmless beyond a reasonable doubt in light of other testimony in the record).

Kuzma further argues, however, that  § 5861(d) required the Government to prove that both Kuzma and D&D failed to register Exhibit 12. This contention appears doubtful, given that the plain text of the statute requires a registration that extends to each person who receives or possesses such a firearm: “It shall be unlawful for any person ... to receive or possess a firearm which is not registered to him in the [NFRTR].”  26 U.S.C. § 5861(d) (emphasis added). But we need not resolve this issue, because the undisputed testimony at trial confirmed that Exhibit 12 was not registered to D&D either. As Tisch explained, Kuzma admitted that D&D did not have the requisite license for a machinegun, which (as noted earlier) the witnesses referred to at trial as an “SOT.” See *supra* at ——. ¹⁵ Tisch further stated that Kuzma had told him D&D's owner had been urging Kuzma “for two to three years to get an SOT,” but to no avail. In his trial testimony, Kuzma confirmed that he had asked Tammy Loeffler to prepare the authorization paperwork “about a week before” the search. In turn, Loeffler admitted on cross-examination that she had never “obtained an SOT” on D&D's behalf, and she claimed that she had prepared the paperwork but failed to mail it out. Accordingly, any error concerning whether the Government had to prove that Exhibit 12 was

registered to D&D was harmless. See [Neder v. United States](#), 527 U.S. 1, 17–20, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999).¹⁶

¹⁵ There are very limited circumstances in which a manufacturer can lawfully produce machineguns and register them. See [18 U.S.C. § 922\(o\)\(2\)](#) (exempting, *inter alia*, possession “under the authority of[] the United States” or a state or local government); [27 C.F.R. § 479.105\(c\)](#) (“The registration of such machine guns under this part and their subsequent transfer shall be conditioned upon and restricted to the sale or distribution of such weapons for the official use of Federal, State or local government entities.”). Any such manufacturer (among others) is subject to the “special (occupational) tax.” [26 U.S.C. § 5801\(a\)](#).

¹⁶ To the extent that we have concluded that certain potential errors were either harmless or not plain error, *see supra* at ———, we further conclude that the cumulative effect of any such potential errors is also harmless. [United States v. Fernandez](#), 388 F.3d 1199, 1256–57 (9th Cir. 2004).




IV

Finally, Kuzma contends that, even if his [§ 922\(o\)](#) and [§ 5861\(d\)](#) convictions are free from reversible error when considered *separately*,

the two convictions are multiplicitous and cannot coexist *simultaneously*. We agree.

*977 Under the aspect of the Double Jeopardy Clause that protects against multiple punishments, “ ‘cumulative sentences are not permitted’ ” for two statutes that proscribe the same offense, “ ‘unless elsewhere specially authorized by Congress.’ ” [Missouri v. Hunter](#), 459 U.S. 359, 367, 103 S.Ct. 673, 74 L.Ed.2d 535 (1983) (quoting [Whalen v. United States](#), 445 U.S. 684, 693, 100 S.Ct. 1432, 63 L.Ed.2d 715 (1980)) (emphasis omitted); *see also* [United States v. Schales](#), 546 F.3d 965, 977 (9th Cir. 2008). The test for determining whether two statutes define the same offense is the familiar “[Blockburger](#) test,” which asks “ ‘whether each provision requires proof of a fact which the other does not.’ ” [Id.](#) (quoting [Blockburger v. United States](#), 284 U.S. 299, 304, 52 S.Ct. 180, 76 L.Ed. 306 (1932)). Here, the Government concedes that [§ 922\(o\)](#) does not require proof of any element that is not also required under [§ 5861\(d\)](#). The former statute requires possession of an item that qualifies as a machinegun with knowledge of the essential characteristics that make that item a machinegun, *see* [18 U.S.C. §§ 922\(o\), 924\(a\)\(2\)](#), and the latter statute requires all of those same elements (plus an additional element concerning the lack of registration), *see* [26 U.S.C. §§ 5845\(a\)\(6\), 5845\(b\), 5861\(d\), 5871](#). The [§ 922\(o\)](#) charge is therefore a lesser-included offense of the [§ 5861\(d\)](#) charge. The Government further concedes that neither statute (nor any other provision of law) indicates that Congress

authorized cumulative punishments to be imposed simultaneously under both provisions. Because “[o]ne of the convictions, as well as its concurrent sentence, is unauthorized punishment,” one of them must be vacated.

 *Ball v. United States*, 470 U.S. 856, 864, 105 S.Ct. 1668, 84 L.Ed.2d 740 (1985). Given that the ultimate “sentencing responsibility resides” with the district court, the “only remedy consistent with congressional intent” is for that court “to exercise its discretion to vacate one of the underlying convictions.”  *Id.*; see also  *Schales*, 546 F.3d at 980.

Accordingly, we remand the case to the district court with instructions to vacate one, and only one, of Kuzma's two convictions. We otherwise affirm the convictions and judgment in all other respects.

AFFIRMED IN PART AND REMANDED.

All Citations

967 F.3d 959, 20 Cal. Daily Op. Serv. 7791, 2020 Daily Journal D.A.R. 8055

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America

v.

Thomas F. Kuzma

AMENDED JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

No. CR-17-00855-002-TUC-RM (JR)

John D. Kaufmann (Retained)

Attorney for Defendant

USM#: 75774-408

THERE WAS A VERDICT OF guilty on 9/25/2017 as to Counts 7 and 8 of the Indictment.

The conviction as to Count 7 is vacated pursuant to Mandate of United States Court of Appeals, Ninth Circuit.

ACCORDINGLY, THE COURT HAS ADJUDICATED THAT THE DEFENDANT IS GUILTY OF THE FOLLOWING OFFENSE(S): violating Title 26, U.S.C. §5861(d), Possession of an Unregistered Firearm, a Class C felony offense, as charged in Count 8 of the Indictment.

IT IS THE JUDGMENT OF THIS COURT THAT the defendant is hereby placed on **PROBATION** for a term of **THIRTY-SIX (36) MONTHS** on Count 8.

The defendant shall report to the probation office within 72 hours of sentencing.

IT IS FURTHER ORDERED that defendant's interest in the following property shall be forfeited to the United States: one D and D Sales, Model A, multiple caliber Uzi-type firearm, serial number DD000005.

CRIMINAL MONETARY PENALTIES

The defendant shall pay to the Clerk the following total criminal monetary penalties:

SPECIAL ASSESSMENT: \$100.00 **FINE:** WAIVED **RESTITUTION:** N/A

The defendant shall pay a special assessment of \$100.00 which shall be due immediately.

The Court finds the defendant does not have the ability to pay a fine and orders the fine waived.

The defendant shall pay a total of \$100.00 in criminal monetary penalties, due immediately. Having assessed the defendant's ability to pay, payments of the total criminal monetary penalties are due as follows: Balance is due in equal monthly installments of \$20.00 until paid in full, to commence 60 days after the date of this judgment.

If incarcerated, payment of criminal monetary penalties are due during imprisonment at a rate of not less than \$25 per quarter and payment shall be made through the Bureau of Prisons' Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk of U.S. District Court, Attention: Finance, Suite 130, 401 West Washington Street, SPC 1, Phoenix, Arizona 85003-2118. Payments should be credited to the various monetary penalties imposed by the Court in the priority established under 18 U.S.C. § 3612(c). The total special assessment of \$100.00 shall be paid pursuant to Title 18, United States Code, Section 3013 for Count 8 of the Indictment.

Any unpaid balance shall become a condition of supervision and shall be paid within 90 days prior to the expiration of supervision. Until all restitutions, fines, special assessments and costs are fully paid, the defendant shall immediately notify the Clerk, U.S. District Court, of any change in name and address. The Court hereby waives the imposition of interest and penalties on any unpaid balances.

PROBATION

The drug testing condition is suspended based on the Court's determination that the defendant poses a low risk of future substance abuse.

It is ordered that while on probation, the defendant must comply with the mandatory and standard conditions of supervision as adopted by this court, in General Order 17-18, which incorporates the requirements of USSG §§ 5B1.3 and 5D1.2. Of particular importance, the defendant must not commit another federal, state, or local crime during the term of supervision. Within 72 hours of sentencing or release from the custody of the Bureau of Prisons the defendant must report in person to the Probation Office in the district to which the defendant is released. The defendant must comply with the following conditions:

MANDATORY CONDITIONS

- 1) You must not commit another federal, state or local crime.
- 2) You must not unlawfully possess a controlled substance. The use or possession of marijuana, even with a physician's certification, is not permitted.
- 3) You must refrain from any unlawful use of a controlled substance. The use or possession of marijuana, even with a physician's certification, is not permitted. Unless suspended by the Court, you must submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court.

STANDARD CONDITIONS

- 1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of sentencing or your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
- 2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must

report to the probation officer as instructed.

- 3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
- 4) You must answer truthfully the questions asked by your probation officer.
- 5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
- 7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- 9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
- 10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
- 11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
- 12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
- 13) You must follow the instructions of the probation officer related to the conditions of supervision.

SPECIAL CONDITIONS

The following special conditions are in addition to the conditions of supervised release or supersede any related standard condition:

- 1) You must submit your person, property, house, residence, vehicle, papers, or office to a search conducted by a probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.
- 2) You are confined to your home for a period of 6 months except for medical appointments or other appointments as approved in advance by the probation officer.
- 3) You must participate in a mental health assessment and follow any directions by the probation officer or treatment provider, which may include taking prescribed medication. You must contribute to the cost of treatment in an amount to be determined by the probation officer.
- 4) You are prohibited from owning, possessing, maintaining or using a firearm, replica firearm or any firearm parts.
- 5) You must cooperate in the collection of DNA as directed by the probation officer.
- 6) You must notify the court of any material change in your economic circumstances that might affect your ability to pay restitution, fines or special assessments.

The Court may change the conditions of probation or supervised release or extend the term of supervision, if less than the authorized maximum, at any time during the period of probation or supervised release. The Court may issue a warrant and revoke the original or any subsequent sentence for a violation occurring during the period of probation or supervised release.

THE DEFENDANT IS ADVISED OF DEFENDANT'S RIGHT TO APPEAL BY FILING A NOTICE OF APPEAL IN WRITING WITHIN 14 DAYS OF ENTRY OF JUDGMENT.


Date of Imposition of Sentence: **Tuesday, January 23, 2018**

Date Amended Pursuant to Mandate of USCA: September 11, 2020

CR-17-00855-002-TUC-RM (JR)
USA vs. Thomas F. Kuzma

Page 5 of 5

Dated this 11th day of September, 2020.



Honorable Rosemary Márquez
United States District Judge

RETURN

I have executed this Judgment as follows:

defendant delivered on _____ to _____ at _____, the institution
designated by the Bureau of Prisons with a certified copy of this judgment in a Criminal case.

United States Marshal

By:

Deputy Marshal

Correspondence between

D & D Sales and the ATF

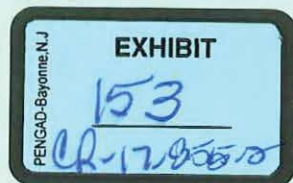
regarding

Blocking Bar in Uzi Receiver

Beginning 2004

through

September 2005



9/23/2005



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

SEP 23 2005

903050:AG

3311/2005-487

www.atf.gov

Mr. Donald Tatom
D&D Manufacturing and Sales
4739 Ranch Road
Sierra Vista, AZ 85635

Dear Mr. Tatom:

This letter supplements Firearms Technology Branch (FTB) letter # 3311/2005-200, which gave an erroneous determination regarding the classification of your previously submitted UZI-type receiver stamping. This letter will provide a revised determination of the status of the stamping and will supersede 2005-200. Further, it is also a response to your correspondence dated June 10, 2005, to FTB. In your reply, which includes a disk with "photo files," you provide detailed information concerning your compliance with requirements we had specified in response to your initial request for classification of the UZI-type receiver stamping that you submitted to FTB.

As you know, the FTB examination confirmed that the submitted sample is a ferrous metal UZI-type receiver stamping. The sample, as indicated in the enclosed photos (see page 3 of this letter), has various holes and slots, but has no additional parts installed. The sample will accept UZI parts, including the following:

- Bolt assembly.
- Top cover assembly.
- Trigger group assembly.
- Barrel trunnion.
- Ejector.
- Bolt buffer.

Most of these parts require welding or riveting to permanently install; however, the sample will accept these parts with no modification. In addition, there are slots and holes located correctly for installation of other parts not listed above.

The FTB examination of the submitted sample had determined that it is virtually identical to the UZI-type receiver stamping manufactured by Group Industries, Louisville, KY. The Group Industries receiver stamping is classified as a *firearm*. Consequently, since the receiver stamping

-2-

Mr. Donald Tatom

you submitted is virtually identical to the Group Industries stamping, being dimensionally correct, and allowing for installation of UZI parts, it is a firearm as defined in 18 U.S.C. § 921(a)(3).

Our original classification of this item as a machinegun was not accurate. After further review, we have determined the following:

- This item, as examined, does not possess the design features of an UZI-type machinegun receiver that facilitate automatic fire by simple modification of existing parts.
- In addition, Exhibit 1 is not readily restorable to shoot automatically because it did not previously shoot automatically and does not in its present condition.
- Further, if a receiver stamping of this type is possessed with a complete set of UZI machinegun parts, it is a combination of parts from which a machinegun can be assembled and therefore, a machinegun.
- Finally, as indicated, the UZI receiver stamping submitted and evaluated is a firearm. This stamping, if assembled into a complete UZI receiver by the installation of a back plate, barrel trunnion, and other receiver components, must have a bolt blocking bar installed. If not, it will be considered a machinegun receiver.

We strongly recommend that you advise your customers that a bolt blocking bar must be installed to prevent the possession of an unregistered machinegun.

Since you have stated that you intend to manufacture this receiver stamping, you should be aware of the following necessary procedures:

- The manufacture and transfer of this item must be conducted using an appropriate Federal Firearms License.
- All marking requirements detailed in 27 CFR § 478.92(a)(1) [formerly 178.92(a)(1)] must be fulfilled.

We thank you for your inquiry and trust that the foregoing has been responsive to your request for an evaluation.

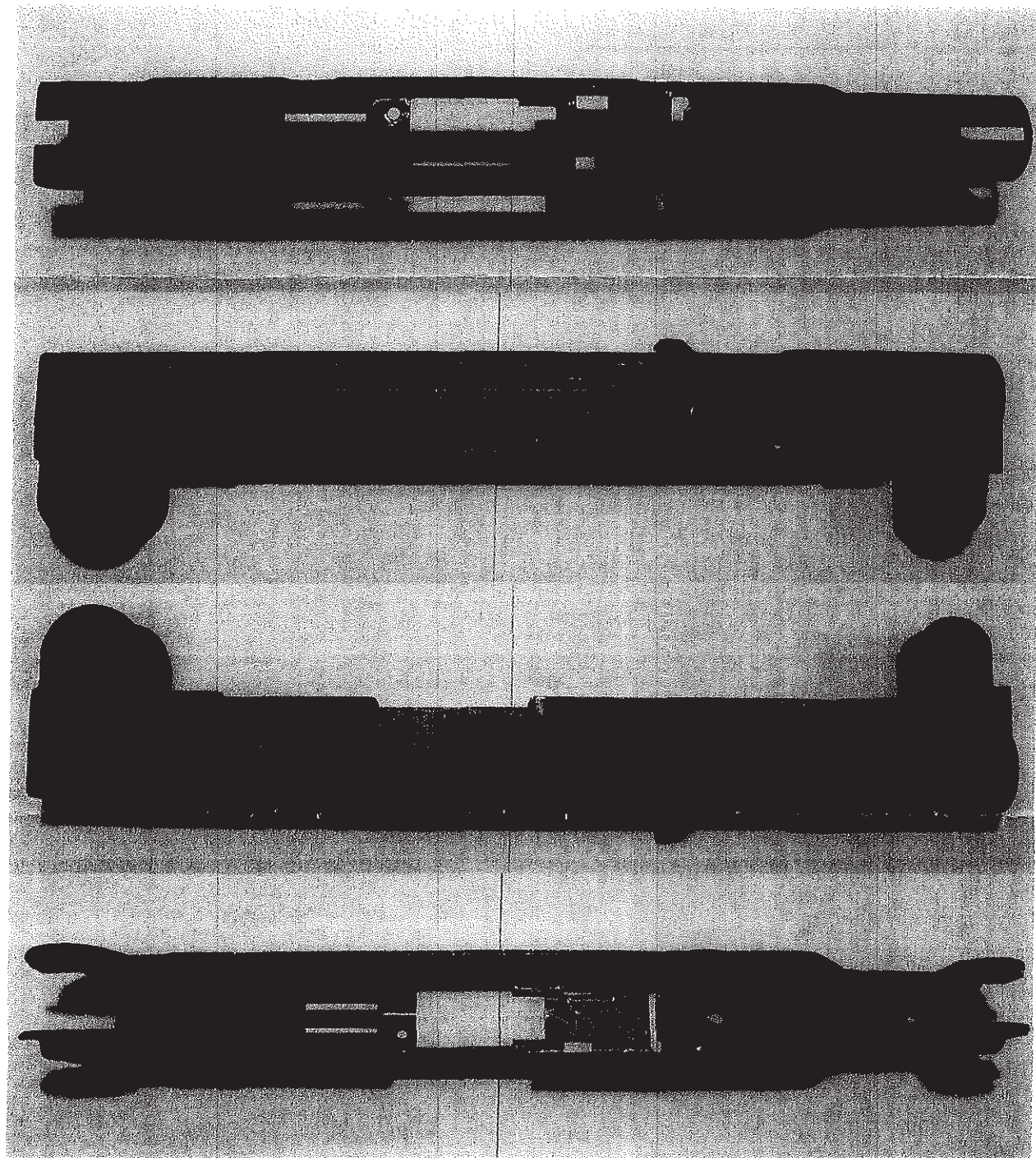
Sincerely yours,

for Richard Vagay
Sterling Nixon
Chief, Firearms Technology Branch

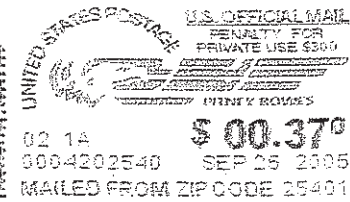
Enclosure

Mr. Donald Tatom

Views of Submitted UZI-type Receiver Stamping



OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300



ER 092

Kuzma Appendix 31

6/10/2005



4739 Ranch Rd.
Sierra Vista, Arizona 85635
Telephone 520-803-1298
FFL-9-86-003-07-5E-38255 (IMI/NA)
&
FFL-9-86-003-08-5E-38256

June 10, 2005

Department of the Treasury
Bureau of Alcohol, Tobacco and Firearms
Firearms Technology Branch
Att: Adam Galbraith
Rick Vasquez
244 Needy Rd.
Martinsburg, WV., 25401
304-260-1700 or 304-260-1699

Gentlemen:

I appreciate the return of the foundation channel for the manufacture of the sample stamping sent for evaluation.

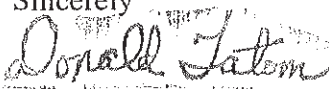
Mr. Vasquez stated that you did not require proof of the installation of the blocking bar when installed. It was installed immediately upon receipt.

I have enclosed copies of the photographs, without touch, up for your records along with a copy of the original photographs on disk. The disk was made with a Mavica digital camera and should work on a Mac. or a PC. The copies were made on a Mac. computer of the enclosed disk.

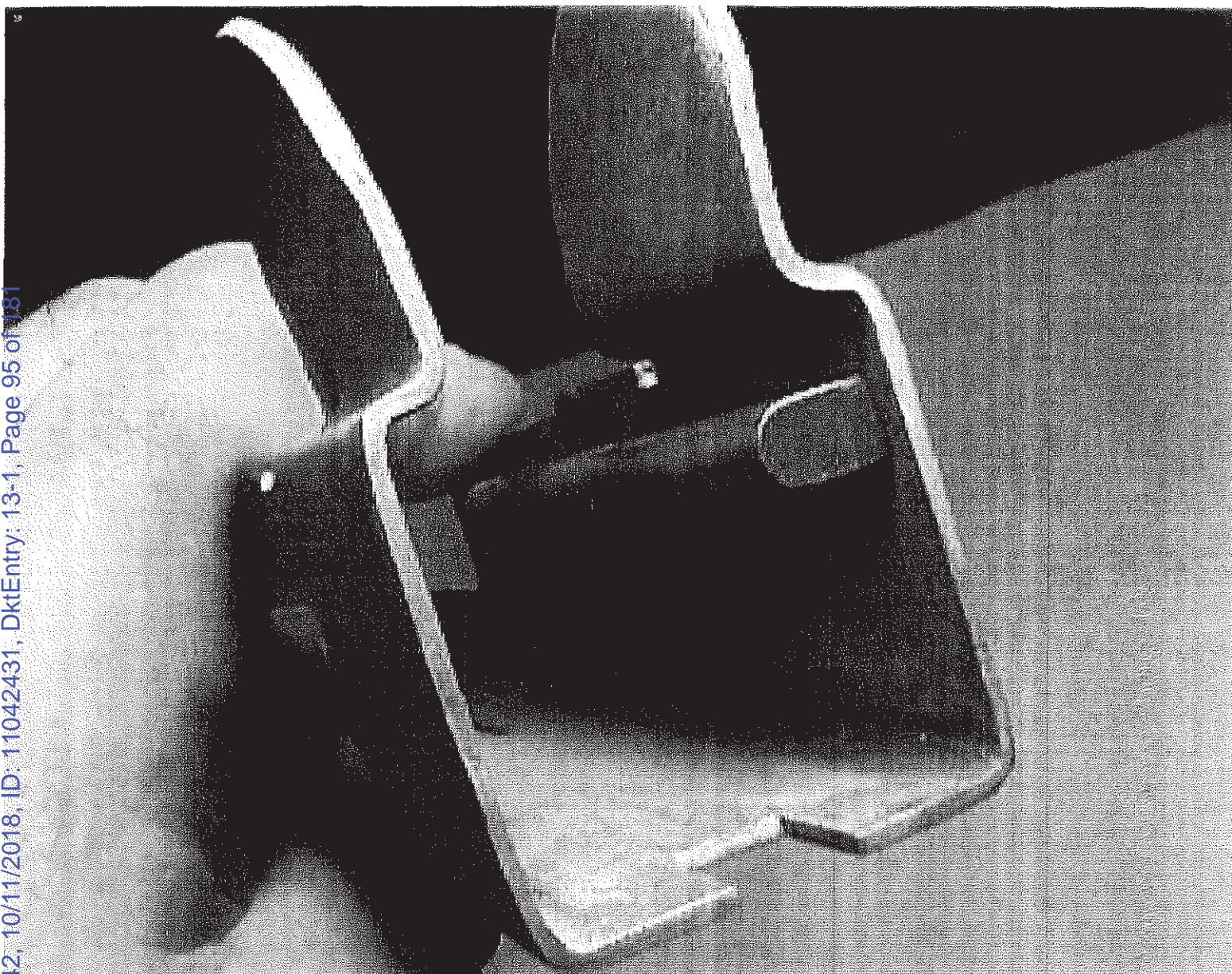
The receiver has not been marked as we still disagree over the classification based on regulation 5845 and 83-5. It is also only a prototype and not for resale. There will be no stampings if your classification stands and the sample will either be marked as required before sale or destroyed. It remains as sent with the blocking bar installed to serve as evidence for a change in classification as stamped. As agreed, out of respect for your agency and authority, the bar was installed immediately, as agreed. Our disagreement over the classification is independent of your initial decision, and until changed, compliance is an understood requirement until changed by mutual agreement or arbitration.

xc sent to:

ATF:
Mr. Bernie Arealano
300 W. Congress
Room 8-B
Tucson, AZ., 85701

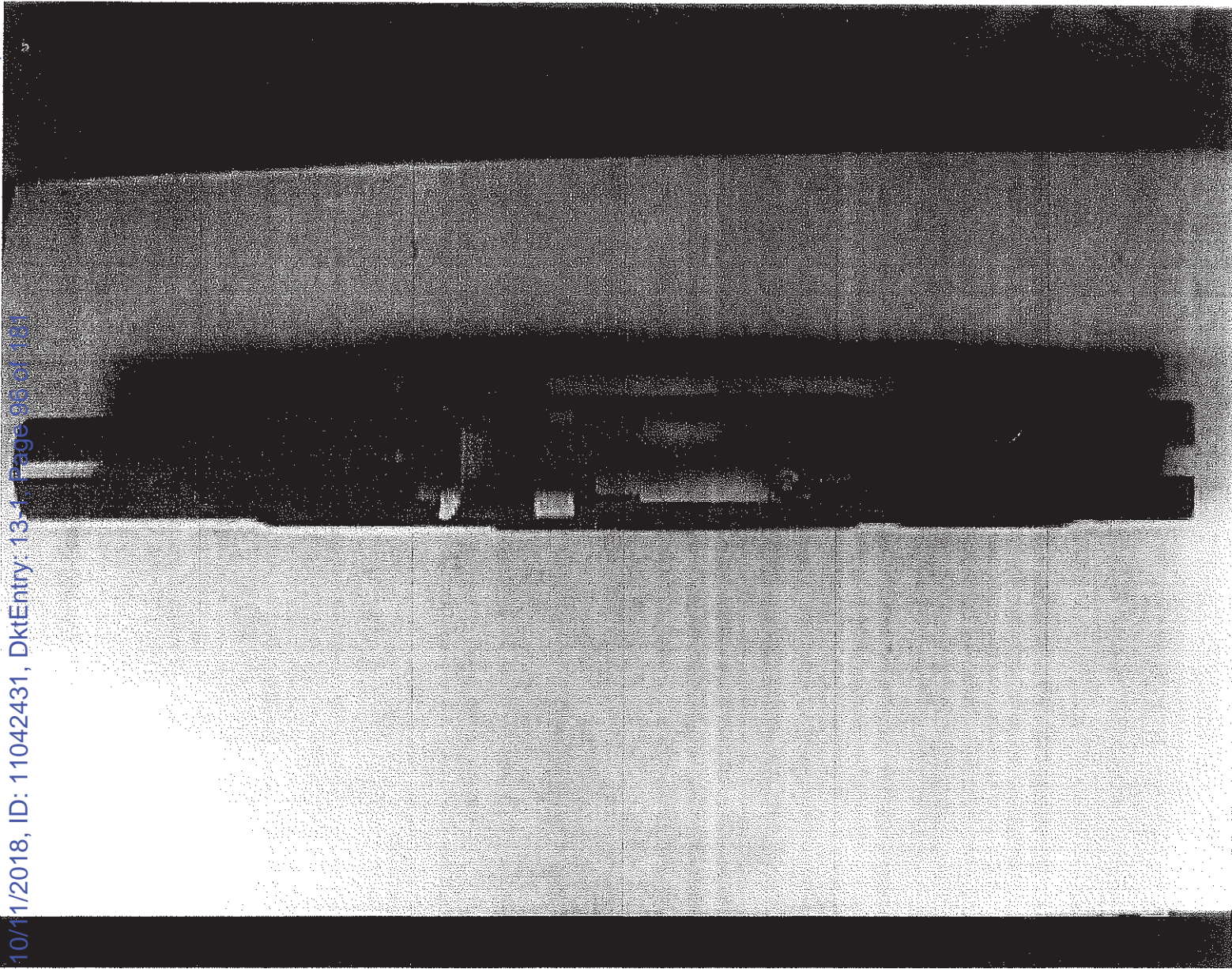
Sincerely


Donald Tatom
By TX

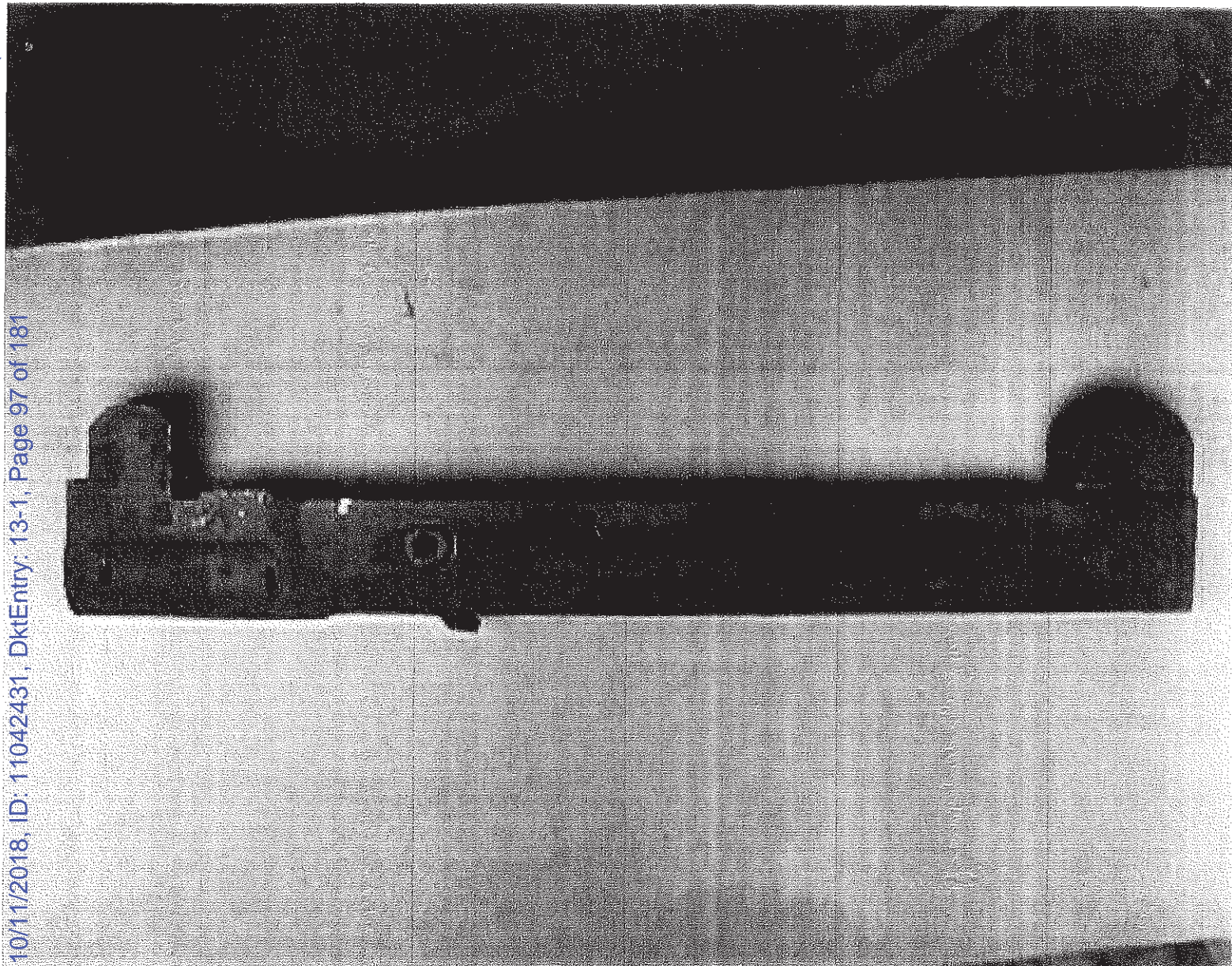


Rear View

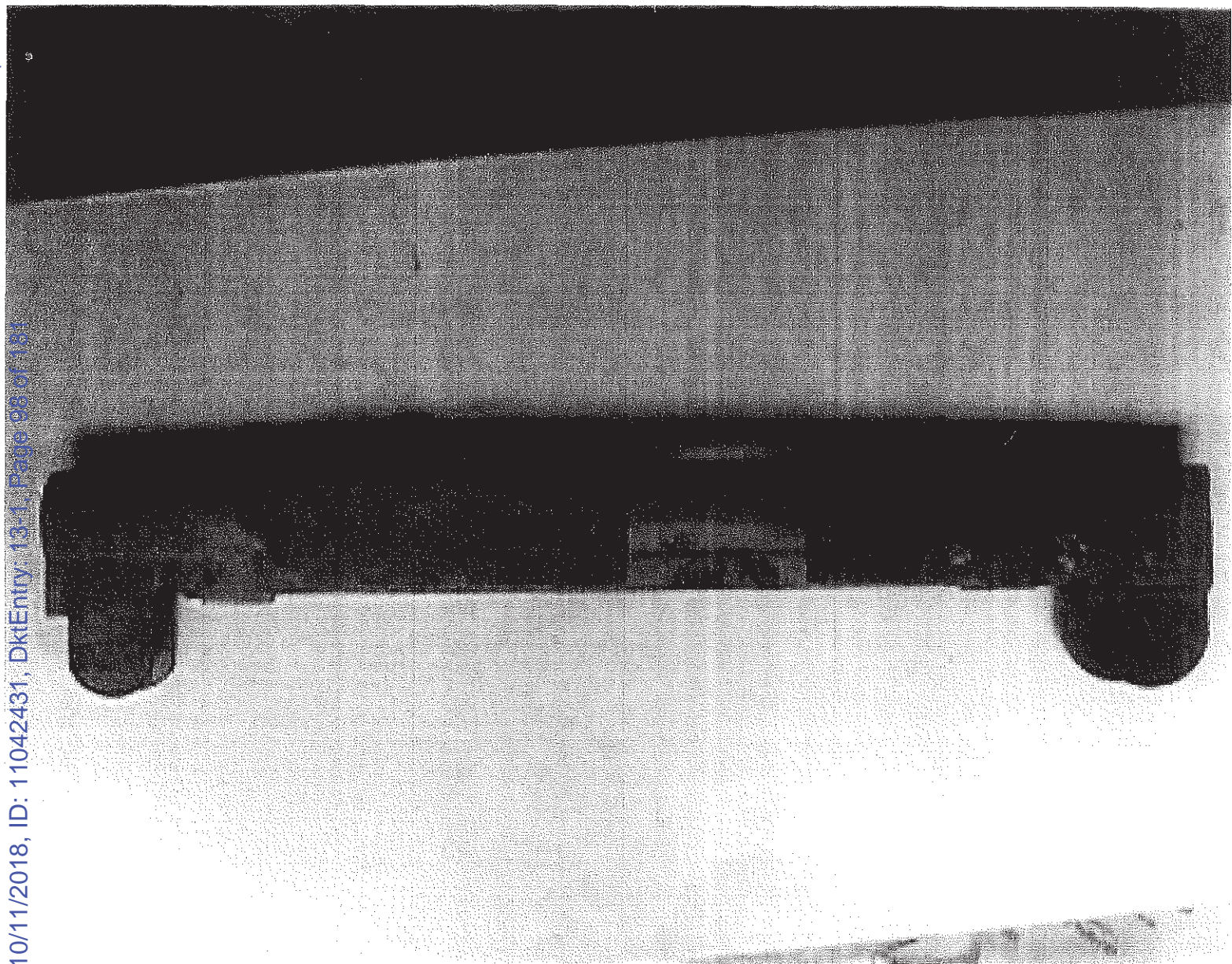
*Hard Copy
Fedex ed*



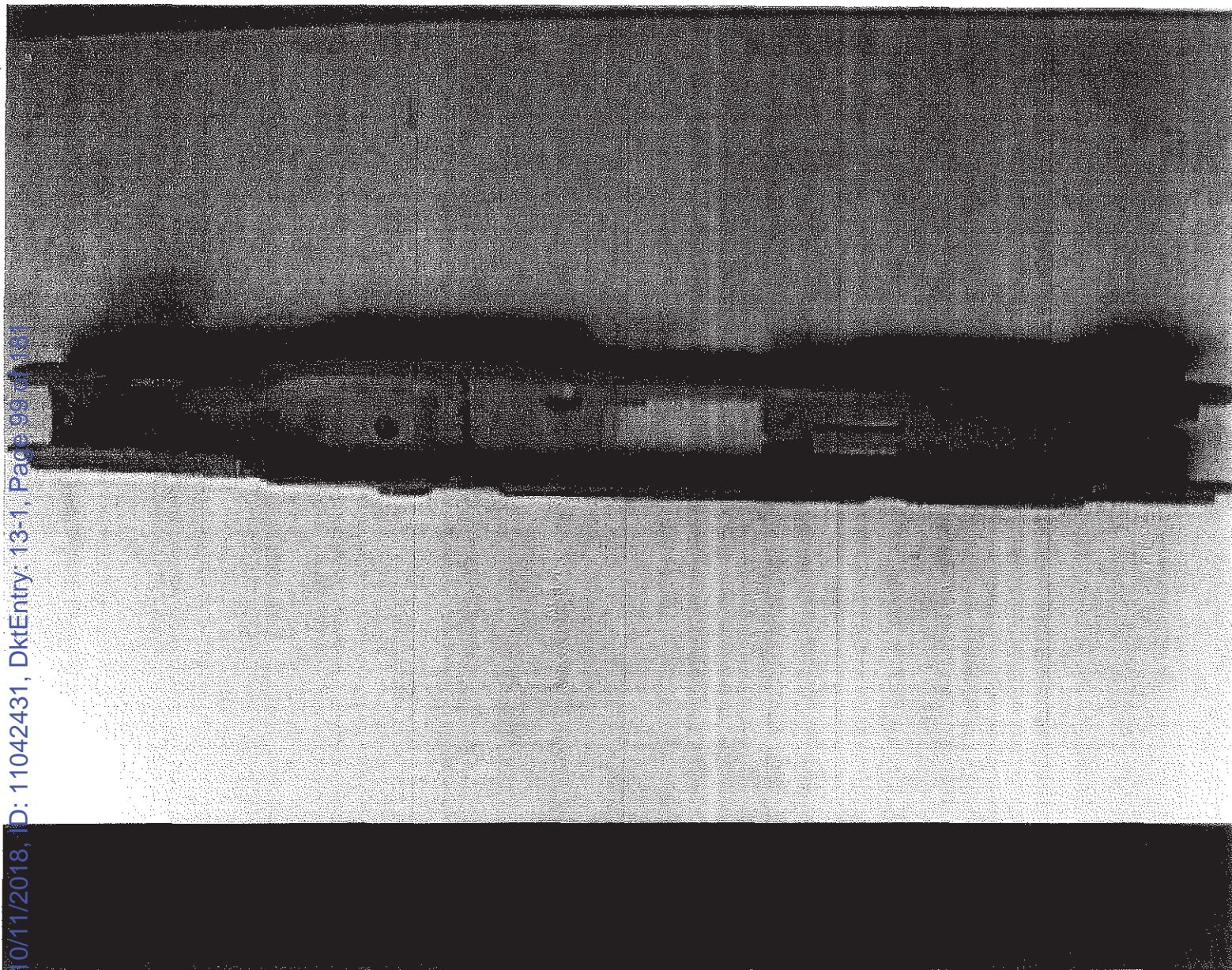
Bottom



Left Side



Right Side



Top View

3/18/2005

**D & D Sales and Manufacturing
4739 Ranch RD
Sierra Vista, Arizona, 85650
Telephone 520-803-1298
FFL 9-86-003-07-5E-38255 &
FFL 9-86-003-08-5E-38256**

3/18/05

**Department of the Treasury
Bureau of Alcohol, Tobacco, Firearms and Explosives
Chief, Firearms Technology Branch
Sterling Nixon &
Firearms Technology Branch
Att: Rick Vasquez
Att: Adam Galbraith
244 Needy Road
Martinsburg, WV 25401
304-260-1700 or 304-260-1699**

Subject: Re: D & D Sales request for classification of (foundation channel) sent 2/22/05 for evaluation.

We disagree with your 3/09/05 decision letter based on the following information:

Gentlemen:

We would first like to clear the air, "in writing", so that there are no misunderstandings about our intent or perception of your authority.

In my discussions with Mr. Galbraith, I made it clear that we would accept your decision, regardless or whether we agree, but I also made it absolutely clear that if I disagree with your decision, I would definitively stipulate any disagreement with expressly defined and appropriate reasons.

I would first like to complement and commend Mr. Galbraith on both his very professional and courteous communication and especially his clear and diligent effort to properly review this evaluation with respect to all of the relevant facts available. According to a Mr. Saied, the original purchaser, of the 20,000 to 50,000 receivers sold to him; your agency, the BATF, has a complete record of every serial numbered receiver sold and classified by the BATF at the 1995 auction supervised by the BATF. Mr. Galbraith should have had access to a complete inventory of everything sold at the auction, by serial number if receivers, or by lot including a reasonably accurate breakdown of parts, included in the lots, even if they were items not regulated by the BATF. He shouldn't have had to be looking everywhere for information.

We had a customer that has lists of all the items and lot numbers sold at the auction with the names of everyone that purchased anything. I find it completely negligent that the BATF does not. The auction would have had to provide every bidder a list of all of the items to be auctioned, prior to the auction which "should certainly" be on file with the BATF because they would have required classification for sale by the BATF. We, unfortunately, didn't keep this customers name, although we asked him to fax us a copy, which we never received. This wasn't a recent event and preceded our proposed project to stamp receiver foundations. If it had been recent, I can certify we would have his name and telephone number available for our own use.

The principle reason for this written correspondence and the previously written preemptive review of regulations regarding Mr. Galbraith's verbal notification, and his advisement, of the "possible" evaluation result of the foundation channel as a machine gun, was to avoid a dispute over interpretation of regulations regarding the foundation channel. The purpose was to avoid a decision by your office that will become, representative of and include much farther reaching issues and areas of enforcement that are directly related to this evaluation but which are also specifically and directly related to other relevant concurrent enforcement issues. Your current 3/09/05 evaluation of our foundation channel also includes areas of interpretation of regulations that may require outside arbitration to arrive at a final evaluation that is satisfactory to us both.

"If" your classification of our foundation channel sent to you for evaluation is a machine gun; then it is a machine gun in any stage of completion of the foundation channel stage of development, "before any welding is done", and your classification of the untouched Group Industries foundation channels would also be machine guns. The difference between the two can be made with a file, a hammer and a drill. We provided Mr. Galbraith with all the information that we had available. Our research, now, indicates that all the information provided by us should all have been available to Mr. Galbraith by your agency, directly from within your agency, plus a great deal of information we do not have, without any required outside research on his part. Reason dictates, "and it is our contention", that the classification of our optimum level of completion of our foundation channels as a machine gun is simultaneously a classification of all of the Group Industries Receivers sold, as a machine guns.

This letter is not intended to address most of the specific issues, only to clarify our approach to addressing any dispute or disagreement over your evaluation and classification of our foundation channel and your interpretation of regulations or legislation regarding that classification.

"First and foremost": until determined other wise, either by direct negotiation with your office, or if required, by secondary review and interpretation at a higher level, beyond the boundaries of your agency, we will completely accept and fully honor your decision until either altered by direct negotiations with your office or invalidation by higher authority.

The first issue we want to address is that the sample sent to you for evaluation is "a one of a kind prototype" representing the optimum final product "we would like to achieve" by stamping only. The sample you have retained represents our "optimum stamping goal"; but is, in fact, the product of both stamping and additional machining and milling.

The actual final stamping will probably be something in between the original Group Industries rough stampings and the sample sent to you which represents the optimum goal we would like to

achieve with a single stamping, but not "if it is classified as a machine gun". We don't want anything to do with machine guns at any level of development.

We will definitively and clearly demonstrate that the presence or absence of the blocking bar, in itself, does not constitute a machinegun. We will further, "unequivocally" demonstrate that any completed semiautomatic UZI is more easily converted to a machinegun, with the blocking bar installed, than by removing it. We will, in addition, "unequivocally" demonstrate that the removal of the lip from the bottom of the bolt, also does not constitute the manufacture of a machine gun unto itself, any more than the sear hole enlargement constitutes the manufacture of a machine gun, unto itself, per BATF letter dated, Oct. 1 1998, Edward Owens response to Mr. Bardwell's July 21, 1998 request regarding enlargement of sear holes on semiautomatic UZIs.

We found and contacted the actual purchaser of the receivers at the 1995 auction (Saied), who informs us that the BATF was present at the auction and that it was entirely supervised by the BATF. He claims that all receivers that he purchased, which were serial numbered, were classified by the BATF by serial number and all serial numbered receivers were logged by the BATF, including all the pre 1986 registered machine gun receivers purchased separately by Vector Inc. That logging of information is a federal regulation and a requirement for every licensed FFL who transfers the receivers in any subsequent transfer.

Neither Mr. Saied nor Paul at KY imports provided any information on how many marked or unmarked receivers were sold. Mr. Saied also could not recall how many receivers he purchased at all. I specifically asked Mr. Saied if he could estimate the number that he purchased as 20,000, 30,000 or 50,000 etc... He said that he could not remember, as it had been over 10 years, and he bought them by lot. He stated that your agency, the BATF should have all that information as all serial numbered receivers were logged in and classified by date registered.

The "second" issue we would like to address is your contention that the sample receiver sent is contraband. If you will please note in our letter head; it includes our 07 manufacturer's license number which entitles us to manufacture firearms from scratch. As I stipulated to Mr. Galbraith, the production of the sample required substantial work, is not replaceable without substantial expense, and we agree to insert the blocking bar immediately upon return. We will send you a photograph or take or send it to the Tucson or Phoenix BATF office for confirmation by that office, if you feel it is necessary.

We also require that the foundation channel sample be returned "for evidence" in the event that we are unable to resolve this disagreement without outside assistance or arbitration. Its destruction as contraband would not be valid or appropriate with respect to our licensed authority and would also constitute the destruction of evidence, which is both a Federal felony and class IV State felony violation. Please return the sample for all of the reasons stated above. We do not in fact want or need a dispute with you and will fully abide by any final decision as decided by appropriate agencies regarding our disagreement over regulations and your relevant classification of our foundation channel. Your current decision, for all practical purposes, puts us out of business and, in our opinion, is a selective violation of the XIV amendment of the US Constitution. It is only one of a list of selective restrictions that you have imposed and "enforced" on us exclusively.

As previously stated, we will fully comply with your decision, in spite of the fact that we disagree with both your interpretation of regulations, your classification of our foundation channel and the extensive consequences that will result from your evaluation and classification, if it in fact stands as it is after we provide you with the forthcoming data regarding the conversion of UZI style firearms to machine guns.

We are drafting a letter that will demonstrate the specific conversion issues and consequences that will result from the evaluation.

Since we do not have a Class II manufactures license, we will only include a description of the two methods of conversion of the finished, illegally imported IMI Israel Action Arms receivers, imported in March and April of 2000, into machine guns. It will include a comparison of both methods of conversion to machine guns with cost, tools and time and parts required; compared to the equivalent cost, tools and time and parts required to complete our foundation channel to its current configuration, it's completion to a functional receiver, and its completion to a fully functional semiautomatic firearm or machine gun.

The forthcoming letter describing and detailing the conversion of semiautomatic UZIs to machine guns applies to every semiautomatic UZI or UZI receiver ever imported into the US.

If after reviewing the written description and estimated time frames provided, you decide that you want a video with timed conversions of the two methods described, we will only do that with a specific letter authorizing the conversions and exempting us from any criminal liability for providing the samples, which our license doesn't authorize us to do.

"For the record", we do not have any such conversions or videos now, nor have we ever had any such conversions or videos. Anything you require for demonstration, (if required after the written description) will be done only after exclusive written authorization by your agency, from your agency, with concurrent written approval from your legal department.

In the event that you require a physical sample of our "written description of the conversion processes"; we will, in fact, have to purchase two of the illegal post 1989 imported IMI Israel Action Arms receivers (\$295.00 plus S&H). If that is the case and you keep the samples, which will be necessary because of the limitations on our 07 license, we will require a refund of the cost of materials which will only be the 2 purchased receivers and one semiautomatic bolt (100.00 ea) which can be returned and converted back to a

semiautomatic bolt, plus all S&H. No other parts are required, except a 2 cent dowel pin, for one of the conversions, unless you want fully functional machine guns as opposed to just receivers and any necessary parts conversions.

Once this is done, there will be no going back. This will change the entire face of firearms regulation enforcement and ownership rights, unless of course, the foundation channel classification is changed to reflect an appropriate classification with respect to regulations, definitions, relative costs and relative conversion times, along with definitive NFA, GCA, and FFA definitions of the terms: designed, relatively convertible or readily restorable to a machine gun. Your final decision on this issue will also affect all semi automatic firearms ownership rights in the US. Your final evaluation and decision, regarding the classification of our foundation channel sent to you for evaluation, will also affect all banned firearms imported since 1989 and those included in the 1998 ban as specifically banned classifications by type of firearms as well as an additional itemized list of the banned firearms and types, added to each category. The 1998 ban superceded any preexisting sporting exceptions that had been indirectly defined as sporting versions of firearms by the now sunseted assault weapons ban. The sunset of the assault weapons ban automatically reverts all fire arms defined by 925(d)(3) and the 1989 and 1998 bans as explicitly prohibited from importation. Combined with 1998 ban, the prohibition on the importation on all firearms defined as not particularly suitable for importation "is absolute". Allowing the importation of "thrice" banned firearms under the pretence that the exchange of parts to US manufactured parts to meet 922(r) compliance "after importation" is a blatant violation of the, unqualified, three times defined legislatively directed and Presidential directed ban on the importation of the firearms "specifically banned form importation by name and classification of type". They would not be legally importable, by definition, in accordance with regulations and legislative acts, even if the US manufactured parts were installed before importation. The BATF doesn't have the authority to "twist specific legislation and regulations" to serve special interests or current political interests. If the Congress and House or the President wants a change in the law, they have to pass it. It isn't within the jurisdiction of

suspend, circumvent or supercede legislative acts, Federal regulations, Presidential directives or US Constitutional law.

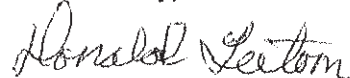
Your review of our forthcoming letter and your decision concerning the forthcoming information will determine the permanent future of firearms ownership rights in the US, irrespective of any current political climate. Any and all relative consequences and political ramifications will be exclusively the result of your final classification decision of our foundation channel, for what it actually is, with respect to other completed semiautomatic firearms. The varying political climate should have absolutely no influence on your interpretation or enforcement of legislative gun control regulations which should be exclusively, "empirically evaluated", without any politically or special interest motivated "subjective" influence. Without a change in legislation, regulations or specific Presidential directives, "the BATF is bound by the strict interpretation of all legislation, federal regulations and Presidential directives".

Only "if we are not satisfied with your evaluation", after your review of the complete statistics included in our "forthcoming letter", will we request arbitration outside of your office or agency.

Until such time as we reach an impasse that requires outside arbitration, all correspondence and negotiations will be exclusively with your office, with our current acceptance of your classification decision, as previously stipulated until changed or reaffirmed.

With respect to the term "designed" referenced in 921 (a) of the GCA, the only place that we can find any specific definition for the term "designed" regarding any specific definition with respect to Federal regulations on firearms, is in rule 83-5 of the NFA. If there is any other definition for the term "designed" within the NFA, GCA or FFA regulations, we would appreciate a referral or fax.

Sincerely,



Donald Tatom



U.S. Department of Justice

Bureau of Alcohol, Tobacco, Firearms and Explosives

MAR - 8 2005

03050 AG
11-2005-200

Mr. Donald Laton
D&D Manufacturing and Sales
4070 Ranch Road
Scottsdale, AZ 85638

Dear Mr. Laton:

This is in response to your correspondence dated January 22, 2005, to the Firearms Technology Branch (FTB), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), in which you requested classification of the UZI-type receiver stamping that you submitted to FTB for classification.

The FTB examination confirmed that the submitted sample is a UZI-type receiver stamping. The sample, as indicated in the photos on page 2, has various holes and slots but has no additional parts installed. The sample will accept UZI parts, including the following:

- Bolt assembly.
- Top cover assembly.
- Trigger group assembly.
- Barrel trunnion.
- Ejector.
- Bolt buffer.

Most of these parts require welding or riveting to permanently install, however, the sample will accept these parts with no modification. In addition, there are slots and holes located correctly for installation of other parts not listed above.

The FTB examination of the submitted sample has determined that it is virtually identical to the UZI-type receiver stamping manufactured by Group Industries, Louisville, KY. The Group Industries receiver stamping is classified as a *firearm*. Additionally, receivers not having bolt blocks are classified as *machineguns*. Consequently, since the receiver stamping you submitted is virtually identical to the Group Industries stamping, being dimensionally correct, and allowing installation of UZI parts, it is a firearm as defined in 18 U.S.C. § 921(a)(1). Moreover, since the submitted sample does not have a bolt block installed, it is also a machinegun as defined in 26 U.S.C. § 5845(b).

Assistant Branch Chief
Rich Vasquez

-3-

Mr. Donald Eaton:

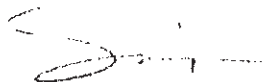
Since you have stated that you intend to manufacture this receiver, you should be aware of the following necessary procedures:

- The manufacture and transfer of this item must be conducted using an appropriate Federal Firearms License.
- All marking requirements detailed in 27 CFR Section 478.92(a)(1) (formerly 178.92(a)(1)) must be fulfilled.
- To avoid the *machinegun* classification, during the manufacturing of this item, you must install a bolt block to prevent the installation of an UZI machinegun bolt. This must be completed no later than close of business on the day the receiver is produced. Receivers not having a bolt block will be classified as machineguns.

Because the submitted sample is considered contraband, it will not be returned and will be disposed of in accordance with the needs of the Federal Government.

We thank you for your inquiry and trust that the foregoing has been responsive to your request for an evaluation.

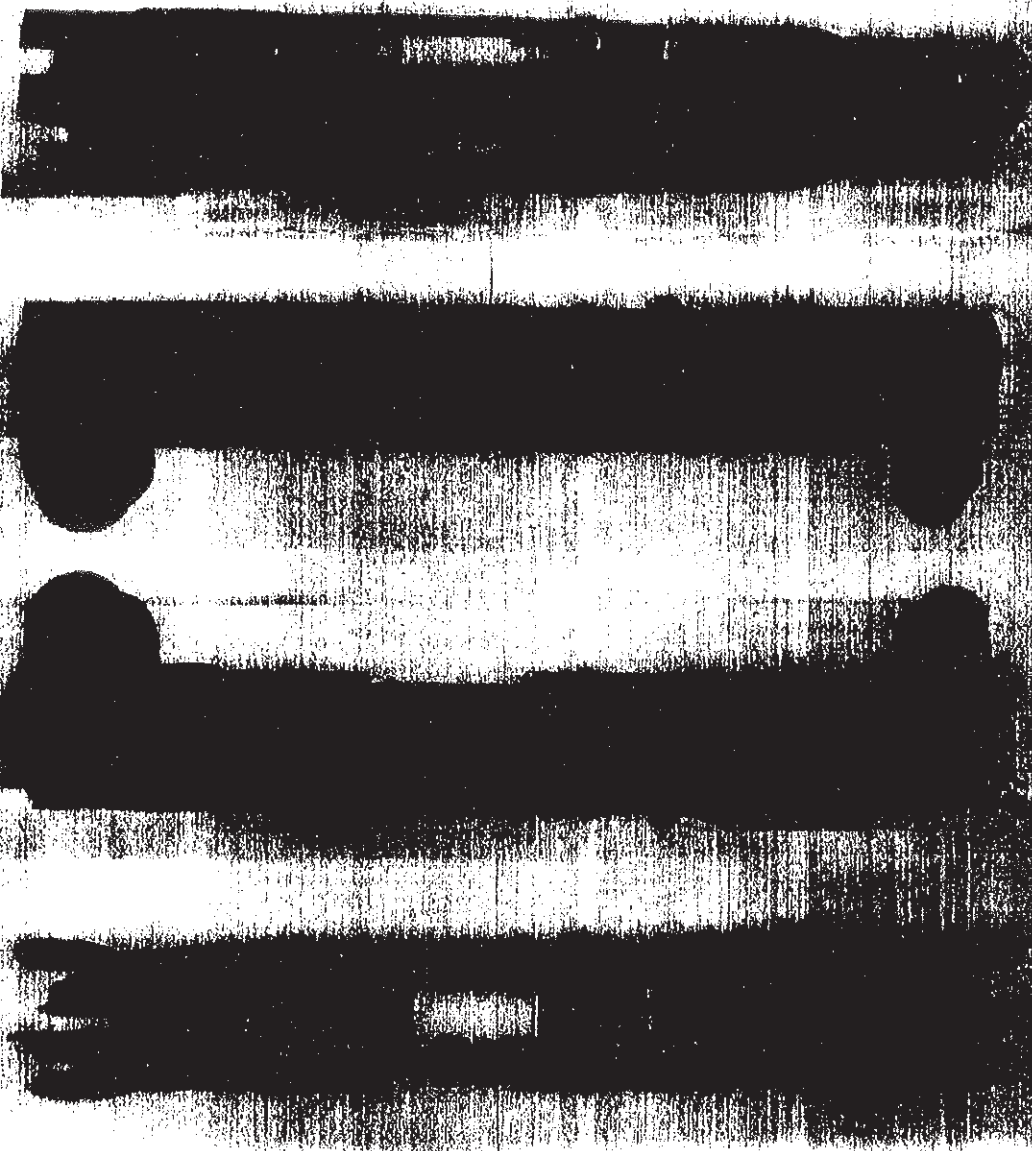
Sincerely yours,



Sterling Nixon
Chief, Firearms Technology Branch

Mr. Donald Taton:

Views of Submitted UZI-type Receiver Stampin



2/21/2005

*Forst 2/21/05
1:45 PM*

FAX COVER SHEET

DATE	2/21/05	
TIME	1:45 PM	A P
NUMBER OF PAGES (including this one)	16	

FAX TO	COMPANY/NAME	BATF, Technology Branch
	CONTACT PERSON	Adam Galbraith
	FAX # (with area code)	304-260-1701
	PHONE # (with area code)	304-260-1699 or 1700

FROM	COMPANY/NAME	D & D Sales
	CONTACT PERSON	Donald Tatom
	FAX # (with area code)	520-803-1298
	PHONE # (with area code)	520-803-1298

COMMENTS

This is a commentary on our evaluation of the relevant GCA, FFA and NFA regulations regarding your pending evaluation and classification of the (multiple use foundation channel sample sent) with relevant discussion as to it's appropriate classification in accordance with regulations, rules and definitions.

Don

PS.

*Re-Faxed 2 pages with word error
page 11 & page 15. please substitute
these two pages for into original Fax
The points of error on the
original document are circled*

*Thank you
Don*

2/21/05

Time 8:30 PM

**D & D Sales and Manufacturing
4739 Ranch RD
Sierra Vista, Arizona, 85650
Telephone 520-803-1298
FFL 9-86-003-07-5E-38255 &
FFL 9-86-003-08-5E-38256**

February 17, 2005

**Department of the Treasury
Bureau of Alcohol, Tobacco, Firearms and Explosives
Firearms Technology Branch
ATT: Adam Galbraith
244 Needy Road
Martinsburg, WV 25401
304-260-1700 or 304-260-1699**

Subject: Re: D & D sales: definitions for classification of (foundation channel) sent for evaluation as a non firearm as "one part" required out of 74 to make a complete firearm and 1 part in 15 to make a complete receiver for up to 40 variations of receivers and firearms.

Dear Mr. Galbraith:

I have made a thorough review of the relevant GCA, FFA and NFA regulations and definitions regarding the request for classification of the (multiple use foundation channel sent to you for your evaluation and classification).

Based on that review and what I know about the Group Industries auction, your evaluation of the (foundation channel) based principally on the Group Industries auction would be tainted. It would appear to have required the incorporation of a large number of BATF regulations already established and implemented on parts and receivers sold at auction, based on grand fathered rights regarding both manufacture and registration before 1986 and registration at the auction

based on the history of classification before the auction by grand fathered company policy and normal approved BATF policy. The overall decisions on how to classify would have required substantial compromise due to the historical issues and pre 1986 registered, marked and serial numbered channels combined with grand fathered issues spanning 7 or 8 years of litigation. This auction would not have represented a normal or standard means of classification in accordance with the current BATF regulations existing at the time of the auction due to the time factors and grand fathered pre 1986 registration issues along with grand fathered company policies previously accepted by the BATF. Bankruptcy rights would have also been very relevant to probable compromises for the sale.

The terms "readily convertible", "readily restored" and "convertible by simple alteration" do not have precisely the same meaning", and depend on the context of the sentence; however, none of the definitions apply to the (foundation channel sent for evaluation) in any concept due to the "major modifications" required regarding both quantity of additional parts, (14) and "time", (7 to 10 hours) required to complete the (foundation channel) into a functional frame or receiver. This doesn't include the time and 60 to 65 additional precision parts necessary to complete the receiver into a functional firearm. Classification of the (foundation channel as a machine gun) in it's current state of completion is a "complete contradiction" to the GCA, FFA and NFA regulations specifying the criteria defining firearms, A.O.W. and "machine guns" as readily convertible or readily restorable.

I do not feel that your interpretation of the definitions and regulations regarding your proposed evaluation of the (foundation channel) "as a machine gun" adequately or accurately reflect the intent of the GCA, FFA, and NFA regulations and definitions. Without the application of some specific time and quantitative standard for parts required for conversion, every semiautomatic firearm in the world has all the requirements necessary to qualify as a machine gun by the "simple alteration" or "removal" of existing component parts per Rule 83-5 of the

NFA. The simple modification of the sear of any semiautomatic firearm will qualify virtually any semiautomatic firearm as a machine gun as defined by NFA 5845 and rule 83-5. **The terms “readily convertible”, “readily restorable” and “conversion by simple alteration” in this context, all have the same meaning and do not apply to the (foundation channel sent for evaluation) by any definition of the GCA, FFA or NFA regulations.**

For example Rule 83-5, an extension of the NFA rule 5845 defines all Sten Mark II semiautomatic firearms as machine guns and therefore states that all Mark II semiautomatic Sten firearms are “machine guns”. The conversion only requires the simple alteration or removal/ breaking off of a stop to convert the Mark II Sten to full auto operation (stated per rule 83-5) as a machine gun.

It further uses the same term **“readily restorable”, definition** applies to any firearm that was previously a machine gun and can be readily restored to function as a machine gun or **(the “designed”, definition)** applies to any firearm that was never a machine gun but possesses specific machine gun features “that simple alteration or removal of any parts” facilitate automatic fire, “in accordance with rule 83-5; which could include every semiautomatic firearm in the world, depending on your evaluation and classification of my sample (foundation channel).

As an example; the SKS firearms can be converted to full factory auto operation with the simple addition of a metal clip or other simple modifications that take just a few minutes. All SKSs posses specific machine gun design features” **as do all semiautomatic firearms”**.

Another example is the AK 47 series that require the addition of (approximately) 4 to 5 factory parts to convert any AK to full factory auto operation in just a few minutes or just simple modification of existing parts to make a simple conversion using only existing parts into a machine gun without the bolt locking delay separately installed.

Are these two models of fire arms considered readily convertible" or not" in accordance with rule 5845 and 83-5 -----assuming that you are not immediately in possession of all the parts necessary to make a machine gun, (a further extension of rule 5845). In all three cases of the firearms listed above, the minimum requirement needed to convert any of them to machine guns just requires some tools, and the alteration of existing parts depending on the quality of full auto firing desired. Rule 83-5 therefore applies to virtually all makes & models of semiautomatic firearms.

Regarding rule 921 (a)(3)(A) of the GCA stating that the term "firearm" means any weapon (including a starter gun) which will or is designed to, or may (readily) be converted to expel a projectile by the action of an explosive (B the frame or receiver of any such weapon (C) muffler or silencer; or (D) any destructive device.

In 478.11; a frame or receiver is defined in Federal Firearms Act. 15 U.S.C. Chapter 18 as: that part of a firearm which provides the housing for the hammer, bolt or breechblock, and firing mechanism and which is usually threaded at its forward portion to receive the barrel. The (foundation channel presented for evaluation) doesn't qualify as a frame or receiver, without the addition of 14 additional precision parts requiring precision alignment to make a functional receiver and 7 to 10 hours of work to completely finish the (foundation channel) into a functional receiver that can "then" be used to make approximately 40 variations of firearms, (16 variations as uzi style firearms) and 20 to 25 firearms variations under the A.O.W. classification with variations to the 14 welded parts required to make a functional receiver from the (foundation channel, "sample sent"). All options require "major modification", none of which qualify as readily convertible.

(The foundation channel), that I sent to you for evaluation is only one (1) of 15 parts necessary to make a complete and functional receiver, which would then have to be combined with 60 to 65 other precision manufactured parts to just make a fully functional firearm required to meet the definition of a basic firearm under the GCA rule 921(a)(3)(A) much less meet the definition

of a machine gun, in its current configuration, in accordance with NFA regulation 5845 and rule 83-5. All necessary work required to convert the (foundation channel sent for evaluation) into a firearm or machine gun requires "very major modifications" and cannot be defined, "in any way", as readily restorable or readily convertible or convertible by simple alteration, to either a firearm or machine gun and is therefore; defining the (foundation channel) as a machine gun, is in complete contradiction to the regulations and definitions as defined by GCA, FFA or NFA regulations defining a firearm or machine gun.

Any piece of steel plumbing pipe, plus some fittings, of the right diameter, can be readily made to fire a standard firearm cartridge or shotgun shell with a rubber band and a nail; thus, it would qualify as a firearm under A.O.W...

The (foundation channel), sent to you for evaluation, can't even meet the definition of "a firearm" in accordance with FFA & GCA regulations and can be manufactured into any one of numerous receiver variations, but only, with the requirement of major modifications and precision welding of at least 14 precision manufactured parts just to make it into a functional frame or receiver and an additional 60 to 65 precision manufactured parts just to make it fire a projectile with an explosive charge per definition of a firearm, "from it's present configuration" as a (foundation channel), none of which constitute readily convertible or readily restorable.

In accordance with rule 83-5 of the NFA extension of 5845, your contention that there is any statutory justification to classify the (foundation channel sent to you for evaluation) "as a machine Gun", with or without a bolt blocking bar, is invalidated by rule 83-5. Your contention that the addition of "a blocking bar" to the (foundation channel sent for evaluation) would reclassify it as a non machine gun is invalid by virtue of the definition under rule 85-3, that the readily removable nature of the blocking bar would still qualify it as a machine gun, (removal time would be far less time than installation, "not more than 30 seconds").

(The foundation channel sent for evaluation) is, in fact, "only one part" of an additional 14 precision manufactured parts necessary to make a functional frame or receiver for a variety of firearms as defined by the FFA and GCA definition of a frame or receiver, which still cannot even be made to fire even a single projectile, without an additional 60 to 65 precision manufactured parts added, just to qualify as a basic firearm. Any contention that (the foundation channel sent for evaluation) "is a machine gun in its current state" is a contradiction of NFA, GCA and FFA regulations and is clearly invalid. If you classify this (foundation channel) as a machine gun it would also require the simultaneous classification of all semiautomatic firearms in the country as machine guns in accordance with NFA regulations.

Based on your proposed classification of the part (the foundation channel sent for evaluation), that can't even qualify as a firearm without the addition of 74 parts, " that it can only be classified as a machine gun" with or without the addition of "just a blocking bar" is completely invalid, as defined by NFA regulations.

If you classify the sample part sent, (the foundation channel) as a machine gun, without the addition of a blocking bar to prevent it from being a machine gun, it is still a machine gun under rule 83-5 of NFA regulations with the blocking bar added, because of the fact that just the simple removal of the blocking bar, (which would take less time than installing the bar), about 30 seconds, with a reciprocating saw or jig saw and a metal cutting blade converts it back to a machine gun per Rule 83-5 of NFA, which leaves it still defined as a machine gun, by your proposed evaluation of (the foundation channel "by itself") as a machine gun with or without the blocking bar. This is a complete contradiction of GCA, FFA and NFA regulations and definitions that define a machine gun.

By your proposed evaluation, that would still leave "a single part" (the foundation channel sent for evaluation) that "doesn't even qualify as a simple firearm or A.O.W." under the definition

of a firearm in accordance with FFA or GCA regulations "still classified as a machine gun". Rule 83-5 makes your contention that the addition of a blocking bar to the (foundation channel) would change the classification, is bogus and invalid under rule 83-5 of the NFA regulations, regardless of the addition of the bar. The (foundation channel sent for evaluation) is a single part "only" that can be used for the manufacture of approximately 40 separate varieties or models of firearms that cannot be made to fire a single projectile without the precise addition of approximately 75 additional precision machined parts. Any rational definition of readily restorable or readily convertible or simple alteration required to convert to a firearm or machine gun, in no way applies to the (foundation channel sent for evaluation), by any stretch of any regulations or definitions.

The (foundation channel sent) cannot possibly legitimately be classified as a machine gun; since it cannot even meet the definition of a simple firearm in its current state without the addition of 74 or 75 precision manufactured parts "with very major modifications required".

A part cannot be classified as a frame or receiver or firearm, much less a machine gun, unless it is readily restorable or readily convertible or convertible by simple alteration to propel at least a single projectile with an explosive charge. The (foundation channel sent for your evaluation) does not qualify as, either as a frame or receiver, or firearm, or machine gun, under NFA, GCA or FFA regulations; in its current configuration (as a multifunction foundation channel), "without major modification, just to qualify as a frame or receiver or firearm".

In essence, your contention that a single part, (the foundation channel by itself) which can't, and doesn't even qualify as a firearm, by any stretch of the definition of a firearm under the FFA or GCA regulations, "is a machine gun" is completely invalid because it can never be anything but a machine gun by your assertion that the presence or absence of a blocking bar, in itself, constitutes the complete definition of a machine gun under rule 83-5 and 5845 of the NFA regulations or a firearm under any other regulations.

In addition, because of the fact that it cannot be made to fire a single projectile without "major modification" which consists of the precision addition of approximately 74 to 75 additional precision parts; makes the classification of the single part (the foundation channel) "as a machine gun", based solely on the presence or absence of a blocking bar, invalid by virtue of the fact that it can't even be made to qualify as a firearm by firing a single projectile without the addition of approximately 75 additional parts. Any contention that the absence or presence of a blocking bar alone, in any way, by any definition under GCA, FFA or NFA regulations, makes (the foundation channel) readily restorable or readily convertible or convertible by simple alteration to either a firearm or machine gun, "completely invalid".

The (foundation channel) is therefore just one part of 75 total precision manufactured parts necessary to make a functional frame or receiver and then either a firearm or machine gun depending on the license classification of the manufacturer, 07 or class II; after which, the product must then be defined, labeled, serial numbered & registered as required by BATF regulations.

Any piece of electrical conduit can be modified (no other parts needed) to use small fire crackers to expel a projectile with enough force to penetrate through a rolled up news paper at 15 feet.

The above example is a firearm or A.O.W., by definition of the cited regulations and the term "readily convertible" or "readily restorable" or "convertible by simple alteration" all apply.

The (foundation channel sent for evaluation) cannot qualify as a firearm, A.O.W. or machine gun by any stretch of the NFA, FFA or GCA regulations "definitions" of a firearm, A.O.W. or machine gun until completed with the "major modification" and the addition of 70 to 75 additional precision machined and aligned parts , just to qualify as a firearm.

In all of the herein cited firearms, we are talking about a matter of 1 to 20 minutes or less for the conversion, or restoration, to a firearm or machine gun, ("except for" the foundation channel sent to you for evaluation).

Is there some minimum or maximum time factor that defines readily convertible or restorable or convertible by simple alteration to a firearm or machine gun? All of the above are clearly, readily convertible to firearms as defined by the relevant FFA or GCA regulations defining firearms, most of which, are readily convertible or restorable to machine guns as defined by NFA rule 83-5; that is all of the firearms referenced herein, (except the foundation channel sent to you for evaluation) are readily convertible to firearms or machine guns in accordance with NFA or FFA or GCA regulations without major modification.

There would be no point in my going to a hardware store and getting a 3/4 in piece of steel pipe with the appropriate screw on fittings and asking you if it is a firearm even if I include an appropriate size cartridge. The description alone is clear enough for you to define whether that pipe, (or any firearms or parts described herein) qualify as readily convertible or readily restorable to a firearm or machine gun with regard to the relevant statutes. I do not believe that a sample SKS or AK is necessary to answer the relevant questions regarding their relative convertibility or relative restorability or simple conversion by modification or removal of existing parts, due to the common knowledge and status of all of the above examples and the shared qualities of the herein referenced firearms with regard to the relative accepted and shared definitions and regulations.

The principle purpose of my review of regulations and definitions is to determine the point at which the term "readily convertible or readily restorable" or convertible by simple alteration "ABSOLUTELY" ceases to apply with respect to any definition of the terms frame,

receiver, firearm or machine gun with respect to all GCA, FFA or NFA regulations, including regulation 5845 & rule 83-5 of the NFA.

It is completely clear that (the terms "readily convertible" and "readily restored" and conversion by simple alteration do not have precisely the same meaning") and typically do not mean precisely the same thing. From the definitions included in rule 83-5, the distinction would seem to be irrelevant whether a firearm is restored to a machine gun, or "never having been a machine gun" is converted to a machine gun; or is converted by simple alteration, as the terms in this context all apply equally to the definition of a machine gun.

The terms "readily convertible" and "readily restored" and "converted by simple alteration" would all have to be relative to some time frame and/or quantitative reference to parts with respect to the fact that both simplicity of the part modification and time to convert or restore any Mark II semiautomatic Sten into a machine gun are obviously the only factors in determining that "all" Mark II Stens are machine guns in any configuration. If not, then both the SKS and the AK series would have to be classified the same, as both fit into the same category as the Mark II Stens; with a slightly increased parts count for modification and slightly increased modification time to equal factory conversion but all are equally as easy to convert to machine guns as defined by NFA regulation 5845 and rule 83-5, as is the Mark II sten without the addition of any parts and with only the simple modification of existing parts.

There are both SKSs and AKs that were machine guns that can be restored and all of those manufactured as semiautomatic can be converted with simple modification to factory standards, although not quite as quickly as the Mark II Sten; the general classification of all the above referenced firearms is the same and the increased time is only a matter of minutes, not exceeding 30 minutes total with a nominal increase in parts from 1 to 4 or 5, "if any additional parts are used at all", depending on the quality of the restoration or conversion desired. Any of the three

examples can be converted to machine guns, as defined by 5845 and rule 83-5, without the addition of any parts and only the simple modification of existing parts.

Based on the above examples, readily convertible or restorable would have to fall into a time frame between 1 and 30 minutes, assuming the necessary parts and tools are on hand for any of the examples listed above. That would mean, of course, rule 83-5 "does in fact apply to both AKs and SKSs". If that is the case, then that would require the confiscation of all semiautomatic SKSs and AKs along with Mark II Stens under rule 83-5 and regulation 5845.

If 5845 & rule 83-5 "do" apply to the factory conversion of semiautomatic AKs and SKSs", then both the necessary parts count could not exceed 0 to 4 or 5 parts for factory conversion and the time frame could not exceed the 30 minutes to be classified as readily convertible or restorable or convertible by simple alteration; but only if both AKs and SKSs are "all" classified as machine guns along with the Mark II Sten. If they are classified as readily convertible or restorable along with the Mark II Sten per rule 83-5, then their conversion time and parts count for a factory standard conversion, would define the upper limit of the terms "readily convertible or restorable" or convertible by simple alteration; unless you choose to include additional firearms into the rule 83-5 classification category. By including the fact that virtually all semiautomatic firearms can be converted to machine guns as defined by NFA regulation 5845 with the minor alteration of existing parts as defined by rule 83-5; then the parts and time required for conversion or restoration "would be defined by the Mark II Sten conversion time and parts, for all semiautomatic firearms per rule 83-5, (approximately 1 to 5 minutes).

If not, then the time frame and parts count "is established" (for the terms readily convertible or restorable) by whatever your classification of the SKS and the AKs are, "with respect to rule 83-5" or by the Mark II Sten

It has taken me as much as 13 months, each, to get a written reply on two written questions relating to the same subject. Congressional complaints will be filed on those two issues that required 13 months for reply, as the replies are inconsistent with the evaluation made, and are contradictory to one another.

Twenty six months for a complete reply and failure to enforce fraudulent importation of banned firearms listed under 925(d)(3) of the GCA on receivers that the BATF legal department has been apprised of since December of 2002 is, at best, unconscionable after issuing a letter to us certifying that all of the 6,000 banned, imported firearms, being sold commercially, are for restricted sale only.

I would hope that your written reply will be much more prompt. I will look forward to a reply that is accurate and specifically based on BATF regulations and associated legislation relative to the (foundation channel sample sent). I believe that I have more specifically defined the issue of the evaluation (of the foundation channel sent for evaluation) by example, definition and regulation, "definitively", as just one (1) of 75 total parts required to make a complete receiver, or firearm or A.O.W., or machine gun (from the foundation channel sent) depending on the FFL manufacturer's classification. From the standpoint of NFA, GCA and FFA regulations, the (foundation channel sent for evaluation) cannot validly be defined as anything but, "a part", "one (1) of 75", without major modifications and the installation of 14 additional precision manufactured parts required to make just a functional frame or receiver. In order to qualify as a firearm under GCA and FFA regulations, additional major modifications, including 60 to 65 additional parts would be required to convert the (foundation channel) into any type of functional firearm configuration which would be chosen by the manufacturer in accordance with his FFL classification and in accordance with all BATF regulations and legislative acts regarding the manufacture of a firearms or machine guns. In any event, the (foundation channel sent) in no way qualifies as readily convertible, restorable or convertible by simple

alteration of existing parts, into a frame or receiver or a firearm or, much less, a machine gun in its present configuration.

One general positive result of the correspondence that produced the 13 month letter of reply from the BATF legal department did produce some clearly defined rules stipulated by the legal department as follows.

1. Any BATF oversight or error is superceded by both federal regulation and legislative act.
2. With respect to #1 above; the proposed classification of the (foundation channel by itself with no other parts) as a machine gun with out the blocking bar installed "or" with it installed would be a violation of NFA Rule 83.5 and 5845 that defines a machine gun; so the (foundation channel) would remain incorrectly defined as a machine gun as defined by regulations, even with any BATF stipulation to the contrary, regarding the blocking bar; giving due respect to the rest of the GCA, FFA and NFA regulations and legislative acts, in accordance with item # 1.
3. The (foundation channel sent for evaluation) does not meet any of the definitions of a firearm under GCA or FFA regulations. It is not in any way readily convertible to fire a single shot or projectile with an explosive charge without 14 additional precision parts just to complete it into a functional receiver with "extremely major modifications". It then "must" first qualify as a functional frame or receiver and then as a functional firearm before it can qualify as a "machine gun" with the addition of another 60 to 65 precision manufactured parts, and further major modification, just to make (the foundation channel)i qualify as a firearm.
4. Since (the foundation channel sent for evaluation) cannot and does not qualify as a firearm under GCA and FFA regulations, it, therefore, cannot possibly qualify as a machine gun under NFA regulation if it does not even qualify as a firearm unto itself.

5. The only possible, rational or valid classifications, (in the sole and separate condition, of the foundation channel sent for evaluation), without any markings, (manufacturer, caliber and classification or designation as a semiautomatic firearm or machine gun, with serial number), and with no additional parts included or present, either loose or attached leaves the only possible valid classifications of the (foundation channel by itself); that would not violate any GCA, FFA, NFA regulation or legislative act, is the classification of the (multifunction foundation channel) as either a "part" (non firearm), one (1) of (15) precision manufactured parts required to make a functional frame or receiver; or as an unserviceable firearm in accordance with the definition of an unserviceable firearm under: title 27, chapter 11, BATF (Department of Justice), sec. 479.11 (bottom of page 128 and top of page 129 as printed off the internet: UNSERVICEABLE FIREARM: defined as; A firearm which is incapable of discharging a shot by means of an explosive and incapable of being readily restored to a firing condition). These two classifications are the only possible classifications that would meet all the regulation requirements without violating any part or portion of any of the other GCA, FFA or NFA regulations or legislative acts. The (foundation channel), by itself, in no way qualifies as a frame or receiver or firearm, much less a machine gun, in accordance with GCA, FFA or NFA regulations, or legislative acts, except under the two options stipulated above in item # 5.

Regarding your final evaluation decision of the (multiple use foundation channel sent for evaluation); "if classified as a machine gun, contrary to our interpretation of the GCA, FFA and NFA regulations and definitions", please include all the relevant regulations and legislation with explanation as to how they apply to your evaluation and as to how you arrived at your evaluation based on those regulations and their relevancy with respect to any classification of the (solitary foundation channel) "by itself", as a firearm or machine gun, in the current state of "only" one (1) of 75 parts configuration necessary for a complete fire arm and "only" one (1) of 14 parts required to make a functional frame or receiver with the requirement of "very major modifications" and precision parts, alignment and welding, just to complete the frame or firearm.

If you're final evaluation of the (multifunction foundation channel) is "a machine gun", it is our opinion that the decision will supercede some specific existing GFC, FFA, NFA regulations and legislative acts. If that is your final decision, please clearly justify the decision. A BATF ruling that the (foundation channel, "by itself") is a machine gun would be a complete contradiction of relevant regulations & definitions, "in our opinion".

Regarding the last request, if applicable, and unanswered, an answer will be requested until received.

It is our intention to focus "exclusively" on the manufacture of parts, which it is our belief constitutes the correct classification of the (foundation channel) "by itself", in its present state of completion. The only other possible appropriate classification for the (foundation channel) "by itself", in its present state of completion, would be an unserviceable firearm as defined in item # 5 on the previous page; "as we interpret the regulations and as specifically defined by the relevant regulations and definitions".

The above paragraph and relevant regulations referenced herein constitute our objective opinion of the (foundation channel) "by itself" based on all the relevant GCA, FFA and NFA regulations as specifically defined. It is also the opinion we expressed in our initial discussion of the Group Industries receivers relative to the basis of their classification, with mutual agreement at the time.

Thank you again for your prompt replies.

Sincerely,


Donald Tatom

2/13/2005

FAX COVER SHEET

DATE	2/13/05	
TIME	10:30	A
NUMBER OF PAGES (including this one)	7	

FAX TO	COMPANY/NAME	BATF
	CONTACT PERSON	Adam Galbraith
	FAX # (with area code)	304 260 1701
	PHONE # (with area code)	304 260 1659

FROM	COMPANY/NAME	DTN Sales
	CONTACT PERSON	Don Taton
	FAX # (with area code)	520 803 1298
	PHONE # (with area code)	520 903 1298

COMMENTS

Documents Relevant To Classification
of Foundation Channel For MANUFACTURER
14 separate style/models of Uzi style FIRE ARMS pieces
of approximately 24 Firearms ^{pieces} under Classification
Now depending MANUFACTURER CLASSIFICATION
OT or II.

DC

2/13/05

Hard Copy to Follow Fedex overnight
2/14/05



4739 Ranch Rd.
Sierra Vista, Arizona 85635
Telephone 520-803-1298
FFL-9-86-003-07-5E-38255 (IMI/NA)
&
FFL-9-86-003-08-5E-38256

February 11, 2005

Department of the Treasury
Bureau of Alcohol, Tobacco and Firearms
Firearms Technology Branch
Att: Adam Galbraith
244 Needy Rd.
Martinsburg, WV., 25401
304-260-1700 or 304-260-1699

RE: Our correspondence regarding the classification of the non firearm foundation channel as one of 15 parts necessary to make a complete receiver and 1 of 74 parts + or - to make a complete firearm out of a possibility of 16 uzi style firearms and another 20 to 24 firearms under the classification of A.O.W. (any other weapon) depending on the modification of the precision parts welded to the channel and the classification of the manufacturer.

Dear Mr. Galbraith:

I am including a decision made by Mr. Nixon regarding the classification of a machine gun with an analysis of that classification made by a separate and independent organization which I will leave unnamed.

Please understand that it is not my intention to, in any way, be disrespectful.

While the evaluation appears absurd, ridiculous and frivolous on the surface, it is my opinion that the BATF and Mr. Nixon were faced with something of a dilemma.

As I stated in my previous letter, virtually every semi automatic firearm, rifle or pistol, qualifies as a machine gun under the machine gun definition 5845 (b) as virtually all can be converted to a machine gun with the simple modification of parts, the addition of from 0 to 4 parts, none of which are specifically designed to make a machine gun.

Mr. Nixon must clearly be a competent man. His position would demand that.

In my opinion, he and the BATF were faced with a dilemma regarding the string conversion of the sem-iauto firearm to a machine gun.

In my opinion, the BATF had the option of classifying virtually every semi auto firearm in the country as a machine gun in accordance with 5845 (b) or find a way to classify the part used to convert it to a machine gun and avoid what would have probably resulted in an unprecedented political controversy and near revolution on the part of gun owners in this country.

The analysis of the decision clearly demonstrates that the shoe string or any string cannot, in fact, be classified as a machine gun under 5845 (b).. Whether the modification of the semiautomatic firearm is by string or other simple modification, 5845 (b) makes it perfectly clear that it is the semiautomatic firearm that is the machine gun, not the part unless its sole function is to make a machine gun.

I fully understand that the apparent ludicrousness of the ruling that the string is a machine gun, in fact, probably saved a great deal of political and public turmoil.

With respect to the foundation channel that I sent to you for evaluation as a non firearm, there is no regulation existing that would support any other decision that it is anything other than a non firearm in the state of completion in which it was sent to you.

If you classify our unmarked, unserial numbered, foundation channel as a machine gun, along with the Group Industries receivers which were, in fact sold, in four classifications which depended on both the markings consisting of manufacturer, model, caliber, serial number and the date of registration with the BATF, which determined what they were classified as for the 1995 BATF sale; you will initiate the arrest and confiscation of virtually every FFL dealer and firearms owner in America for the illegal sale and purchase of 30,000 to 50,000 illegal machine guns orchestrated by the BATF.

The spin-off will cause a political and public revolt that will make the classification of all semi auto firearms as machine guns pale in comparison.

We will have no alternative but to appeal to both congress and the US Attorney General, in simple self defence, of an inaccurate and inappropriate ruling that will devastate the gun industry by declaring that 10 years of BATF approved firearms sales were in fact illegal sales of machine guns.

None of the 50,000 Group Industries receivers were sold at auction with a blocking bar, none were resold to dealers with a blocking bar and none were sold to the public with a blocking bar which would make them all illegal machine gun sales orchestrated by the BATF and approved for illegal sale by the BATF for 10 years if you use your proposed evaluation.

Mr. Galbraith: please review your verbal clarification of your intended classification of all these receivers carefully, without distortion. In the interest of public welfare please use the factual classification defined by the relevant regulations which are also demonstrated by the historical facts of the actual BATF approved 1995 sale and resale of all the Group Industries receivers sold at auction and resold since.

After reading the BATF classification and justification for the classification of a shoe string as a machine gun instead of the semi automatic firearms as machine guns, I thought that maybe I was in the twilight zone.

In addition, our attorney just received a reply to a letter written to the BATF in December of 2004 requesting clarification of one of the other issues we have discussed. The date of the reply was Jan 5, 2005, another 13 month wait.

It took 13 months to receive a reply that did not address a single issue in the request drafted and sent by our attorney.

That is the second time it took 13 months to receive a reply on an issue from the BATF. The above reply was an answer to a request for clarification of contradicting Import papers regarding the first 13 month reply.

Mr. Galbraith; if we don't receive a prompt answer in complete and strict compliance with the federal statutes, and legislative directives precisely as written, this whole collage will all go directly to the US Senate and House Majority and Minority leaders and to the US Attorney General.

There is no excuse for it taking 13 months to receive a reply to a letter written by a competent attorney or anyone, and then not have a single issue addressed in the inquiry answered with the returned reply.

Based on the letter regarding the BATF classification of a shoe string as machine gun, irrespective of the reason, that means that everyone with shoes with two sets of shoelaces with loops tied in them is in possession of two machine guns and is subject to 10 years in prison and fines of up to \$250,000 for each shoe string if he owns any kind of semi auto firearm. The loops aren't even necessary for the prosecution

The BATF classification of the foundation channel that we sent you as either a machine gun or firearm in the state of completion sent, by statutory definition under 921 of the GCA or 5845 of the NFA would just about fall into the same category of the shoe string classification as a machine gun with respect to the specifics of those regulations.

I am sincerely looking forward to your evaluation and classification. As I initially stated to you, regarding our initial telephone conversation, you were the first person that I had ever spoken with at the BATF that made sense regarding classification in accordance with the specific guidelines of the regulations as written and clearly defined.

I am waiting to see if you can move me out of the twilight zone and into some sort of reality regarding BATF policy.

The first issue is going straight to congress and the US Attorney general for evaluation and explanation.

How can you possibly expect the public or anyone to understand regulations that take over a year to receive a response for clarification, and then have them receive an answer that has absolutely nothing to do with the questions asked or documents sent for evaluation or any relationship to the previous evaluation that took 13 months to receive?

I am sincerely looking forward to your reply ,with optimism, that you will review these letters in the spirit of our original discussion before you reply.

Truly Yours,



Donald Tatom

Hard copy to follow fedex over night.

2/09/2005

and

9/20/2004

Subj: **BATF shoestring letter**
Date: **2/9/2005 5:58:43 PM Mountain Standard Time**
From: **pnptechology@swbell.net**
To: **contact@danddsales.com**

Dan,

Here is the BATF shoestring letter:

Mark

<http://www.jpfo.org/shoestring.jpg>



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

SEP 8 9 2004

003050:RDC
3311/2004-379

www.atf.gov

Mr. Brian A. Blakely

SKS

Dear Mr. Blakely:

This refers to your letter of February 6, 2004, to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Branch (FTB), in which you inquired about the legality of a small section of string intended for use as a means for increasing the cycling rate of a semiautomatic rifle.

As you may be aware, the National Firearms Act, 26 U.S.C. § 5845(b), defines "machinegun" to include the following:

...any weapon that 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. This term shall also include 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 a person [holding added].

In 1996, FTB examined and classified a 14-inch long shoestring with a loop at each end. The string was attached to the cocking handle of a semiautomatic rifle and was looped around the trigger and attached to the shooter's finger. The device caused the weapon to fire repeatedly until finger pressure was released from the string. Because this item was designed and intended to convert a semiautomatic rifle into a machinegun, FTB determined that it was a machinegun as defined in 26 U.S.C. 5845(b).

We thank you for your inquiry, regret the delay in response, and trust the foregoing has been responsive.

Sincerely yours,

Sterling Nison
Chief, Firearms Technology Branch

Subj: (no subject)
Date: 2/9/2005 7:33:16 PM Mountain Standard Time
From: pnptechology@swbell.net
To: contact@danddsales.com



Jews For The Preservation of Firearms Ownership, Inc.
P.O. Box 270143
Hartford, WI 53027

Phone (262) 673-9745
Fax (262) 673-9746

“A Shoestring Is A Machinegun” —Says BATFE

*By The Liberty Crew
Jews for the Preservation of Firearms Ownership*

No kidding. The federal Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) has declared that an actual shoestring can be a machinegun. As explained in its September 2004 letter to a citizen, BATFE's Firearms Technology Branch (FTB) made this magical ruling:

In 1996, the FTB examined and classified a 14-inch long shoestring with a loop at each end. The string was attached to the cocking handle of a semiautomatic rifle and was looped around the trigger and attached to the shooter's finger. The device caused the weapon to fire repeatedly until finger pressure was released from the string. Because this item was designed and intended to convert a semiautomatic rifle into a machinegun, BATFE determined that it was a machinegun as defined in 26 U.S.C. § 5845(b).

Make no mistake: the BATFE says that ***the shoestring itself is a machinegun***. How could that ruling make any sense? The National Firearms Act, 26 U.S.C. § 5845(b), defines “machinegun” as:

Any weapon that shoots, is designed to shoot, or can be readily restored to shoot,

Wednesday, February 09, 2005 America Online: Dandsales

automatically more than one shot, without manual reloading, by a single function of the trigger.

So far, no surprises. But § 5845(b) also defines "machinegun" to include:

...any part designed and intended solely and exclusively...for use in converting a weapon into a machinegun ...

The shoestring, looped around the trigger, the cocking handle of the rifle, and the shooter's finger, was "designed and intended" to convert the rifle into a machinegun. Therefore, according to BATFE, the shoestring itself is a machinegun.

Watch the Word Wizardry

Did you catch BATFE's word trick? Keep in mind that phrase from § 5845(b) quoted above: "any part intended and designed solely and exclusively for use in converting ..." Consider these facts:

1. A shoestring is *not* intended and designed solely and exclusively for converting a firearm into a machinegun. A shoestring's primary use is to fasten shoes. Shoestring manufacturers do not intend the shoestrings to be used for any other purpose whatsoever.
2. The fellow who rigged up that shoestring to operate the rifle's trigger did not "design" the shoestring. The shoestring came ready-made *for use in shoes*, not in guns.
3. Because the shoestring was not intended or designed to convert a rifle into a machinegun, the shoestring is not a machinegun.
4. Now look again at the BATFE letter's wording (above). The letter says the shoestring "was designed and intended to convert a semiautomatic rifle in a machinegun." Notice the letter **does not say** the shoestring was designed and intended "***solely and exclusively***" for that use.
5. Thus, the BATFE deliberately ignored the limiting language "solely and exclusively." To be illegal under the § 5845(b), a modification must be "designed and intended solely and exclusively" to convert a rifle into a machinegun. The BATFE deliberately omitted the "solely and exclusively" phrase so they could illegalize a shoestring.

"Yeah, but ..."

But wait -- isn't the "loop at the end" of the shoestring a "design" that was "intended" for the illegal purpose? Maybe so, but a looped shoestring could have other purposes, including extracting "baby teeth" by looping one end around a tooth and the other around a doorknob. A looped shoestring does not have a sole and exclusive purpose. A looped shoestring differs greatly from any of the actual components of a firearm. Most firearm components are made for the specific, sole and exclusive purpose of fitting into and assisting in the operation of the firearm. Those components just don't have any other uses.

When § 5845(b) uses the term "parts," that term reasonably means the machined and crafted

(140 of 14)

parts of a firearm or conversion kit. Paper clips, shoestrings and other common household materials should not be defined as "machineguns." Judges and bureaucrats should not strain legal language to maximize the number of things that are illegal and to punish as many people as possible.

Is BATFE Your Federal Friend?

The shoestring-machinegun example shows how far BATFE will stretch to prosecute "the gun laws on the books." Now you should see the videotape of BATFE experts test firing a rifle they claimed was converted into a machinegun. BATFE said they proved a machinegun conversion, but a real gun expert proved that the rifle was not a converted machinegun -- it was a dangerously defective semi-auto!

Get your copy of the BATFE video (VHS or DVD) for \$17.76 (postage paid). Show it to fellow shooters and gun clubs. With it you'll also receive FREE a copy of the freedom booklet "Is America Becoming a Police State?" (a \$3.00 value), and copies of the BATFE confiscation report and Len Savage's expert witness report on this outrageous case.

You need to know what the BATFE will do to prosecute *you*. Visit jpfo.org or call (800) 869-1884 to obtain your copy of this revealing video.

Copyright 2005, by Aaron Zelman. Permission is granted to reproduce this article in full, provided that JPFO contact information, website and phone number are included. J.P.F.O., Inc. * P.O. Box 270143 * Hartford, WI 53027 * (262) 673-9745 * (800) 869-1884.

[[JPFO Home](#) > Common Sense]

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Undated
Response to letter dated
01/22/2005

903050:AG
3311/2005-200

Mr. Donald Tatom
D&D Manufacturing and Sales
4739 Ranch Road
Sierra Vista, AZ 85635

Dear Mr. Tatom:

This is in response to your correspondence dated January 22, 2005, to the Firearms Technology Branch (FTB), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), in which you ask for a classification of the UZI-type receiver stamping that you submitted to FTB for classification.

The FTB examination confirmed that the submitted sample is a ferrous metal UZI-type receiver stamping. The sample, as indicated in the photos on page 2, has various holes and slots, but has no additional parts installed. The sample will accept UZI parts, including the following:

- Bolt assembly.
- Top cover assembly.
- Trigger group assembly.
- Barrel trunnion.
- Ejector.
- Bolt buffer.

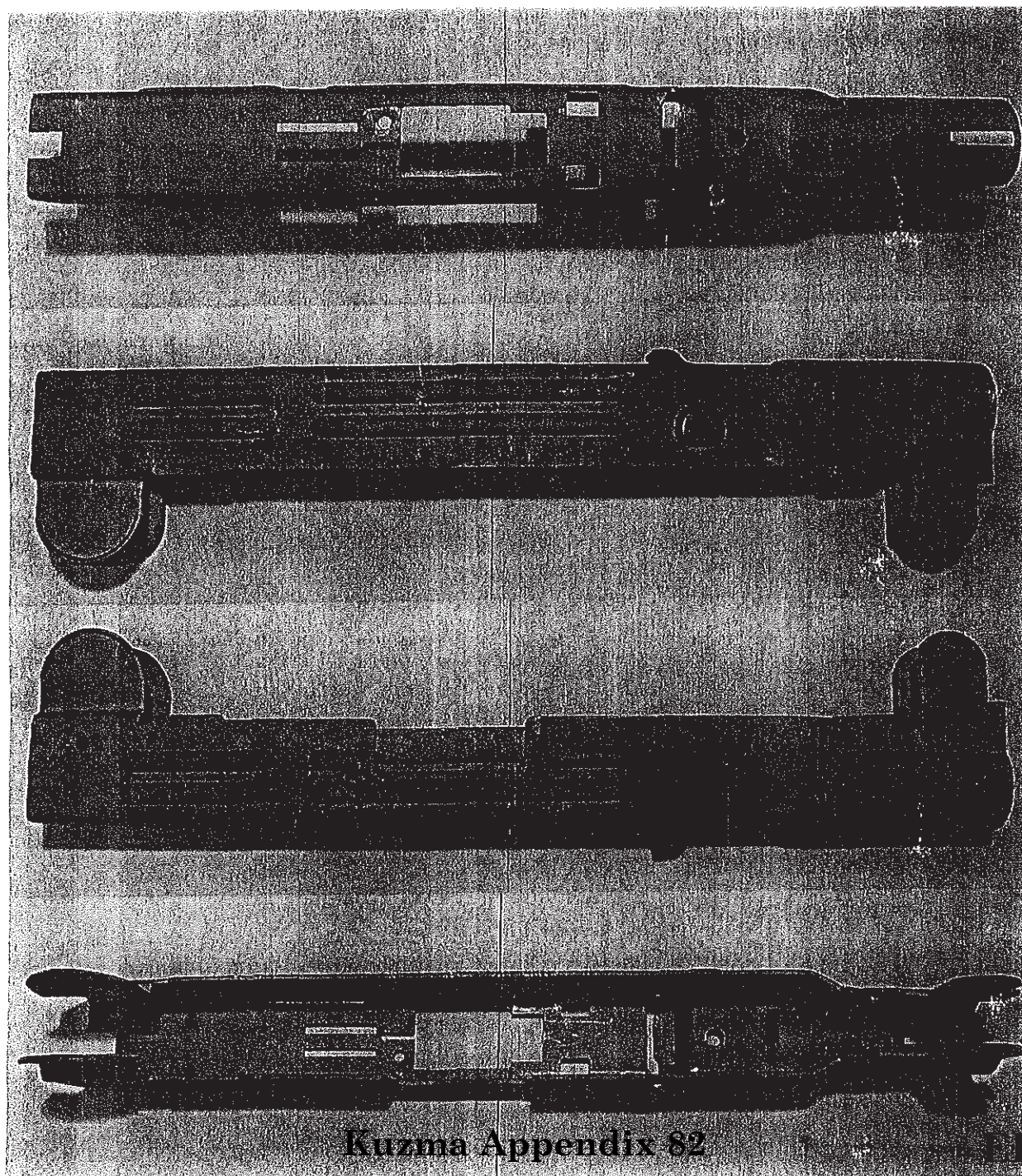
Most of these parts require welding or riveting to permanently install; however, the sample will accept these parts with no modification. In addition, there are slots and holes located correctly for installation of other parts not listed above.

The FTB examination of the submitted sample has determined that it is virtually identical to the UZI-type receiver stamping manufactured by Group Industries, Louisville, KY. The Group Industries receiver stamping is classified as a *firearm*. Additionally, receivers not having bolt blocks are classified as *machineguns*. Consequently, since the receiver stamping you submitted is virtually identical to the Group Industries stamping, being dimensionally correct, and allowing installation of UZI parts, it is a firearm as defined in 18 U.S.C. § 921(a)(3). Moreover, since the submitted sample does not have a bolt block installed, it is also a machinegun as defined in 26 U.S.C. § 5845(b).

-2-

Mr. Donald Tatom

Views of Submitted UZI-type Receiver Stamping



-3-

Mr. Donald Tatom

Since you have stated that you intend to manufacture this receiver stamping, you should be aware of the following necessary procedures:

- The manufacture and transfer of this item must be conducted using an appropriate Federal Firearms License.
- All marking requirements detailed in 27 CFR Section 478.92(a)(1) [formerly 178.92(a)(1)] must be fulfilled.
- To avoid the *machinegun* classification, during the manufacturing of this item you must install a bolt block to prevent the installation of an L Z1 machinegun bolt. This must be completed no later than close of business on the day the receiver is produced. Receivers not having a bolt block will be classified as machineguns.

Because the submitted sample is considered contraband, it will not be returned and will be disposed of in accordance with the needs of the Federal Government.

We thank you for your inquiry and trust that the foregoing has been responsive to your request for an evaluation.

Sincerely yours,

Sterling Nixon
Chief, Firearms Technology Branch

Emails

2/05/2005

to

2/22/2005

Subj: **Dandsales: definitions**
 Date: 2/22/2005 1:34:12 PM Mountain Standard Time
 From: EPS@atf.gov
 To: Dandsales@aol.com

Thank you for visiting ATF's Website. As stated on our site, generally, we do not answer technical questions via e-mail, but I again contacted our Firearms Technology Branch (FTB) and was advised the following:

"The prohibition on "semiautomatic assault weapons" in Section 922(v) of Title 18, U.S.C. no longer applies. The provisions relating to importation of firearms in 18 U.S.C. sections 922(l) and 925(d)(3) still apply. The restrictions on importation of semiautomatic rifles established in 1989 and 1998 still apply. For further information see 21. IMPORTATION OF SEMIAUTOMATIC ASSAULT RIFLES AND MODIFIED VERSIONS OF SUCH RIFLES in http://www.atf.gov/pub/fire-explo_pub/geninfo.pdf and for information concerning the 1998 study see http://www.atf.gov/pub/treas_pub/assault_rifles/index.htm."

If you have any further questions, please call them on 304-260-1700. Regards,

-----Original Message-----

From: Dandsales@aol.com [<mailto:Dandsales@aol.com>]
Sent: Sunday, February 20, 2005 10:08 AM
To: EPS Directorate
Subject: Re: Dandsales: definitions
 Gentlemen:

Question #1. Since the sunset of the assault weapons ban on Sept 13, 1994; (**specifically, by name**), **Please list** or refer me to a list of what firearms are **now listed** as banned from importation, as not particularly suitable for sporting purposes under 925(d)(3) of the GCA. Please include the list of the 43 firearms originally banned from importation by the 1989 executive order and by ammendment to 925 (d) (3) of the GCA with any other firearms banned from importation still included on or added to the banned firearms list.

Question #2. Since the sunset of the assault weapons ban, which distinguished between specifically banned firearms defined as assault weapons and the characteristics that distinguished them from their sporting version counterparts; **what specific characteristics and what legislation and/or federal regulation** (if any) now distinguishes and/or permits the importation of **any sporting version** of the above requested list of banned firearms under GCA 925(d)(3), from the specifically banned from importation list of firearms requested under question #1 above.

This assumes that there is some distinction. If there is none, please state so with the list or reference to any web sites that have all of the specific information requested.

Thank you again
 Don

Thank you again for your prompt reply.

The part has been sent for evaluation and the evaluation is currently in process now.

The condition of the (receiver) is just the (basic foundation channel) which requires the addition of 14 precision machined parts (variable) and 7 to 10 hours of work to just make a complete receiver from the (foundation channel) which is unmarked and unclassified by make, model, caliber or serial # and can be made into approximately 40 different firearms under the uzi style or A.O.W. classification of firearms but only with the addition of approximately another 60 additional precision manufactured parts to just make a complete functional firearm as defined under 921(a)(3)(A).

Your prompt assistance and referrals to regulations and definitions, combined with our previous knowledge, has enabled us to submit an accurate and complete request with references to appropriate regulations and definitions to get a correct and accurate evaluation based accurately on the condition of the (foundation channel) relevant to the appropriate regulations and definitions.

We sincerely appreciate your assistance and the promptness.

Sincerely
Don

Subj: **Re: Dandsales: definitions**
 Date: 2/15/2005 4:35:13 AM Mountain Standard Time
 From: Dandsales
 To: EPS@atf.gov

Gentlemen:

Thank you very much for your prompt reply:

However, It did not adequately answer the question. I did finally access the web site for the definition for frame or receiver and they are synonyms as I thought. Sorry about the email error. **It had some other errors to correct so please disregard** the first copy of this email as it was an unfinished draft.

For example Rule 83-5, an extension of the NFA rule 5845 defines all Sten Mark II firearms as readily convertible to machine guns and therefore states that all Mark II semi auto Sten firearms are machine guns. The conversion only requires the removal/ breaking off of a stop to convert the Mark II Sten to full auto operation (stated per rule 83-5) as readily convertible.

It further uses the same term (readily convertible) to apply to any firearm that was previously a machine gun or any firearm that was never a machine gun that can be readily converted or restored to a machine gun if it is readily convertible or restorable as defined by rule 83-5.

As an example; the SKS firearms can be converted to full auto operation with the simple addition of a metal clip or other simple modifications that take a few minutes.

Another example is the AK 47 series that require the addition of (approximately) 4 to 5 factory parts to convert any AK to full factory auto operation in just a few minutes or just a string to make conversion without the bolt locking delay.

Are these two fire arms considered readily convertible or not in accordance with rule 83-5 ----assuming that you are **not** immediately in possession of all the parts necessary to make a machine gun, (a further extension of rule 5845). In all three cases that can be just some tools.

Regarding rule 921 (a)(3)(A) of the GCA stating that the term "**firearm**" **means** any weapon (including a starter gun) which will or is designed to, or may (readily) be converted to expel a projectile by the action of an explosive (B the frame or receiver of any such weapon (C) muffler or silencer; or (D) any destructive device.

Any piece of steel plumbing pipe of the right diameter can be readily made to fire a standard firearm cartridge or shotgun shell.

Any piece of electrical conduit can be modified (no other parts needed) to use fire crackers to expel a projectile with enough force to penetrate through a rolled up news paper at 15 feet.

In all of the above cases we are talking about a matter of 1 to 20 minutes.

Are the above examples considered machine guns or firearms, by definition of the cited regulations and the term "**readily convertible**" or "**readily restorable**" or not?

Is there some minimum or maximum time factor coupled with possession of **all** the parts that define readily convertible as all of the above are clearly readily convertible as defined by the relevant regulation with reference to rule 83-5.

There would be no point in my going to a hardware store and getting a 3/4 in piece of steel pipe with the appropriate screw on fittings and asking you if it is a firearm even if I include an appropriate size cartridge. The description alone is clear enough for you to define whether that (or any of the above) qualify as **readily convertible** with regard to the relevant statutes. I do not believe that a sample SKS or AK is necessary to answer the relevant questions regarding them, due to the common knowledge and status of all of the above examples and the shared qualities of the samples with regard to the questions.

Tuesday, February 15, 2005 America Online: Dandsales

Kuzma Appendix 87

ER 148

The purpose of my questions is to determine the point at which the term "readily convertible" ABSOLUTELY ceases to apply with respect to any definition of the term firearm or machine gun. This, of course, "assumes" that you are "not in possession" of "all of the parts necessary to make a fully functional firearm or machine gun," from standard gun parts.

Thank you very much for your prompt reply. I was both pleased and impressed as it has taken me as much as 13 months to get a written reply on written questions.

Sincerely,
Don

PS

Your reply states that (The terms "readily convertible" and "readily restored" do not have precisely the same meaning.)

It is completely clear that they do not mean precisely the same thing, but from the definitions included in rule 83-5, the distinction would seem to be irrelevant whether a firearm is restored to a machine gun, or "never having been a machine gun" is converted to a machine gun; as the term readily convertible or restorable applies equally to both.

The terms "readily convertible" and "readily restored" would both have to be relative to some time frame and/or quantitative reference to parts with respect to the fact that both simplicity of the part modification and time to convert or restore the Mark II Sten into a machine gun are obviously the only factors in determining that "all" Mark II Stens are machine guns in any configuration. If not, then both the SKS and the AK series would have to be classified the same, as both fit into the same category as the Mark II Stens; with a slightly increased parts count for modification and slightly increased modification time to equal factory conversion.

There are both SKSs and AKs that were machine guns that can be restored and all of those manufactured as semiauto can be converted with simple modification, although not quite as quickly as the Mark II Sten; the general classification of all the above referenced firearms is the same and the increased time is only a matter of minutes, not exceeding 30 minutes total with a nominal increase in parts from 1 to 4 or 5 if any, depending on the quality of the restoration or conversion desired.

Based on the above examples, readily convertible or restorable would have to fall into a time frame between 1 and 30 minutes, assuming the necessary parts and tools are on hand for any of the examples listed above. That is unless, of course, rule 83-5 "does in fact apply to both AKs and SKSs". That would require the confiscation of all SKSs and AKs along with Mark II Stens under rule 83-5

If rule 83-5 "**does**" apply to AKs and SKSs", then both the necessary parts count could not exceed 0 to 4 or 5 parts and the time frame could not exceed the 30 minutes to be classified as readily convertible or restorable; but only if both AKs and SKSs are "all" classified as machine guns along with the Mark II Sten. If they are so classified as readily convertible or restorable with the Mark II Sten per rule 83-5, then their conversion time and parts count would define the upper limit of the terms "**readily convertible or restorable**"; unless you choose to include additional firearms into the rule 83-5 classification category.

If rule 83-5 only applies to the Mark II Sten then the parts and time for conversion or restoration time would be defined by the Mark II Sten conversion time and parts.

Therefore a time frame and parts count "is established" (readily convertible or restorable) by whatever your classification of the SKS and the AKs is, "with respect to rule 83-5" or by the Mark II Sten

Thank you again and I am looking forward to your reply.

I would hope that your reply will be as prompt as before since I believe that I have more specifically defined the issue by example and regulation.

Thank you again
Don

Tuesday, February 15, 2005 America Online: Dandsales

(150 of 114)

Page 1 of 1

Subj: **Dandsales: definitions**
Date: 2/15/2005 12:30:29 AM Mountain Standard Time
From: EPS@atf.gov
To: Dandsales@aol.com

Thank you for visiting ATF's Website. As stated on our site, generally, we do not answer technical questions via e-mail, but I contacted our Firearms Technology Branch (FTB) and was advised the following:

"Due to the wide range of firearms design, construction, and manufacturing techniques it is not possible for ATF to offer a precise definition of the term "readily convertible" that will apply to all cases. Determinations are made on a case-by-case basis. In order to obtain a determination on a particular item, it is necessary to send a sample to the following address for examination:

Chief, Firearms Technology Branch
Bureau of Alcohol, Tobacco, Firearms and Explosives
Firearms Technology Branch
244 Needy Road
Martinsburg, WV 25401

The term "frame or receiver" is defined in 27 CFR 478.11 and 479.11. see http://www.access.gpo.gov/nara/cfr/waisidx_04/27cfrv2_04.html

The terms "readily convertible" and "readily restored" do not have precisely the same meaning."

If you have any further questions, please call them on 304-260-1700. Regards,

-----Original Message-----

From: Webmaster
Sent: Monday, February 07, 2005 2:20 PM
To: EPS Directorate
Subject: FW: definitions

-----Original Message-----

From: Dandsales@aol.com [<mailto:Dandsales@aol.com>]
Sent: Saturday, February 05, 2005 9:17 AM
To: Webmaster
Subject: definitions

The term "readily convertible" is frequently used.

1. Precisely, how does the Treasury Department define "readily convertible" as in the definition of what constitutes a firearm, 921(3)(A) with respect to readily converted to expel a projectile by the action of an explosive and 921(3)(B), the frame or receiver of any such weapon?
2. Are frame and receiver interchangeable terms or do they refer to a separate parts of the firearm?
3. Are these terms defined the same as the example under rule 83-5 as in "readily restored" which is defined as the simple alteration or elimination of existing component?

Thank you
Don

Tuesday, February 15, 2005 America Online: Dandsales

Subj: **definitions**
Date: 2/5/2005 7:17:08 AM Mountain Standard Time
From: Dandsales
To: webmaster@atf.gov

The term "readily convertible" is frequently used.

1. Precisely, how does the Treasury Department define "readily convertible" as in the definition of what constitutes a firearm, 921(3)(A) with respect to readily converted to expel a projectile by the action of an explosive and 921(3)(B), the frame or receiver of any such weapon?
2. Are frame and receiver interchangeable terms or do they refer to a separate parts of the firearm?
3. Are these terms defined the same as the example under rule 83-5 as in "readily restored" which is defined as the simple alteration or elimination of existing component?

Thank you
Don

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Firearms Technology Criminal Branch
Report of Technical Examination



244 Needy Road
Martinsburg, WV 25401

Phone: 304-616-4300
Fax: 304-616-4301

To:
Special Agent Alexander Tisch
Bureau of Alcohol, Tobacco, Firearms and Explosives
2255 W. Ina Road, #301
Tucson, AZ 85741

Date: MAY 03 2017
UI#: 785130-17-0023
RE: EWER, Ronald
FTCB#: 2017-380-WJS
306154

Date Exhibits Received: 4/25/17 and 4/26/17

Delivered By: FEDEX 7789 7791 8167 and 7789
8491 6339

Type of Examination Requested

Test, Examination, Classification

Exhibits:

- 3. D&D Sales, Model A, UZI-type firearm, .45ACP caliber, serial number DD000005 (suspected machinegun).
- 72. Masterpiece Arms (MPA), Model MPA10T, .45ACP caliber firearm, serial number A6242 (suspected any other weapon).
- 81. Glock, Model 19C, 9mm Luger caliber firearm, serial number HSD552 (suspected any other weapon).

Pertinent Authority:

The Gun Control Act of 1968 (GCA), as amended, defines "firearm" to include:

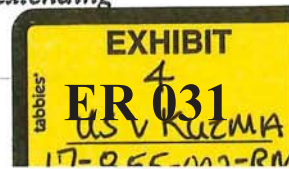
"...any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive...the frame or receiver of any such weapon...[and] ...any firearm muffler or firearm silencer...." (See 18 U.S.C. § 921(a)(3).)

As specified in the GCA, 18 U.S.C. § 921(a)(23), the term "machinegun" has "the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b))."

The GCA, 18 U.S.C. § 921(a)(29), defines "handgun", in part, to mean a firearm which has a short stock and is designed to be held and fired by the use of a single hand.

Under an implementing regulation of the National Firearms Act (NFA), 27 CFR § 479.11, "pistol" is defined as—

... a weapon originally designed, made, and intended to fire a projectile (bullet) from one or more barrels when held in one hand, and having (a) a chamber(s) as an integral part(s) of, or permanently aligned with, the bore(s); and (b) a short stock designed to be gripped by one hand and at an angle to and extending below the line of the bore(s).



S/A Alexander Tisch

785130-17-0023

2017-380-WJS

Page 2

Pertinent Authority (cont.):

The NFA, 26 U.S.C. § 5845(a), defines “firearm” as:

“... (1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in subsection (6) a machinegun; (7) any silencer (as defined in 18 U.S.C. § 921); and (8) a destructive device. The term ‘firearm’ shall not include an antique firearm or any device (other than a machinegun or destructive device) which, although designed as a weapon, the ...[Attorney General] ... finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector’s item and is not likely to be used as a weapon.”

Also, the NFA, 26 U.S.C. § 5845(b), 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. The term shall also include 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 a person.”

The NFA, in 26 U.S.C. § 5845(e), further defines the term “any other weapon” (AOW) as follows:

... any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire. Such term shall not include a pistol or revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition.

Finally, the NFA, § 5842, “Identification of firearms,” states:

“...(a) Identification of firearms other than destructive devices. - Each manufacturer and importer and anyone making a firearm shall identify each firearm, other than a destructive device, manufactured, imported, or made by a serial number which may not be readily removed, obliterated, or altered, the name of the manufacturer, importer, or maker, and such other identification as the...[Attorney General] ...may by regulations prescribe. (b) Firearms without serial number. - Any person who possesses a firearm, other than a destructive device, which does not bear the serial number and other information required by subsection (a) of this section shall identify the firearm with a serial number assigned by the...[Attorney General] ...and any other information the...[latter] ... may by regulations prescribe.”

S/A Alexander Tisch

785130-17-0023
2017-380-WJS
Page 3**Findings:**

Exhibit 3 is a UZI-type firearm, assembled utilizing UZI machinegun parts and a firearm frame or receiver manufactured by Global Machine & Tool, LLC located in Rhome, Texas. I noted the Exhibit is devoid of a bolt, top cover and compatible magazine. I also found the UZI machinegun barrel is chambered for the .45 ACP cartridge. An UZI machinegun feed ramp is assembled to the Exhibit's receiver by welding. I further found an UZI machinegun trigger mechanism has been installed to Exhibit 3.

I observed the following markings on the frame or receiver of Exhibit 3:

- D&D Sales
- Sierra Vista, AZ
- Model :A
- Cal. 9mm
- .22
- .45 ACP
- .41AE
- DD000005[serial number]

In order to perform a field function test on Exhibit 3, I installed a commercially available UZI machinegun bolt assembly, 9mm Luger caliber machinegun barrel and machinegun top cover. I performed a field function test on Exhibit 3 and noted it tested positive for machinegun function. During this function test, I observed the Exhibit has been assembled to utilize a fixed-firing pin UZI machinegun bolt assembly and an UZI-type machinegun trigger mechanism to permit the Exhibit to fire from the "open-bolt" position. I also noted numerous welding marks on the frame or receiver of Exhibit 3.

As part of my examination, and to demonstrate Exhibit 3 incorporates the frame or receiver of a weapon designed to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger; I test fired Exhibit 3 on April 25, 2017, at the ATF test facility, Martinsburg, West Virginia, using commercially available Winchester brand, 9mm Luger caliber ammunition and a compatible magazine from the National Firearms Collection (NFC). With the selector in the determined Automatic position; I inserted a magazine containing one round of ammunition and squeezed the trigger. Exhibit 3 expelled a projectile by the action of an explosive.

With the selector in the Automatic position, I then inserted a magazine containing two rounds of commercially available Winchester brand 9mm Luger ammunition into the Exhibit and squeezed the trigger. The Exhibit fired both rounds of ammunition automatically, without manual reloading, by a single function of the trigger. I repeated this method of test-fire an additional two times; obtaining the same results.

A comparison was made between Exhibit 3 and an Israeli Military Industries (IMI) UZI machinegun obtained from the National Firearms Collection (NFC #520538, serial number 089389) and an IMI Model A semiautomatic UZI rifle NFC#520388, serial number SA21421). This comparison confirmed the frame or receiver of Exhibit 3 is dimensionally compatible with the frame or receiver of the NFC UZI machinegun.

As received, Exhibit 3 is designed and assembled to function as an open-bolt, magazine-fed, fixed firing-pin machinegun. A distinctive feature of semiautomatic UZI-type receivers is the inclusion of a bolt-blocking bar located on the inside right, rear of the receiver. This bolt-blocking bar is welded to the inside of the receiver and prevents the installation of an un-modified UZI machinegun bolt assembly. Through the previously mentioned comparison, I observed Exhibit 3 is devoid of a blocking bar. I observed slightly deformed holes on the right rear of the receiver. These holes are designed for a machinegun bolt blocking bar to be welded in place.

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As received, Exhibit 3 is a weapon designed to shoot automatically, more than one shot without manual reloading, by a single function of the trigger and incorporates the frame or receiver of a machinegun, thus Exhibit 3 is a "machinegun" as defined in 26 U.S.C. § 5845(b).

Exhibit 72 is a Masterpiece Arms, .45 ACP caliber, MAC-type firearm. The frame or receiver of Exhibit 72 was manufactured by Cutting Edge Laser Machining, Inc., located in Covington, Georgia. I noted Exhibit 72 does not incorporate a bolt assembly utilizing a fixed firing-pin. I noted the presence of a forward pistol grip and a barrel shroud attached to Exhibit 72.

During my examination, I performed a field-function check on Exhibit 72 and determined the Exhibit operated as designed; as a semiautomatic weapon. I noted Exhibit 72 incorporates an overall length of approximately 10-1/2 inches and a barrel length of approximately 5-15/16 inches. Prior to obtaining these measurements, I removed the attached barrel shroud.

I measured the overall length of Exhibit 72 in the following manner:

I placed the Exhibit on a flat surface and measured the distance between the extreme ends of the Exhibit measured along a line parallel to the center line of the bore and noted the measurement.

I measured the barrel of Exhibit 72 in the following manner:

I placed the Exhibit on a flat surface and then closed the bolt; inserted a cylindrical scale into the muzzle of the barrel until it touched the bolt face; then noted the measurement and removed the cylindrical scale from the barrel.

I noted the following external markings on the Exhibit:

On the right side of the frame

- Masterpiece Arms
- 45ACP
- Braselton, GA
- A6242 [serial number]

The selector markings

- Safe
- Fire

As a part of my examination, I test-fired Exhibit 72 on April 25, 2017 at the ATF test range, Martinsburg, West Virginia, using commercially available, Remington brand, .45ACP caliber ammunition and a compatible magazine obtained from the NFC. With the selector in the Fire position, I inserted a magazine containing one round of ammunition into the Exhibit, chambered the round of ammunition and squeezed the trigger: As expected, the Exhibit expelled a projectile by the action of an explosive.

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Page 5**Findings:(con)**

I then inserted a magazine containing two rounds of ammunition into the Exhibit, chambered the first round, set the selector to the Fire position, and squeezed the trigger: Exhibit 72 fired both rounds in a semiautomatic manner; that is, one shot for each single pull of the trigger. I repeated this method of test-fire two additional times, obtaining the same results each time.

Due to the attachment of a forward grip and being capable of being concealed on the person with an overall length of less than 26 inches; Exhibit 72 is a weapon no longer exempt from being classified as an "any other weapon". Consequently, as received, Exhibit 72 is classified as an "any other weapon" as defined 26 U.S.C. § 5845(e).

Exhibit 81 is a Glock, Model 19C, 9mm Luger caliber firearm utilizing a frame or receiver made in Austria by Glock GMBH and imported into the United States by Glock Incorporated, located in Smyrna, Georgia. I also noted an inverted Glock Model 19 type magazine attached to the accessory rail of the Exhibit via a Fab Defense "Glock Magazine Frame Picatinny Attachment (GMFG)". This product is a firearm accessory marketed by FAB DEFENSE as an item which "*serves both as comfortable foregrip and a spare magazine*".

During my examination, I performed a field-function check on Exhibit 81 and determined the Exhibit operated as designed; as a semiautomatic weapon. I noted Exhibit 81 incorporates an overall length of approximately 7-3/8 inches and a barrel length of approximately 4 inches.

I measured the overall length of Exhibit 81 in the following manner:

I placed the Exhibit on a flat surface and measured the distance between the extreme ends of the Exhibit measured along a line parallel to the center line of the bore and noted the measurement.

I measured the barrel of Exhibit 81 in the following manner:

I placed the Exhibit on a flat surface and then closed the bolt; inserted a cylindrical scale into the muzzle of the barrel until it touched the bolt face; then noted the measurement and removed the cylindrical scale from the barrel.

As a part of this examination, I noted the following markings on Exhibit 81:

On the forward, underside area of the frame

- **HSD552** [serial number]

On the left side of the frame (grip)

-  [the Glock trademark]

On the right side of the frame

- **MADE IN AUSTRIA**
- **GLOCK, INC., SMYRNA, GA**

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Page 6Findings:(con)On the left side of the slide

-  [the Glock trademark]
- 19C
- AUSTRIA
- 9x19

On the right side of the slide

- HSD552
-  [the Glock trademark]

On the barrel

- HSD552
- 9x19
-  [the Glock trademark] 1 

As a part of my examination, I test-fired Exhibit 81 on April 26, 2017 at the ATF test range, Martinsburg, West Virginia, using commercially available, Winchester brand, 9mm Luger caliber ammunition and a compatible magazine obtained from the NFC. I inserted a magazine containing one round of ammunition into the Exhibit, chambered the round of ammunition and squeezed the trigger: As expected, the Exhibit expelled a projectile by the action of an explosive.

I then inserted a magazine containing two rounds of ammunition into the Exhibit, chambered the first round, and squeezed the trigger: Exhibit 81 fired both rounds in a semiautomatic manner; that is, one shot for each single pull of the trigger. I repeated this method of test-fire two additional times, obtaining the same results each time.

Due to the attachment of a forward grip and being capable of being concealed on the person with an overall length of less than 26 inches; Exhibit 81 is a weapon no longer exempt from being classified as an "any other weapon". Consequently, as received, Exhibit 81 is classified as an "any other weapon" as defined 26 U.S.C. § 5845(e).

Conclusions:

Exhibits 3, 72 and 81, each incorporating the frame or receiver of a firearm of a weapon designed to expel a projectile by the action of an explosive are each a "firearm" as defined in 18 U.S.C. § 921(a)(3)(B).

Exhibit 3 is a weapon which is designed to shoot automatically more than one shot, without manual reloading, by a single function of the trigger and incorporates the frame or receiver of a machinegun, thus Exhibit 3 is a "machinegun" as defined in 26 U.S.C. § 5845(b).

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Page 7**Conclusions:(con)**

Exhibits 72 and 81, each being a weapon capable of being concealed on the person from which a shot can be discharged through the energy of an explosive and no longer designed to be held and fired by the use of a single hand due to the incorporation of a forward grip, and therefore are each not a pistol; are each an "any other weapon" as defined in 26 U.S.C. § 5845(e).

Exhibits 72 and 81, each being an "any other weapon"; are each a "firearm" as defined in 26 U.S.C. § 5845 (a)(5).


Exhibits 3, 72 and 81 are each not marked with NFA maker or manufacturer markings as required by 26 U.S.C. § 5842.

Examined by:



William J. Swift
Firearms Enforcement Officer

Approved by:



Max M. Kingery
Chief, Firearms Technology Criminal Branch

Attachment: 25 pages bearing 25 photos.

This Firearms Technology Criminal Branch report is provided in response to your request for assistance. Please be aware that these documents may constitute "taxpayer return information" that is subject to the strict disclosure limitations provided in 26 U.S.C. § 6103. Exceptions to the non-disclosure provisions that permit the disclosure internally within ATF are set forth in 26 U.S.C. §§ 6103(h)(2)(C) and (o)(1). Any further disclosure of these reports is strictly limited and must be reviewed and approved by the Office of Chief Counsel prior to any information dissemination. Failure to adhere to the disclosure limitations provided in 26 U.S.C. § 6103 could result in civil and/or criminal liability.

Exhibit 3, As Received



Exhibit 3



Exhibit 3, Markings



Exhibit 3, Holes on Right Side to Install Machinegun Blocking Bar

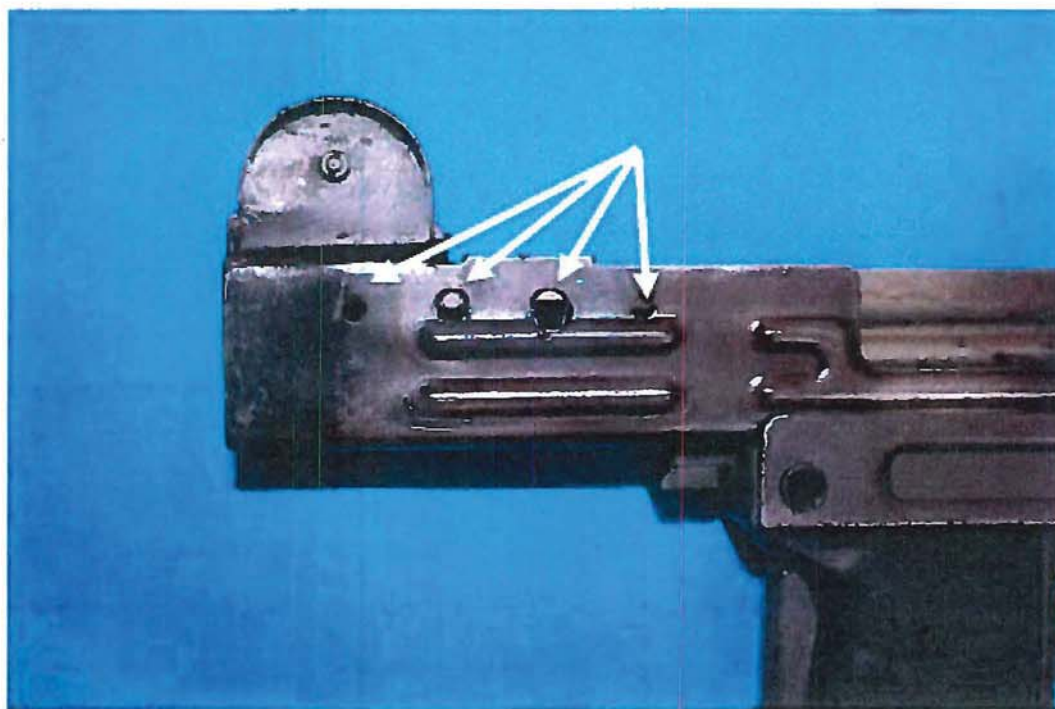


Exhibit 3, Inside View of Holes on Right Side to Install Machinegun Blocking Bar

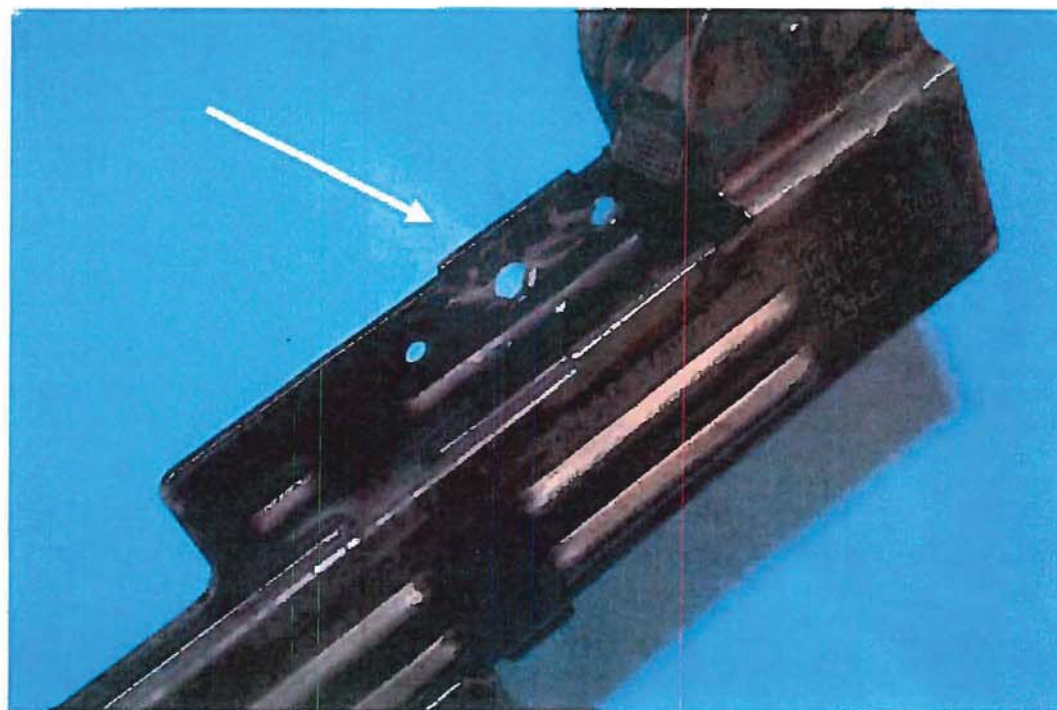


Exhibit 3, UZI Machinegun Feed Ramp

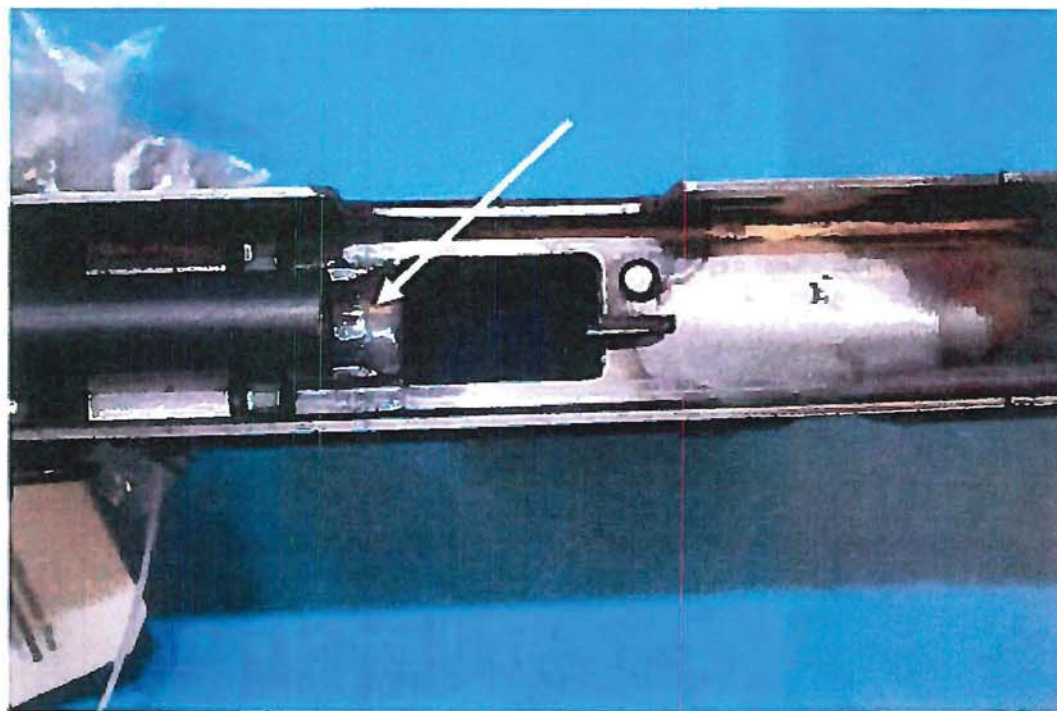


Exhibit 3, With UZI Machinegun Bolt Installed



Exhibit 3, Comparison to NFC UZIs



Exhibit 3, Comparison to NFC UZIs

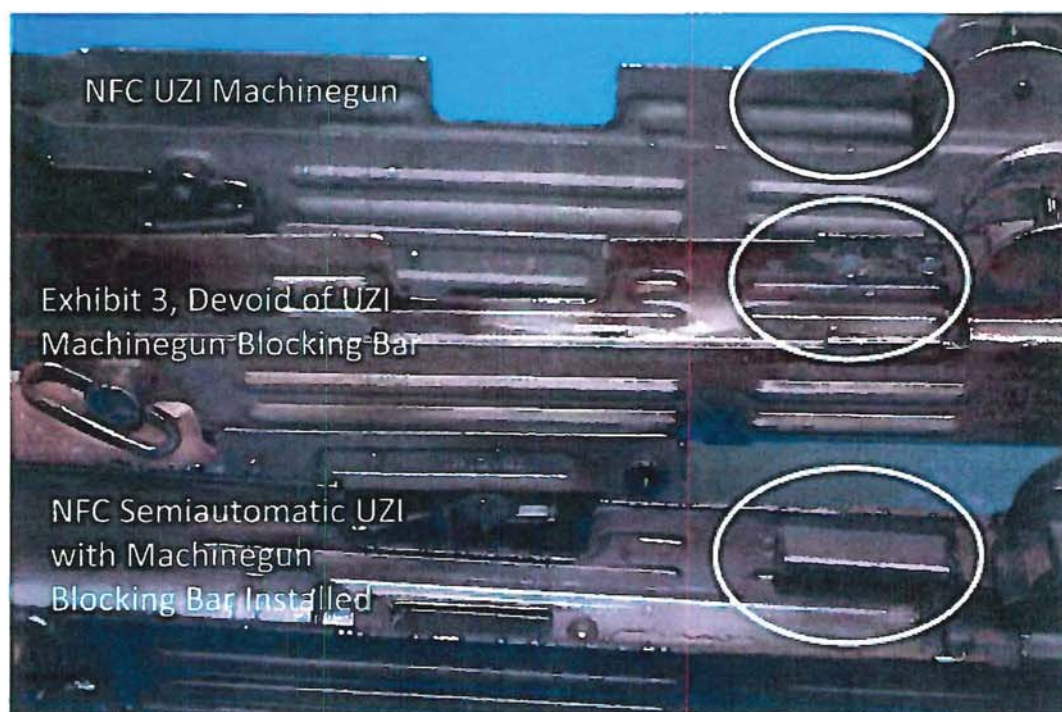


Exhibit 3, Comparison to NFC UZIs



NFC UZI Machinegun Parts Installed to Exhibit 3 Prior to Test Fire

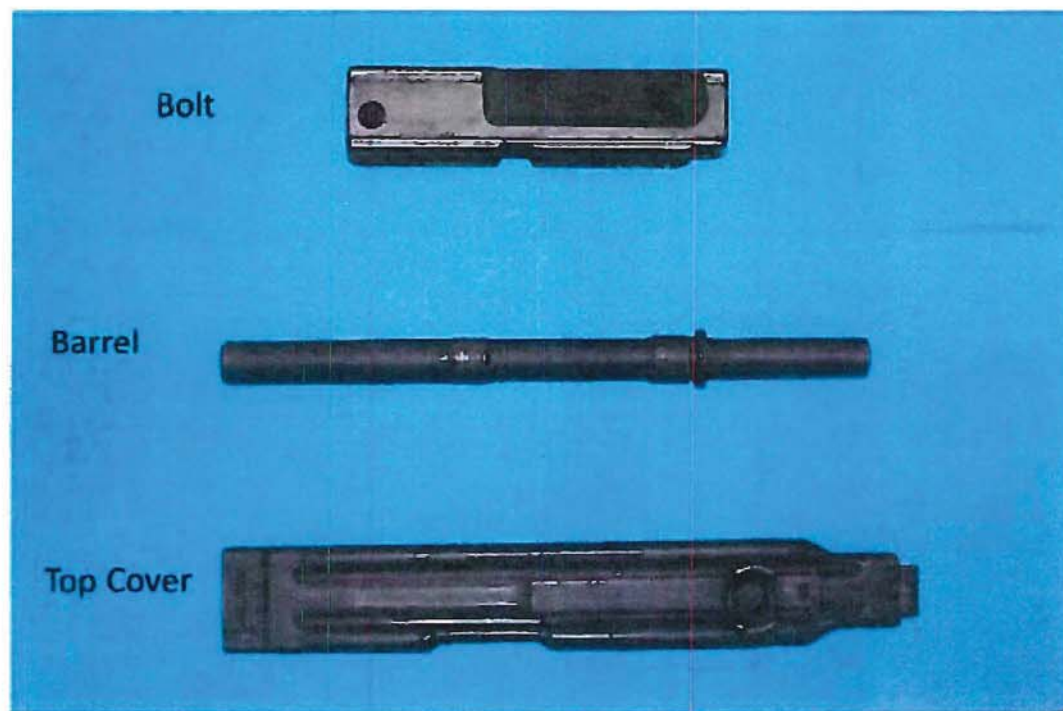




Exhibit 3, Prior to Test Fire, With Selector in the "Automatic" Position



1 Q. And as a result of your investigation, did you develop information
2 that led you to believe that you had identified the source of a number of
3 fully automatic machine guns that you had discovered?

4 A. Yes, I did.

5 Q. And was that -- did that all occur here in the District of Arizona,
6 specifically in the Tucson community?

7 A. Yes, it did.

8 Q. And as a result of the information that you gathered in your
9 investigation, did you apply for a search warrant for a particular
10 residence?

11 A. Yes, I did.

12 Q. And was that search warrant presented to a judge here in the
13 District of Arizona?

14 A. Yes, it was.

15 Q. Was that search warrant granted?

16 A. Yes, the search warrant was granted.

17 Q. Can you tell us what the location of that search warrant -- first,
18 just the physical address of the location that the search warrant
19 provided for?

20 A. It was 5661 South Spencer Drive in Tucson, Arizona.

21 Q. And specifically, what did the search warrant provide for as far as
22 what you were searching for and had established probable cause to
23 search for and to seize in this case?

24 A. The judge authorized us to search for machine guns, machine gun
25 parts, and tools used to manufacture and assemble machine guns.

1 Q. And again, was this all in relation to the investigation that you
2 mentioned you had been conducting with regard to machine guns?

3 A. Yes, it was all related.

4 Q. Do you recall what date that search warrant was executed?

5 A. Yes, March 21st of this year, 2017.

6 Q. And have you developed information with regard to the particular
7 location that you were going to execute the search warrant on?

8 A. Yes, we do scouts of location and try to obtain as much
9 information we can about it before we go there.

10 Q. Did you determine who was living in that residence?

11 A. Yes, we did.

12 Q. Who was that?

13 A. Thomas Kuzma, the gentleman at the defense table wearing the
14 brown shirt.

15 THE GOVERNMENT: May the record reflect the witness identified
16 the defendant?

17 THE COURT: The witness will so reflect.

18 BY MS. WOOLRIDGE:

19 Q. Were you able to learn anything else about the defendant in this
20 case, Mr. Kuzma, specifically with regard to any firearms authorization
21 he might have?

22 A. Yes, we learned that a Federal Firearms Licensee used this
23 property to run a business out of, it was called D&D Sales.

24 Q. And were you able to determine what Mr. Kuzma's role was with
25 regard to D&D Sales?

1 A. Yes, we learned that he had been granted the designee to be
2 basically the acting manager of the business.

3 Q. And I know that you are not an industry operations inspector, and
4 your focus is on criminal investigations, but as we mentioned with the,
5 kind of the intersection or overlap of the two, have you had a chance to
6 become familiar of what that entitles to be a responsible person for a
7 federally licensed firearms dealer?

8 A. Somewhat, on a limited basis.

9 Q. If you can describe, with that caveat, what your limited
10 knowledge is with regard to that role?

11 A. To be a designee, you cannot be prohibited from possessing
12 firearms. Obviously, you would have a big conflict. The person has to
13 operate and understand the rules and the regulations of selling and
14 manufacturing firearms to be an effective FFL and work within the
15 confines of the law.

16 Q. Is that designee then held to the same standard and the same
17 responsibilities as the official licensed person?

18 MR. KAUFMANN: Objection, Your Honor. That calls for a
19 conclusion of law.

20 THE COURT: Sustained.

21 BY MS. WOOLRIDGE:

22 Q. When you executed this search warrant, were you physically
23 present?

24 A. Yes.

25 Q. And how was it that -- if you can just maybe walk us through --

1 how it was that you arrived at this location and subsequently executed
2 the search warrant.

3 A. In the interest of safety, we always try to make a plan to limit our
4 agents exposed to danger. Not knowing anything about the location we
5 are going or what is inside, I chose to make a plan where I called Mr.
6 Kuzma to me, away from the property, a quarter mile away and
7 explained to him what was happening and obtained the key to the
8 property, and my authority to be there with the search warrant, and
9 provide this key to the entry team who goes in and checks to see that
10 everything is safe, that there are no other suspects there and allows us
11 to secure the place we are going to search so we can safely execute the
12 search warrant.

13 Q. So I want to back up and talk a little bit about your interaction
14 with the defendant in this case when you initially arrived at the location.

15 Physically, whereabouts did you make your first contact with him?

16 A. I was at a nearby intersection. I think it was Sunset and
17 Nebraska, if I recall correctly, probably within a quarter mile or so of
18 the residence, but out of the line of sight.

19 Q. Did you ask him to meet you there, or how did that come
20 about?

21 A. I told him I had some questions or some photographs, basically, a
22 ruse to get him to come to me, saying I needed to see him and I had
23 information or parts or something that he needed to see.

24 Q. And why was it that you wanted to have him come meet you
25 away from the residence?

1 A. It is a safer way to execute a search warrant. It reduces the
2 amount of conflict that law enforcement will have with the place and
3 the people they are searching. It is safer for us is the bottom line,
4 remove the person, and then the entry team doesn't have the problem
5 of dealing with somebody who is potentially anti-law enforcement or
6 would pose a risk to us.

7 Q. Is that risk especially of concern when you are dealing with a
8 location that you believe to have firearms?

9 A. Firearms and especially machine guns. That was taken into
10 consideration when drawing the plan.

11 Q. And so did the defendant, in fact, meet with you in this location
12 on Nebraska about a quarter of a mile away from his home?

13 A. Yes, he drove there.

14 Q. Was he alone or did someone else drive him? How did that
15 occur?

16 A. He was alone in a vehicle.

17 Q. Was he driving the vehicle?

18 A. Yes.

19 Q. And when you met with him, if you can tell us what transpired.

20 A. I was standing outside my car and greeted him, and I asked him
21 to come over to us. He exited his vehicle, he used a cane to walk, he
22 came over to my vehicle. And I invited him to sit down inside and
23 explain to him why I was there and what was going to happen today.

24 Q. And did he, in fact, come in your car and talk to you about that?

25 A. Yes, he did.

1 Q. Specifically, what did you explain to him was going to happen?

2 A. I identified myself, that I was an ATF agent and had a search
3 warrant for his home and business. I asked him about who else was
4 there, were there any safety concerns that the other ATF agents would
5 have when they went there, like booby traps or dogs or children, or
6 anything they needed to be aware of before they went and secured this
7 location.

8 We did not learn of anything that was of concern to us.

9 Q. And was anyone else present at the location, other than the
10 defendant himself?

11 A. There was a sergeant with the Pima County Sheriff's Department
12 in a marked police car in uniform there.

13 Q. I am sorry, with regards to individuals inside the residence. Did
14 the defendant tell you about of any other individuals -- other than law
15 enforcement?

16 A. No, he said it was vacant.

17 Q. Did the defendant himself provide you a key to access the
18 residence?

19 A. Yes, he did.

20 Q. And did you then provide that key to the search team?

21 A. Yes, I did.

22 Q. Now, did you, yourself participate in the search?

23 A. After I conducted an interview. I responded to the location, D&D
24 Sales, and I participated in the search as well.

25 Q. You mentioned that you conducted an interview first.

1 Was that of the defendant?

2 A. Yes, in my vehicle.

3 Q. And did you record that interview?

4 A. Yes, I did.

5 Q. I will get into some detail with you in a moment about some
6 particular statements, but did you ask the defendant specifically -- first
7 of all, did you tell him specifically that you were searching his residence
8 with regard to information that you had about machine guns?

9 A. Yes, I did.

10 Q. And did he tell you anything about machine guns at that time?

11 A. He told me we would find a machine gun there.

12 Q. Specifically, do you recall what he said about the machine gun
13 you would find?

14 A. I believe he told us it would be in the garage. I don't recall
15 anything other than that at that time.

16 MS. WOOLRIDGE: Your Honor, may I approach the witness?

17 THE COURT: Ladies and gentlemen, we are growing to take a
18 recess at this time. I will see you back at about 2:15 or so.

19 (Thereupon the jurors exited the courtroom)

20 1:53 p.m.

21 THE COURT: The record will reflect the absence of the jurors,
22 presence of counsel, presence of defendant.

23 I am sorry. Ms. Woolridge, you weren't looking, but I believe
24 Mr. Kuzma does need to take a break, so we want to make sure that
25 we --

1 MS. WOOLRIDGE: Thank you, Your Honor.

2 BY MS. WOOLRIDGE:

3 Q. Sir, I just handed you what has been marked as Government's
4 Exhibit 1, 2 and 3.

5 Can you take a look at those exhibits again briefly for us and let
6 us know if you recognize them.

7 A. These are reports that I authored about this investigation.

8 Q. And, first of all, do you have an independent recollection of this
9 particular investigation?

10 A. Yes.

11 Q. Did you also create some reports to help refresh your recollection
12 as to details of this particular investigation?

13 A. Yes, I did.

14 Q. Might these report at times be helpful to refresh your recollection
15 as to particular details?

16 A. It would be helpful, yes.

17 Q. If you need to refer to any of your reports, you can just let us
18 know that you are referring to one of the reports and just let us know
19 which exhibit number it is?

20 A. I will.

21 Q. And specifically, do either of those reports refresh your
22 recollection as to where the defendant told you that machine gun was
23 located in his home?

24 A. Exhibit 1 under paragraph 5, I state, "Kuzma admitted there was
25 one unregistered machine gun in the garage on the shelf."

1 multiple ways. It can fire from an open bolt or closed bolt, depending
2 on its configuration.

3 Q. Throughout your interview, did the defendant exhibit familiarity
4 with, specifically with regard to Uzis?

5 A. Yes, he did.

6 Q. And were you able to gauge or assess his knowledge?

7 A. Yes.

8 Q. And can you describe to us, from your conversations him, what
9 that knowledge -- what that knowledge appeared to be?

10 A. Much greater than mine.

11 Q. Did he specifically talk to you about his experience welding and
12 essentially gunsmithing Uzi firearms?

13 A. We discussed some welding and manufacturing concepts about
14 the Uzi; yes.

15 Q. And did he express familiarity and experience, both in welding
16 and manufacturing Uzi-type firearms?

17 A. The way he spoke, I was convinced that he knew how to
18 manufacture and assemble Uzi-type firearms, yes.

19 Q. Specifically, did you ask the defendant whether he had -- whether
20 the machine gun that -- whether he had a machine gun that functioned
21 as -- whether he had a machine gun that functioned fully automatic?

22 A. When I asked him if the one in the house that he spoke of would
23 work as a machine gun, his answer was yes.

24 Q. And did you tell him that it was basically a violation of federal
25 firearms law for him to possess that?

1 A. I did tell him this, yes.

2 Q. Did he respond that he knew and understood that?

3 A. Yes, he told me he knew.

4 Q. Did you also inform him that he cannot have any combination of
5 parts that can be assembled into a machine gun?

6 A. Yes, I told the defendant that.

7 Q. And did he say that yes, he knew that as well?

8 A. Correct.

9 Q. Did he explain to you at all or demonstrate any knowledge to you
10 at all of why, in fact, the firearm he was speaking of did, in fact,
11 function as a machine gun?

12 A. I am not sure I understand.

13 Q. Did you talk to him at all about the particular characteristics of
14 the firearm -- of the machine gun he admitted to possessing?

15 Did you discuss with him what made that a machine gun?

16 A. Yes, we did.

17 Q. Can you basically explain what he told you about that.

18 A. My recollection during our first interview about what he said what
19 made an Uzi a machine gun had to do with the blocking bar being in the
20 firearm receiver or out. And during the first interview with him, he was
21 telling me that the machine gun that we were talking about that I was
22 there to look for, that the blocking bar was in -- welded in the receiver,
23 and that he had been meaning to take it out of the receiver.

24 Q. Now, was that factually correct?

25 A. No, it is actually the opposite of that.

1 A. On line 16 of page 20, my question is: "Okay. And -- and when
2 you made it, your instructions to Tim were: Make this so we can test
3 these full auto bolts when they come in?"

4 Q. And his response?

5 A. On line 20, "Yeah."

6 Q. In the interview, did he acknowledge to being the responsible
7 party for the federally licensed firearms dealer?

8 A. Yes, he did.

9 Q. And at the conclusion of the interview, did you go and participate
10 in the search warrant of his residence?

11 A. Yes, I did.

12 Q. Can you describe to us the layout of the residence.

13 A. Sure. The entire property is on, I would say, a large, maybe an
14 acre or more of property in southwest Tucson. It's surrounded by
15 six-foot chain link fence with double electric wire around the top with
16 chain link gates. This is where D&D Sales operates out of, this interior
17 structure.

18 There is a main house which is a standard single family home
19 residence. There is also a single-wide trailer on the property inside that
20 gate as well.

21 We took evidence from all areas inside the fenced area.

22 Q. You mentioned that Mr. Kuzma told you that the specific machine
23 gun, this Uzi machine gun, would be in the garage on a shelf.

24 Did you look in that particular location?

25 A. Yes.

1 Q. First of all, tell us about the garage to this residence.

2 A. The garage is what appeared to me to be filled with welders,
3 grinders, air compressors, and an assortment of parts in boxes
4 scattered around on worktop benches and shelves, and shelves full of
5 parts, tools, things like that.

6 Q. There was some talk in the interview about welding and making
7 specific weapons, in particular this machine gun.

8 Did you see any machines or any tools that could have been used
9 to accomplish that?

10 A. There were two welders that I noted. One was a MIG, M-I-G; and
11 the other was a TIG, T-I-G welder.

12 Q. Do you have any idea what those acronyms stand for?

13 A. M-I-G, I believe is metal inert gas, and T-I-G is tungsten inert
14 gas. That is where my knowledge ends.

15 Q. Do you have any knowledge about whether these welders can be
16 used to accomplish the manufacture or alteration of a weapon into a
17 fully automatic machine gun?

18 A. I don't know if one of these machines alone could be used to do
19 that, but generally, welders are used to join two pieces of metal
20 together.

21 Q. Based on your understanding of the modifications in these
22 particular weapons, would welders be -- could welders be used to
23 accomplish those modifications?

24 A. My understanding, a welder would be used to join a blocking bar
25 to a receiver, but I would assume a cutting tool to disattach two pieces

1 I want to show you what has been marked as Government's
2 Exhibit 5. Do you see the photographs depicted in front of you?

3 A. Yes.

4 Q. Do you recognize what is depicted in that photograph?

5 A. This is the shelf in the garage I was speaking of.

6 Q. And does it appear to be in the -- to reflect the condition of the
7 garage in the defendant's residence on the day you executed the search
8 warrant on March 21st, 2017?

9 A. Yes, it does.

10 Q. To your knowledge, was this picture taken in connection with the
11 execution of that search warrant?

12 A. Yes, it was.

13 MS. WOOLRIDGE: Your Honor, I move to admit and publish
14 Exhibit 5.

15 THE COURT: Any objection?

16 MR. KAUFMANN: No objection, Your Honor.

17 THE COURT: Exhibit 5 is admitted.

18 BY MS. WOOLRIDGE:

19 Q. Sir, if you touch the screen in front of you, it will leave a mark, so
20 you can help point out to us if there is anything in particular you are
21 speaking of. But with regard to the specific firearm that we are
22 discussing in this case, can you describe -- first of all, do you see the
23 general location where that firearm was found?

24 A. I remember finding it on the middle shelf. It is not very visible in
25 this picture.

1 DEFENSE COUNSEL: No objection.

2 THE COURT: Exhibit 6 is admitted.

3 BY MS. WOOLRIDGE:

4 Q. So just to clarify, is that red circle you drew the particular Uzi
5 machine gun that we are referring to?

6 A. Yes.

7 Q. Now, did you, yourself have an opportunity to physically see and
8 handle the this particular machine gun?

9 A. Yes, I have.

10 Q. Did you also secure it and keep it into evidence in this case?

11 A. Yes, it was taken as evidence.

12 Q. Did you bring it with you to court here today?

13 A. Yes, I did.

14 Q. And did you ensure, before we take a look at it, did you ensure
15 with the United States Marshal Service before bringing it into the
16 courtroom, that it was, in fact, safe for you to bring into the courtroom
17 for the purpose of today's trial?

18 A. Yes.

19 MS. WOOLRIDGE: May I approach the witness, Your Honor?

20 THE COURT: Yes.

21 MS. WOOLRIDGE: We will put an exhibit sticker on.

22 THE COURT: What number is this?

23 MS. WOOLRIDGE: Exhibit 12.

24 THE COURT: Thank you.

25 BY MS. WOOLRIDGE:

1 some holes on -- call this the passenger side of the firearm, on the right
2 side of the firearm. And there appears to be some melted metal around
3 one of the holes right here that I am pointing at, as well as a little bit of
4 the same in the next hole further down. It is sort of hard to see, which
5 would tell me this has been altered.

6 Q. And you also mentioned in connection with the parts that you
7 mentioned that were missing here, did you do some further searching
8 throughout this garage and the defendant's home?

9 A. Yes, we searched the entire property.

10 Q. Were the parts that were missing from this firearm, were any
11 parts that matched those parts found in the defendant's property?

12 A. We did see the parts that would go into this firearm at the
13 defendant's property.

14 Q. Do you remember where on the property they were located?

15 A. There were parts all over the house, even in the other house, in
16 the single-wide mobile home. They were in the garage, in the front
17 room. That is where I saw most of the Uzi parts. There were parts to
18 other firearms in other places. We saw other Uzi receivers, this portion
19 here, in the mobile home as well.

20 Q. So based on the parts that you saw throughout the garage and
21 the home, would there have been sufficient parts to allow this firearm
22 to be fully assembled so it could fire?

23 MR. KAUFMANN: Objection, Your Honor. There is no foundation
24 for him to give that opinion.

25 THE COURT: Overruled; if you know.

1 conducted the search?

2 A. No.

3 Q. Did you notice any other individuals that had access to the garage
4 or the home or anywhere else on the property at the time of your
5 search?

6 A. No.

7 Q. So after the search, did you take this firearm out to the
8 defendant?

9 A. Yes, I did.

10 Q. And what happened when you did that? What did you do?

11 A. I took this firearm and another Uzi that we found out to
12 Mr. Kuzma.

13 Q. The other Uzi that you found, was that a machine gun?

14 A. No, it was not; it was semi-automatic.

15 Q. Was it otherwise -- other than the fact it was semi-automatic, was
16 it otherwise similar to this machine gun?

17 A. It was similar, yes.

18 Q. And what did you do with the machine gun and the
19 semi-automatic Uzi when you went back to speak with the defendant?

20 A. These were firearms I found on a shelf in the garage, and I
21 wanted him to clarify if this was the firearm he was speaking of during
22 our interview. So I took this firearm and another with me, another one
23 from that shelf, to ask him which one he was speaking about.

24 Q. What was the purpose of bringing the machine gun and a
25 semi-automatic Uzi?

1 A. To ask him to explain the differences to me, to point out things
2 maybe I didn't see or know. His knowledge was much better than mine
3 about the way these are configured.

4 Q. And what did he say to you or what did he do with regard to
5 these two firearms?

6 A. He pointed at this firearm and told me this was the firearm that
7 he was talking about, that it was a machine gun.

8 He pointed to the other firearm and said that was
9 semi-automatic.

10 Q. And was he able to quickly recognize and make that distinction,
11 or did that take some amount of time?

12 A. I don't recall a delay. It was very quick.

13 Q. Did you ask him to provide you some further explanation of why
14 the gun you have here, Exhibit 12, was a machine gun and why the
15 semi-automatic firearm was not?

16 A. Yes, I asked him what the difference was between the two,
17 because they were similar looking.

18 He pointed to this area inside this firearm and said the blocking
19 bar was gone. That was one of the characteristics that made it a
20 machine gun. This is the same area with the melted metal that I saw
21 next to the holes. The other firearm had had a piece of metal welded
22 to the side of the frame, unlike this receiver had.

23 Q. Agent Tisch, you mentioned before the search and before you
24 actually found this machine gun, when you were speaking with the
25 defendant, when he was talking to you about that machine gun, and

1 you asked -- you were asking him about what made it a machine gun,
2 he was telling you to the effect that the blocking bar was in?

3 A. Correct.

4 Q. When you actually took this machine gun to him and asked to
5 explain what made it a machine gun, did he correctly explain that the
6 blocking bar was out?

7 A. Yes. He said the blocking bar is out, cut out, which would have
8 been right here. And that is one of the characteristics of this firearm
9 that makes it a machine gun.

10 Q. And when you actually showed him the firearm, did the defendant
11 demonstrate that he understood that what made it -- that a
12 characteristic of the of it being a machine gun was that the blocking bar
13 was out?

14 A. Right. Besides identifying this as the firearm he spoke about as
15 machine gun, he pointed out that the blocking bar was gone, which is
16 what made it a machine gun, and the other firearm still had this bar
17 welded in that only allowed it to function semi-automatic, or one bullet
18 per trigger press.

19 Q. Did you correct the defendant on his earlier misstatement that
20 the blocking bar being there is what made it a machine gun, or was
21 that something he corrected on his own when he examined the
22 machine gun, Exhibit 12?

23 A. I don't think we ever addressed the first interview, versus me
24 showing him the firearm that he was speaking of. He never corrected
25 himself, but pointing out what he meant was more clear to me which

1 firearm he was describing as a machine gun.

2 Q. And specifically, just to clarify, was that firearm he was describing
3 as a machine gun what we are seeing here today, Exhibit 12?

4 A. Yes. This is the firearm I brought out to him from the garage on
5 the shelf. This is the firearm he told me was the machine gun, not the
6 other semi-automatic Uzi with the blocking bar welded in that I showed
7 him at the same time. That other firearm is depicted in that earlier
8 picture that I had circled with the three firearms in the box.

9 Q. Did you speak with the defendant on some subsequent
10 occasions?

11 A. Yes, I did.

12 Q. I am going to show you what has been marked -- if I can
13 approach the witness?

14 THE COURT: Yes.

15 MS. WOOLRIDGE: -- as Defense Exhibit 118.

16 BY MS. WOOLRIDGE:

17 Q. First, if you could take a quick look at Exhibit 118 and let us know
18 if you recognize it.

19 A. This is a transcribed copy of a phone call that I record with Mr.
20 Kuzma the next day, March 22nd.

21 Q. And specifically, was that phone call in relation to your
22 investigation in this case?

23 A. Yes.

24 Q. And did you have an opportunity to listen to the recording of that
25 phone call?

1 A. Yes, I have listened to the recording since making it.

2 Q. Specifically, do you talk in this recording? Did you talk to the
3 defendant in this case about the characteristics of fully automatic Uzi
4 machine guns versus semi-automatic Uzis?

5 A. Yes, I believe we spoke about that.

6 Q. I am going to refer you, actually, to the beginning on the bottom
7 of page 25 of this transcript -- first of all, does this transcript happen to
8 be a transcription of the recording of that interview?

9 A. Yes, it does.

10 Q. And specifically, did Mr. Kuzma talk you about how to convert
11 semi-automatic Uzis into fully automatic machine guns?

12 A. On page 25.

13 Q. Beginning on the bottom of page 25 and continuing on to page
14 26?

15 A. Yes. Mr. Kuzma started talking about how firearms are converted
16 to fully automatic machine guns.

17 Q. And did he specifically say that through that conversion they will
18 fire full auto?

19 A. Going to the next page on page 26, may I quote?

20 Q. You may.

21 A. Starting at line 1, Mr. Kuzma saying all -- "Yeah, all ya have to do
22 is put a machine gun pistol grip on them and they fire full auto."
23 "Okay." And in parenthesis the word, "chuckling," "not well."

24 MR. KAUFMANN: Excuse me, Your Honor. That is taken out of
25 context.

1 THE COURT: He says, "Don't go weld with any machine guns."

2 "Don't try to," blank, "refrain from welding any machine gun
3 together." Answer: "Well, yeah, yeah, that ain't happening."

4 MR. KAUFMANN: If you look right after he tells him not to weld,
5 they are talking about the testing the machine gun.

6 THE COURT: In any event, we are getting off track. What I was
7 initially saying is that, Mr. Kaufmann, I am going to allow you to ask
8 about information they obtained from Mr. Sink and any instructions they
9 may have given Mr. Sink.

10 There will be no reference to any agreement, so I do not see any
11 evidence that the agreement -- that there was an agreement or that
12 Mr. Sink gave information in exchange for an agreement with the
13 government.

14 MR. KAUFMANN: You read page 18?

15 Starting at line 22. "You know, you might be able to" --

16 THE COURT: Thank you.

17 Again that is not -- I don't see any agreement there. So the
18 ruling is -- like I said, I will allow the parties to ask questions regarding
19 that, just nothing to do with reference to an agreement.

20 MR. KAUFMANN: And I ask them if ATF ever offered him money
21 or to pay him, which they are clearly offering him.

22 And again, I am renewing my request on the record again for the
23 agreement to be produced. I think it is a reversible error not to
24 produce that agreement.

25 THE COURT: Well, Judge Rateau looked at it, but I will look at it

1 A. Yes.

2 Q. And specifically if I can refer you to page 10 of Exhibit 117.

3 A. Go ahead.

4 Q. Beginning on line five, can you just give us the exact wording of
5 the question that you asked Mr. Kuzma?

6 A. My question starts, "Tim told us that he put one together for you
7 so you could test the bolts."

8 Q. What was the defendant's answer?

9 A. Mr. Kuzma answers, "Yeah."

10 Q. Just backing up a few lines.

11 Did you qualify that you were specifically talking about machine
12 guns.

13 A. Yes, I do.

14 Q. And then did you ask him, "Do you have one there like that?"

15 A. Yes, I did.

16 Q. What was his response?

17 A. Mr. Kuzma's answer is, "Yes, we have one with a -- a blocking bar
18 still in it and I was going to tell him to take it out."

19 Q. You mentioned in this response he said, "I was going to tell him."
20 Was it your understanding this was in reference back to Tim or Mr.
21 Sink?

22 A. That is what I thought, yes.

23 Q. Did he ever say in this interview, did the defendant ever say that
24 he did tell Mr. Sink to make any conversion so that the machine gun
25 would no longer function as a machine gun?

1 Q. Did you specifically tell him we are only here for machine guns?

2 A. Yes.

3 Q. And looking on the bottom of page 19, what was his response to
4 that?

5 A. Starting on line 16 of page 19, I say "We're only here for machine
6 guns."

7 Q. And his response?

8 A. The answer starting at line 18, "Okay. But so all you got to do is
9 look and see and, yes, all potentially have that one with the bar, that
10 the bar was put in just specifically to test a machine gun bar.

11 Q. And specifically in that answer, does the defendant say, "I'll
12 potentially have that one"?

13 A. Yes.

14 Q. And do you continue to question him about that?

15 A. Yes. On line one of page 20, I say, "So that one, as it is right
16 now, as it's set up will function as a machine gun."

17 Mr. Kuzma answers, "Yes, it will."

18 Q. And is that when you asked him to tell you where it was in the
19 house?

20 A. Yes.

21 Mr. Kuzma says, "As it sits --" I'm sorry.

22 I say, "As it sits, tell me where that gun is inside the house."

23 The answer from Mr. Kuzma, "It's sitting on a shelf in the
24 garage."

25 Q. And did you clarify where that was?

1 remainder of the page and onto the next page.

2 A. Yes.

3 Q. So any question in your mind that you guys were talking about
4 the same firearm?

5 A. We were talking about the same firearm, yes.

6 Q. Now, do you specifically -- do you specifically again then also
7 clarify, and I'm on the top of page 37, that that's the one you're talking
8 about in the garage on the shelf?

9 A. Yes.

10 Q. And his response?

11 A. "Yeah."

12 Q. And you asked him?

13 A. After he says, "Yeah," I asked, "That's the one with the bar
14 installed again," which is this backwards of the concept.

15 His answer, "Yeah, I was going to take -- while chuckling -- that
16 out, yeah."

17 Q. And again he says "I was"?

18 A. "Yeah, I was going to take that out --" excuse me.

19 "I was gonna take that out."

20 Q. What was his demeanor like during that exchange?

21 A. He was laughing.

22 Q. At several times during this interview, does Mr. -- did Mr. Kuzma
23 acknowledge that he was the responsible party for what was going on
24 at the FFL or the dealer?

25 A. Yes, he did.

1 Q. And would you read for the jury lines 18 to 25.

2 MS. WOOLRIDGE: Your Honor, same objection.

3 May we approach?

4 THE COURT: No. Overruled. You may continue.

5 MS. WOOLRIDGE: Your Honor, he was not present for and I
6 understand Mr. Kaufmann has subpoenaed --

7 THE COURT: I overruled the objection, Ms. Woolridge.

8 THE WITNESS: Read from 18 on?

9 MR. KAUFMANN: Yes.

10 BY MR. KAUFMANN:

11 Q. Hold on for just a second. This interview is being conducted by
12 whom?

13 A. That's what I was looking at. Special Agent Christopher Bort,
14 B-O-R-T, and Special Agent Paul Parkinson.

15 Q. And who are they?

16 A. They are ATF agents.

17 Q. And this was an interview taken in the course of your
18 investigation of this case?

19 A. This was taken as the initiating point of the case, yes.

20 Q. It wasn't initiated before when you received information about a
21 machine gun being pawned?

22 A. I think that's what their interview was about.

23 Q. So it was initiated before, but this was one of the first steps
24 taken?

25 A. I believe so, yes. They would be able to answer better.

1 Bort said?

2 BY MR. KAUFMANN:

3 Q. Bort said to Sink, don't tell Kuzma anything about this
4 interview?

5 A. He doesn't use those words. I could read it to you.

6 Q. Sure.

7 A. Starting on line 19, Agent Bort says, "Okay, well, even if he
8 knows it, it may not be something that he can do per -- I mean,
9 because if he is put on there as a responsible party, that might be -- so
10 I would just ask that you don't say anything right now."

11 Q. And the next three lines?

12 A. There's a blank where Tim Sink would reply, and Agent Bort
13 continues, "And I'm -- like I said, I'm willing to just kind of work
14 through and make sure that everything is on the up and up."

15 Q. And the answer?

16 A. Mr. Sink says, "Awesome."

17 Q. So if you know what he means, let me ask you if you know what
18 he means when he says, "I just ask you don't say anything right now."

19 A. Yes.

20 Q. What does he mean?

21 Let me ask you. Does he mean don't tell anything to Mr. Kuzma
22 about what was going on?

23 A. I don't know.

24 He could answer. I don't know what he meant by his words.

25 Q. So let's go to the next page, page 20.

1 Does ATF tell Mr. Sink not to do anything, not to go back, not to
2 weld, not to weld the part that's at issue here?

3 Starting on line 12.

4 A. Line 12, Special Agent Bort asks, "Rather than like doing a search
5 warrant and blowing up your house and things like that, you know, I
6 think what he is doing is okay, but there's some things and I'm afraid
7 for you if he's telling you to weld stuff back together, then that's putting
8 you at risk."

9 Q. So why would welding stuff put him at risk, if you know?

10 A. I don't know. I wasn't present for this.

11 Q. Who is -- excuse me. Go ahead, I'm sorry. I didn't mean to cut
12 you off.

13 A. That was my answer.

14 Q. Who is the "he" that he is referring to that is putting Mr. Sink at
15 risk?

16 A. Mr. Kuzma.

17 Q. And then continue.

18 A. Mr. Sink answers, "Right."

19 Special Agent Bort says, "So, um, I don't know, something burnt
20 your eyes welding, or something you can't weld for a while, and
21 whatever, and we're going to go do our homework and make sure that
22 the license is up to -- " there's a fraction of a word, legit I think it would
23 be, it's L-E-G-I, "you know, standard, and then we'll -- we'll go from
24 there."

25 Continue?

1 Q. Hold on for just a second.

2 So when he's telling him, "something burnt your eyes welding, or
3 something you can't weld for a while and whatever," what's your
4 understanding of what he's saying?

5 MS. WOOLRIDGE: Again, objection. If he knows.

6 MR. KAUFMANN: If you know. I'm asking what his
7 understanding is.

8 THE WITNESS: Without being there, it's hard to say. I know
9 there had been a fire previous to this. He may be referring to that. I
10 don't know.

11 BY MR. KAUFMANN:

12 Q. He doesn't -- this doesn't tell him, don't be welding, and if you're
13 asked to weld tell him that something is burnt in your eyes or that you
14 can't weld for a while or whatever. Isn't that the logical explanation of
15 don't weld?

16 MS. WOOLRIDGE: Your Honor, same objection.

17 THE COURT: If you know.

18 MR. KAUFMANN: If you know.

19 THE WITNESS: I'm sorry, I don't. Agent Bort would know.

20 BY MR. KAUFMANN:

21 Q. So you don't have any explanation of why Agent Bort is telling
22 him something burnt your eyes welding or something that you can't
23 weld for a while. You have no idea what he's talking about to Mr.
24 Sink?

25 A. It's hard to understand exactly. If we could play the recording, it

1 would maybe be better, but reading it it doesn't make very much sense
2 to me.

3 Q. It doesn't make sense that he's telling -- after he tells Mr.
4 Kuzma -- excuse me, Mr. Sink, don't tell Mr. Kuzma what's going on,
5 and then he tells him don't do any more welding for Mr. Sink?

6 MS. WOOLRIDGE: I believe this has been asked and answered. I
7 believe the agent doesn't know.

8 THE COURT: Sustained.

9 BY MR. KAUFMANN:

10 Q. Before you go over to Mr. Kuzma's residence with your search
11 warrant, what is your understanding of who makes Exhibit 12?

12 A. Who makes that firearm?

13 Q. Yes.

14 A. I didn't know about the existence or the specifics of that firearm
15 until we found it. Is that what you're asking, the actual manufacturer?

16 Q. No. Who put it together?

17 A. Mr. Sink and Mr. Kuzma is what I believed.

18 Q. Did anybody ever tell you that Mr. Kuzma put it together?

19 A. In a black and white definitive he did this?

20 Q. Yes.

21 A. No, I don't think so.

22 Q. And before you go over there, what is your understanding of why
23 it's put together?

24 A. The only information I had was from Mr. Sink, and it was my
25 understanding it was used to test full auto or machine gun bolts for

1 Uzis.

2 Q. So in what condition was Exhibit 12 before the test occurs?

3 A. It was as we see it here.

4 Q. And how do you know that?

5 A. Because I saw it.

6 Q. When did the test occur?

7 A. You're talking about the ATF test?

8 Q. No.

9 A. Which test?

10 Q. The test of the bolts.

11 A. Oh, I don't know. When I encountered the firearm it was in that
12 condition.

13 Q. So what condition was it when Mr. Kuzma told Mr. Sink to do
14 something with Exhibit 12?

15 A. I don't know.

16 Q. Whose fingerprints are on Exhibit 12?

17 A. Mine.

18 Q. Mr. Kuzma's?

19 A. It wasn't fingerprinted, sir.

20 Q. Any reason that it wasn't?

21 A. A confession was made by Mr. Kuzma that it was his, it was at his
22 home. It wasn't complicated to me.

23 Q. So Mr. Kuzma -- excuse, me, Mr. Sink, he told you what he did for
24 Mr. Kuzma?

25 A. That's correct.

1 Q. What did he tell you he did for Mr. Kuzma?

2 A. He said he welded things for him, assisted with the business with
3 categorized it kind of as odds and ends jobs.

4 Q. What did he tell you that Mr. Kuzma did?

5 A. I don't recall if he clarified what Mr. Kuzma did.

6 Q. One second, Your Honor.

7 Would you take a look at Exhibit 117, page 22.

8 A. 22, you said?

9 Q. 22.

10 A. Yes, sir.

11 Q. So why don't you review lines 8 through 11.

12 A. My statement is --

13 MS. WOOLRIDGE: First of all, I'm sorry, I thought he was being
14 asked to read to himself. Your Honor, I object this is hearsay and
15 covered by the court's order dated March 18th.

16 THE COURT: May I see counsel at sidebar.

17 (Thereupon, counsel approached the bench and conferred with
18 the Court as follows:)

19 THE COURT: What is your next question?

20 MR. KAUFMANN: It's going to say that all he does is log work.

21 Ms. Woolridge has asked so many questions on hearsay about Mr. Sink
22 that she's opened the door so wide that a diesel train could go through
23 it.

24 THE COURT: You have to follow the rules of evidence. If you
25 don't object to her not following the rules, then I can't rule on them,

1 intended to stop operating his business soon due to his health.

2 Q. Did he ever tell you that he was in extreme pain?

3 A. I don't recall.

4 Q. Why don't you take a look at -- do you have Exhibit 117 up there
5 with you?

6 MS. WOOLRIDGE: May we approach for a moment?

7 THE COURT: Yes.

8 (Thereupon, counsel approached the bench and conferred with
9 the Court as follows:)

10 MS. WOOLRIDGE: I understand there could be certainly some
11 relevance as to his physical condition of whether he could I guess
12 possess the firearm. The issue is when we start to talk about extreme
13 pain and declining health, I think we're now getting to the point of
14 trying to invoke sympathy. I think the questions can be asked to this
15 witness: If you ever witnessed anything that would prevent him from
16 being able to handle or pick up, or do anything with a firearm. I think
17 that's certainly permissible.

18 But I think now when we start talking about pain and declining
19 health and things of that -- and what he might do in the future, I think
20 at this point that's getting into sympathy, which obviously the jury is
21 not to consider. So I think that needs to be narrowly tailored, these
22 questions.

23 THE COURT: Mr. Kaufmann.

24 MR. KAUFMANN: It goes to his ability to answer the questions
25 and his mental condition at the time, that is he was in so much pain

1 that he wasn't knowing exactly what was going on.

2 THE COURT: I thought that's where he was going with it.
3 Certainly if you start going into irrelevant -- things that aren't relevant,
4 then you can address it at that time.

5 MS. WOOLRIDGE: I did not anticipate that road. I think the
6 questions again can be focused to whether he was able to answer the
7 questions and carry on the conversation.

8 THE COURT: I thought that's where you were going.

9 Thank you.

10 (Thereupon, counsel returned to their trial tables, afterwhich the
11 proceedings resumed as follows:)

12 THE COURT: You may continue, Mr. Kaufmann.

13 BY MR. KAUFMANN:

14 Q. Do you have 117 up there?

15 A. I'm sorry?

16 Q. Do you have 117 up there?

17 A. Yes, I do.

18 Q. So take a look at page 44.

19 A. Yes, I have reviewed it.

20 Q. Does he tell you that he is in terrific pain all the time?

21 A. He says, "I've got so much pain all the time."

22 Q. So how many times did you talk to him on the 21st?

23 A. The first interview in my car, and then when I brought the two
24 firearms out, the machine gun and a semi-auto Uzi for him to compare.
25 And then at the very end I probably said goodbye, or that the property

1 was his again and he could continue about his day as he pleased.

2 Q. And what time did you guys arrive?

3 A. It was in the morning. I don't recall exactly. It was during the
4 interview, so that started 9:56 hours, so that's very close to when the
5 search team was going up to the house.

6 Q. So probably you got there and gave him a call, 9:15, 9:30?

7 A. Maybe not that early, probably 9:40. It didn't take him long to
8 come down the street.

9 Q. When did you leave?

10 A. I don't recall, hours later though, in the afternoon.

11 Q. We only have one recorded conversation from the 21st. Is that
12 your understanding?

13 A. Yes. There was only one recording made that day.

14 Q. Where was the recording of where he made all of these
15 admissions about this being a machine gun?

16 A. That's 117.

17 Q. So when you brought these two machine guns or these two
18 things out that you testified and you said that's a machine gun, where
19 is that recorded?

20 A. I didn't have the recorder running then.

21 Q. Are there times when you're directed to run the recorder and
22 times when you're not directed to run the recorder?

23 A. Yes.

24 Q. And you're directed to not run the recorder when you're asking a
25 suspect questions?

1 A. An out-of-custody suspect, there is no requirement to record from
2 our policy.

3 Q. So why didn't you record the second conversation?

4 A. I had gloves on, I was carrying two firearms, I didn't really have a
5 chance to activate it.

6 Q. You couldn't put them down? How long would it have taken you
7 to put it down and activated the recorder?

8 A. Probably less than 30 seconds, I think.

9 Q. So during that conversation, didn't he tell you that neither of
10 those were machine guns and that Exhibit 12 was a semiautomatic
11 receiver with the blocking bar out?

12 A. What I recall was him identifying that firearm as the machine gun
13 we had spoken about in the first interview, and the other firearm that I
14 was holding as a semiautomatic firearm.

15 Q. So Exhibit 12 here, was it able to fire automatically?

16 A. At what time?

17 Q. At the time that you seized it.

18 A. No.

19 Q. Did Mr. Kuzma have it in his physical possession? Did he have it
20 on him?

21 A. No, it was on the shelf in the garage.

22 Q. Thrown into a box?

23 A. I'm sorry.

24 Q. Thrown into a box?

25 A. It was in a box. I don't know if it was thrown there.

1 Q. On a shelf?

2 A. It was in a box on a shelf.

3 Q. Who put it in the box? Who put it on the shelf?

4 A. That's unknown.

5 Q. So as far as you know this could not shoot automatically, this
6 Exhibit 12?

7 A. At the time I found it, I don't think it would shoot automatically. I
8 don't think it would shoot at all.

9 Q. Did it ever shoot automatically?

10 A. I don't know.

11 Q. Well, one of the things that's a definition of a machine gun, sir, is
12 it not, that it's something that is readily restorable?

13 A. Yes.

14 Q. So in order to be restorable, you have to restore it to its condition
15 where it shot automatically?

16 A. You're asking me if that is what the definition is?

17 Q. Yes.

18 A. I believe so. I don't have it memorized word for word, but that
19 sounds correct, yes.

20 Q. When was this machine ever shot automatically?

21 A. The only time I know of is when it went to the lab.

22 Q. What lab?

23 A. The ATF lab.

24 Q. So the definition of readily restorable and weapon that shoots
25 automatically doesn't apply to this instrument?

- 1 A. I think it does apply, yes.
- 2 Q. So this instrument shoots automatically the way it is?
- 3 A. As you're holding it, no.
- 4 Q. But this is how you found it?
- 5 A. Yes.
- 6 Q. So it couldn't shoot automatically when you found it?
- 7 A. When I found it, right.
- 8 Q. And you won't have any idea whether it ever shot automatically?
- 9 A. I reviewed a report that said it did shoot automatically.
- 10 Q. When?
- 11 A. After we took it.
- 12 Q. I'm talking about before.
- 13 A. I don't know if it ever shot automatically. I never saw it before
- 14 that day.
- 15 Q. I want to know if the definition readily restorable applies to this
- 16 gun, and when it was able to shoot automatically prior to the time that
- 17 you seized it.
- 18 A. I don't know before I got it, but I know it was restored to shoot
- 19 fully automatic.
- 20 Q. But to be readily restorable, it had to be able to shoot
- 21 automatically at some prior time?
- 22 A. Is that the question to me? Did it meet the definition at a
- 23 previous date?
- 24 Q. Are you familiar with 27 CFR 197.11 ATF Ruling 83.5?
- 25 A. No.

1 piece of metal, a small rail, and it limits what kind of parts can go inside
2 this receiver, and when I say it's slotted, it's sort of like the positive
3 image of this little notch here. It's about that size and shape, if you can
4 see, which is the buffer that has come out of this piece -- this exhibit.

5 If you can imagine, when this is put in, it slides right over that
6 bar, and if you rotate this or turn it to another direction it wouldn't be
7 able to go in and this firearm wouldn't accept this piece. So that
8 blocking bar, it goes on the passenger side of the gun, the right side of
9 the gun, and it's welded to the upper portion of the inside channel and
10 it limits what kind of parts can be put on.

11 Q. Doesn't it limit the gun from shooting automatically and that's
12 why it's called a blocking bar?

13 A. I think that was the original design is to prevent full auto parts,
14 and I know there's been alterations since that design, so I think that
15 was the original idea is that it wouldn't allow those parts that made it a
16 machine gun to fit a firearm that had the blocking bar. But I know
17 there's been changes to bolts that are then slotted to fit over a blocking
18 bar. The expert, the next witness will know more about it than I do.

19 Q. Was a blocking bar ever put in Exhibit 12?

20 A. I don't know. When I found it, it was like this without the bar.

21 Q. Was the blocking bar ever taken out of Exhibit 12, do you know?

22 A. Mr. Sink's statements told me that it was removed, but I never
23 saw it. I only saw it in the condition that you see it in today.

24 Q. You indicated on direct testimony that a manufacturer needs an
25 SOT license in order to possess parts, machine gun parts?

1 So you know in this case he's the one that whatever alterations
2 were made were made by Mr. Sink; is that correct?

3 A. I couldn't testify that I know who made the alterations. I just
4 know that Mr. Sink told us about the alterations.

5 Q. But he admitted that he made alterations?

6 A. He admitted he made alterations, yes.

7 Q. Mr. Sink also admitted that he stole parts from D&D Sales?

8 MS. WOOLRIDGE: Objection, relevance.

9 THE COURT: Overruled. You may answer if you know.

10 THE WITNESS: Yes, Mr. Sink told us that he took things from the
11 business, yes.

12 BY MR. KAUFMANN:

13 Q. And that him and this third guy, Mr. Ewer, put them together and
14 sold them?

15 A. Yes, the other person is Ronald Ewer and that was part of the
16 story, yes.

17 Q. So you found no evidence that Mr. Kuzma was selling machine
18 guns or putting machine guns together out the back door?

19 A. I found evidence that machine guns were illegally possessed at
20 his home.

21 Q. The question was: That he was illegally selling machine guns out
22 the back door?

23 A. No no no, he didn't sell any machine guns that I have evidence of,
24 no.

25 Q. And the only machine gun that you allegedly claim that he has is

1 A. It was sent to me. I think it was left at the front desk of our
2 office.

3 Q. At your request?

4 A. Yes, they wondered if I was interested in seeing this document
5 and I told them I was interested in it.

6 Q. And as a result no charges -- no state charges have been filed
7 against Mr. Sink for theft from D&D Sales?

8 A. That's my understanding, yes.

9 Q. Was that also part of the deal?

10 A. As I answered we never made a deal for anything with Mr. Sink.

11 Q. Never made an agreement with Mr. Sink?

12 A. There was an agreement made, but he never received anything of
13 benefit for it.

14 MR. KAUFMANN: Your Honor, I am done with this witness, except
15 I re-raise my request for what I've requested before.

16 THE COURT: Thank you.

17 Ms. Woolridge.

18 MS. WOOLRIDGE: Thank you, Your Honor.

19 MR. KAUFMANN: I don't need to make a further record of that,
20 Your Honor, it's pretty clear.

21 THE COURT: Thank you.

22 Let me just clarify, Mr. Tisch. You said there was an agreement
23 made but he never received anything of benefit for it?

24 Was that your answer?

25 THE WITNESS: He agreed to cooperate but was never given

1 anything to do it and took no action on my behalf.

2 THE COURT: Thank you.

3 You may continue, Ms. Woolridge.

4 I'm sorry.

5 Mr. Kaufmann, was there something else?

6 MR. KAUFMANN: Can I make a record without repeating what I
7 said before?

8 THE COURT: Yes. Your objection is noted. Thank you.

9 REDIRECT EXAMINATION

10 BY MS. WOOLRIDGE:

11 Q. Let's pick up right where we left off. Let's talk about -- as far as
12 this agreement that you were talking about with Mr. Sink, did Mr. Sink
13 ever actually cooperate with you in connection with that agreement?

14 A. No.

15 Q. So did anything ever come of that?

16 A. No.

17 Q. Did he ever receive any sort of benefit from you?

18 A. He never received anything from us.

19 Q. Did you ever tell the Pima County Sheriff's Department not to file
20 theft charges against Mr. Sink?

21 A. No, I'm not in charge of their department. I can't tell them to do
22 anything.

23 Q. Did you try to influence their investigation in any way?

24 A. No, I just asked for a copy of what Mr. Kuzma sent them and they
25 provided that to me.

1 Q. And did you have a chance to review the entirety of the
2 transcript, Exhibit 121?

3 A. Yes, I've reviewed it and listened to the recording.

4 Q. And did that -- at some point does Mr. Borts explicitly verify what
5 he was telling Mr. Sink not to weld?

6 A. Yes.

7 Q. And specifically what did Mr. Bort tell Mr. Sink not to weld? I'm
8 sorry, Special Agent Bort tell Mr. Sink not to weld?

9 A. He tells him not follow weld machine guns back together.

10 MR. KAUFMANN: What page are you on?

11 MS. WOOLRIDGE: Page 28.

12 I'm sorry. I wasn't able to hear you over defense counsel.

13 THE WITNESS: He tells Mr. Sink during the interview don't weld
14 any more machine guns.

15 BY MS. WOOLRIDGE:

16 Q. So does he specifically tell him to refrain from breaking the law?

17 A. Yes.

18 Q. Anywhere in that interview does Special Agent Bort tell Mr. Sink
19 not to turn an existing machine gun back into a semi auto?

20 A. He doesn't say anything specific like that directing Mr. Sink to do
21 that.

22 Q. You were asked some questions about the type of work that the
23 defendant Mr. Kuzma did for D&D Sales.

24 Based on Mr. Kuzma's own statement, did he state that he was in
25 fact the responsible party for this federally licensed firearms dealer.

1 jurors.

2 You may continue, Ms. Woolridge.

3 BY MS. WOOLRIDGE:

4 Q. Sir, I have just handed you what's been marked as Exhibit 12 and
5 previously admitted in this case.

6 First of all, if you could look at it and let us know if you recognize
7 what this object is.

8 A. Yes, I do.

9 Q. What do you recognize it to be?

10 A. It is an item I examined and determine to be an Uzi machine
11 gun.

12 Q. When is the first time you saw this machine gun?

13 A. At the search warrant of the defendant's home.

14 Q. And is this one of the items you examined on that date?

15 A. Yes, it is.

16 Q. Were you able to make any sort of I guess preliminary
17 determination upon examining it on that date of the search warrant?

18 A. Yes, I did.

19 Q. What was that opinion that you were able to make on that date,
20 March 21st?

21 A. I determined it to be a machine gun.

22 Q. How was it that you were able to make that determination? What
23 about this machine gun in fact led to that conclusion?

24 A. An Uzi type machine gun has several notable design features.
25 First thing I noticed was the machine gun selector, which has a third

1 position for automatic function. Safe, semi, automatic.

2 Next I noticed it was missing a blocking bar which is required on
3 semiautomatic firearms. It's located here, at the right rear. It's
4 attached on the inside and welded through these four holes that
5 prevents a machine gun bolt assembly from being installed. The
6 absence of that such a firearm is classified as a machine gun.

7 I also noticed it had a machine gun barrel. I also noticed it had a
8 machine gun feed ramp. Machine gun feed ramp is located near the
9 chamber of the barrel. On a semiautomatic Uzi type firearm, it would
10 be a ring, a blocking ring that goes around the barrel further preventing
11 a bolt from being installed and functioning.

12 So the ring and the blocking bar that would prevent a machine
13 gun bolt from being installed.

14 Q. Were all those features that you just explained that are
15 characteristic of machine guns, were they present on this firearm as it
16 was when you first saw it on March 21st?

17 A. Yes.

18 Q. And is that also the current condition of this firearm?

19 A. Yes, it is.

20 Q. As you're looking at Exhibit 12 today, is that how the firearm
21 appeared and the condition that it was in when it was first found and
22 you first examined it on March 21st?

23 A. Yes.

24 Q. Were any of those things you just spoke about that made it a
25 machine gun, the selector switch, the absence of a blocking bar, the

1 machine gun barrel, or the machine gun feed ramp, were those things
2 modified by yourself or anyone else?

3 A. No, ma'am.

4 Q. Now, as Exhibit 12 was found, as this machine gun was found in
5 the defendant's home, was it at that time capable of being fired?

6 A. No.

7 Q. Why is that?

8 A. It was missing a bolt assembly and a top cover.

9 Q. If it's missing those things, how can it possibly be a machine
10 gun?

11 A. Definition of a machine gun under federal law, National Firearms
12 Act, is any weapon which shoots, is designed to shoot and be readily
13 restored to shoot automatically without manual reloading by a single
14 function of the trigger, and that includes the frame or receiver of such a
15 weapon.

16 Q. And so what about Exhibit 12, this machine gun, allows it to fall in
17 that definition?

18 A. Yes, the absence of the blocking bar, as I noted earlier, would
19 classify this item as a machine gun. With the blocking bar installed,
20 that's a design feature found on a semiautomatic Uzi firearm.

21 Q. You mentioned that the definition under federal law of a machine
22 gun includes a frame or receiver of a weapon that can -- I believe expel
23 more than one projectile by one function of the trigger; correct?

24 A. Correct.

25 Q. And does this machine gun in front of you, Exhibit 12, is that in

1 fact a frame or receiver of such a machine gun?

2 A. Yes, it does incorporate frame or receiver of a machine gun.

3 Q. For those of us that may be unfamiliar with firearms. Can you
4 explain to us what do we mean when we say receiver, what does that
5 mean?

6 A. When you're talking about a firearm frame or receiver, or a
7 machine gun frame or receiver, you're talking about the part that
8 generally holds the bolt, has the barrel attached to it, has the fire
9 control component attached to it, or may contain the fire control
10 components, such as the trigger, the hammer, the selector, things like
11 that.

12 So in this instance if you take the barrel, the hand grips -- the
13 trigger mechanism away, the sights, the barrel. This channel, this piece
14 right here, is the frame and receiver of a firearm, specifically in this
15 case a machine gun.

16 Q. Were there a number of other parts at the defendant's residence
17 on March 21st that you also looked at?

18 A. There were numerous Uzi type firearm parts, such as bolts, top
19 covers, barrels. Almost anything to assemble an Uzi type firearm was
20 at that location.

21 Q. So were there parts that, for instance, could be placed on this
22 firearm such that it would be readily able to be shot or fired
23 automatically with the parts that were present at that residence?

24 A. Yes.

25 Q. Did you also examine another -- did you also recall a number of

1 other receiver stampings present at that --

2 A. Yes, I did.

3 Q. Explain to us what is a receiver stamping?

4 A. Well, receiver stamping -- so now you know what a frame or
5 receiver of a Uzi type firearm is; a stamping is this same metal channel
6 without the trunnion, which is the part that holds -- this metal piece
7 right here that holds the barrel in place, it's absent of the rear back
8 plate, it doesn't have that on it, so essentially it's just an open channel
9 with all the holes cut for the magazine well, for the sear, for the trigger
10 mechanism, the sear to come through, these two little metal tabs on
11 the inside.

12 MS. WOOLRIDGE: May I approach the witness, Your Honor?

13 THE COURT: Yes.

14 BY MS. WOOLRIDGE:

15 Q. Sir, I've just handed you what has been marked after some
16 inspection as Exhibit 145.

17 Do you recognize what that item is?

18 A. Yes, I do.

19 Q. Does that appear to be one of the receiver stampings that you
20 examined at the residence on March 21st?

21 A. Yes, it is.

22 Q. And can you explain to us the distinction between this receiver
23 stamping, Exhibit 145, and a machine gun -- the machine gun, Exhibit
24 12.

25 First of all, is Exhibit 145 a machine gun?

1 A. This, no.

2 Q. And how is it then that Exhibit 12 is a machine gun and this
3 receiver stamping is not.

4 Can you explain to us the distinction.

5 A. First, I can explain the stamping and why this is classified as a
6 firearm. So as this is stamped out of metal, it has holes as I explained
7 for the sear from the trigger mechanism to come through, has the front
8 area here for the front attachment of the trigger mechanism, has a
9 magazine well cut out, has attachment for the rear trigger mechanism
10 pin, if you will, to hold the trigger mechanism to the receiver, has cut
11 outs here in the front in the trunnion area where you would weld the
12 trunnion in place and grind that off and make it smooth, has an area
13 and the holes located for the front and rear sites. This also has four
14 holes similar to this exhibit for attachment of a machine gun blocking
15 bar, which is required by ATF so the item will not be classified as a
16 machine gun.

17 Q. So you mentioned that the blocking bar is required.

18 In Exhibit 145 there is no blocking bar; correct?

19 A. That's correct.

20 Q. How is it that 145 is not a machine gun while Exhibit 12 is?

21 A. This is not classified as a machine gun because it doesn't fit the
22 definition.

23 It's not a weapon that shoots, not designed to shoot. It's
24 designed for the inclusion of a semiautomatic receiver or a
25 semiautomatic machine gun blocking bar. It can't be readily restored to

1 shoot, another part of the definition, because it never was a machine
2 gun, and so it can't be restored to shoot.

3 Q. How is it that Exhibit 12 is different?

4 A. Exhibit 12 has been assembled with a machine gun trigger
5 mechanism, machine gun barrel, and the absence or the removal of the
6 machine gun blocking bar. Once you assemble this with a machine gun
7 blocking bar and you remove it, you made a machine gun, or you
8 assemble this into a functioning weapon without a machine gun
9 blocking bar you made a machine gun.

10 Q. Are there any markings in Exhibit 12 specifically with regard to
11 the area where the blocking bar would be?

12 A. Any markings? Yes, ma'am. It appears there's been some kind
13 of heat, maybe a torch where the metal has been deformed and
14 discolored, some type of heat, maybe a torch. These two holes here
15 have been deformed. Or it appears the welding was removed and the
16 blocking bar was removed.

17 Q. Sir, you mentioned that you examined this weapon on March
18 21st.

19 Did you examine it a second time to make a further
20 determination?

21 A. Say again.

22 Q. Did you examine this machine gun a second time to make a
23 further determination?

24 A. Yes, this item was sent to our office for me to write a formal
25 report of a technical examination on.

1 Q. How was it that during your examination that you -- your official
2 examination -- that you came about to this conclusion? Can you take
3 us through the steps that you followed in your examination.

4 A. Upon receiving the exhibit, I made note of the physical design
5 features, anything outside of the exhibit, such as the selector, the
6 barrel, the absence of a machine gun blocking bar. The physical
7 features, as well as the markings, I identified those, I noted those.

8 I reviewed the inside of the exhibit and confirmed there was no
9 blocking bar, which should be present in a semiautomatic Uzi-type
10 firearm. I noted it had a machine gun barrel installed; found there was
11 a machine gun feed ramp installed, and a machine gun trigger
12 mechanism installed.

13 Upon finding that the caliber or the chamber of the barrel was
14 designed to fire 45 ACP cartridge, .45 automatic, I attempted to obtain
15 a compatible bolt, which is designed to fire with that. We did not have
16 one in our reference collection, so I obtained a 9mm barrel and
17 compatible bolt, installed those as well as a machine gun top cover in
18 less than a minute, and began to test fire the weapon.

19 Q. Was there a reason to have to install those parts that the parts on
20 the Exhibit 12 as you received it would not have permitted it to function
21 as a machine gun?

22 A. Could you repeat the question?

23 Q. Let me back up. Were there any parts as installed on Exhibit 12
24 that would have not permitted it to function as a machine gun?

25 A. No.

1 Q. So anything about Exhibit 12 in the state that it arrived to you
2 that would have prohibited it to fire fully automatically?

3 A. No, ma'am.

4 Q. So you mention that you did have to change some parts.
5 Was that only for your testing purposes?

6 A. Yes, ma'am, it was.

7 Q. And what was the result of your testing then?

8 A. After I installed the machine gun bolt and compatible barrel and
9 the machine gun top cover, to demonstrate that it incorporates the
10 frame and receiver of a machine gun, a weapon designed to shoot
11 automatically, I test fired it and it fired as a machine gun.

12 Q. When you say it test fired as a machine gun, can you explain to
13 us what that means?

14 A. Well, a definition of machine gun found 26 U.S. Code Section
15 5845, definition B, machine gun is any weapon which shoots, is
16 designed to shoot, can be readily restored to shoot, automatically
17 without manual reloading by a single function of the trigger, and that
18 also includes the frame and receiver of such a weapon. Exhibit 12 met
19 that definition.

20 Q. I'm going to show you what's been marked for demonstrative
21 purposes as Government's Exhibit 14.

22 A. I don't see anything.

23 Q. Sir, is this the definition of a machine gun as codified in Title 26 of
24 the United States Code that you are familiar with and utilized in your
25 examination? And determination, I should say.

1 A. Yes, ma'am, it is.

2 MS. WOOLRIDGE: Move to admit and publish Exhibit 14.

3 THE COURT: Any objection?

4 MR. KAUFMANN: No, Your Honor.

5 THE COURT: Exhibit 14 is admitted and may be published.

6 BY MS. WOOLRIDGE:

7 Q. If you draw on your screen it should leave a mark, so if you could
8 go through this definition, and I note that there's a lot of alternative
9 ways that a firearm can meet the definition of a machine gun, if you
10 could underline and just walk us through the definition. Let us know
11 which of these terms apply to make this weapon, Exhibit 12, a machine
12 gun.

13 A. So the term machine gun means any weapon which shoots, is
14 designed to shoot, automatically, more than one shot without manual
15 reloading by a single functioning of the trigger. Or the frame or
16 receiver of any such weapon.

17 Q. So even if this firearm did not shoot, the fact that it was -- does it
18 encompass a frame or receiver of a machine gun?

19 A. Yes, ma'am, it does.

20 Q. So even if it did not -- was not a full firearm, would just the frame
21 and receiver that you received as part of Exhibit 12 qualify as -- under
22 this definition of a machine gun?

23 A. Yes. Exhibit 12 without the trigger mechanism, the handguards
24 or the barrel or the bolt, anything except this metal channel --
25 everything removed except this metal channel remaining, it would be

1 classified as a machine gun.

2 Q. So the parts of that you used to test it -- even without those
3 parts, would the machine gun in front of you still be a machine gun?

4 A. Yes, ma'am, it would.

5 Q. I think in front of you is what's been admitted as Defense Exhibit
6 104.

7 Do you see that document?

8 A. Yes, ma'am.

9 Q. Have you had an opportunity to review this document?

10 A. Yes, I have.

11 Q. And can you summarize essentially what you understand that
12 document to be?

13 A. This is a letter to Mr. David Tatum, D&D Manufacturing and Sales
14 in Sierra Vista, Arizona, responding to an inquiry about an Uzi-type
15 firearm channel, where we responded.

16 Q. First of all what is the date of that letter?

17 A. September 23rd, 2005.

18 Q. And does it appear to be in response from an inquiry from Mr.
19 Tatum of D&D Sales?

20 A. Yes, ma'am.

21 Q. And was it a inquiry about the asking for a classification of
22 whether a particular firearm was a machine gun?

23 A. Yes, it is.

24 Q. Specifically what was that particular firearm?

25 A. An Uzi-type firearm.

1 Q. And specifically was it a fully assembled firearm or a -- I should
2 say it did qualify as a firearm, correct?

3 A. Yes.

4 Q. Was the weapon that was asked about an Uzi firearm such as the
5 machine gun, Exhibit 12?

6 A. Yes.

7 Q. Was Exhibit 12 the same firearm that was referenced in this
8 letter?

9 A. No, it was an Uzi type channel, similar to this.

10 Q. And so you're holding up, just for the record, Exhibit 145; is that
11 correct?

12 A. That is correct.

13 Q. So just so I understand was the letter, Exhibit 104, asking for a
14 clarification about Exhibit 145?

15 A. It appears it's similar to that.

16 Q. I'm sorry. A channel that is similar to Exhibit 145?

17 A. I did not examine the item in question within the letters.

18 Q. Are there photographs at the back of the letter that helped you
19 also make a comparison?

20 A. Yes, ma'am. This item appears to be similar to Exhibit 145.

21 Q. Does it appear to be similar to Exhibit 12, the machine gun?

22 A. Yes.

23 Q. How so?

24 A. It's an outward shape, the design features. In Exhibit 104,
25 similar shape to this which is used to assemble a machine gun or a

1 semiautomatic Uzi-type firearm.

2 Q. So how is -- is Exhibit 12 different in any way to what is referred
3 to in Exhibit 104?

4 A. This is an assembled firearm, which has a barrel, the fire control
5 components, the barrel, the necessary machine gun parts installed for it
6 to be classified as a machine gun.

7 Q. What was the conclusion of the letter, Exhibit 104, with regard to
8 the firearm that was submitted back in 2005 to the ATF for its
9 determination?

10 A. This item as examined does not possess the design features of an
11 Uzi-type machine gun receiver that facilitate automatic fire by simple
12 modification of existing parts, and in addition Exhibit 1 is not readily
13 restorable to shoot because it did not previously shoot automatically
14 and does not in its present condition.

15 Further, if a receiver stamping of this type is possessed with a
16 complete set of Uzi machine gun parts, it is a combination of parts from
17 which a machine gun can be assembled and therefore a machine gun.

18 Finally, as indicated, the Uzi receiver stamping submitted and
19 evaluated is a firearm. This stamping, if assembled into a complete Uzi
20 receiver by the installation of a back plate, barrel trunnion and other
21 receiver components must have a blocking bar installed. If not, it will
22 be considered a machine gun receiver.

23 Q. So I want to talk about the last sentence you just read.

24 Does 12 have all of those components that this letter states will
25 cause something similar to Exhibit 145 to become a machine gun.

1 A. Yes.

2 Q. Does this letter then put the recipient of that letter on notice that
3 something assembled, just as Exhibit 12 was when it was first
4 discovered and first came to you, put them on notice that that was in
5 fact an unlawful machine gun?

6 A. Yes, it does.

7 Q. Does the letter also contain a warning to the recipient of the
8 letter that such functions -- or sorry, such assembly would in fact be a
9 machine gun?

10 A. Yes. Further in bold print it says, "We strongly recommend that
11 you advise your customers that a bolt blocking bar must be installed to
12 prevent the possession of an unregistered machine gun."

13 Q. I want to ask you about your previous experience as a holder of a
14 federal firearms license.

15 Did you have responsibility as a holder of a federal firearms
16 license to provide safe weapons that you were selling to the
17 community.

18 A. Yes.

19 Q. How did you satisfy that requirement?

20 A. I would perform function tests and ensure they were functioning
21 reliably and safely.

22 Q. Did you ever have to use a fully automatic machine gun, such as
23 Exhibit 12, to perform such function tests?

24 A. I had absolutely no use for a machine gun to perform any kind of
25 function test of firearms I sold.

1 Q. We heard early in the case from statements from defense counsel
2 that the defendant in this case needed to have this particular machine
3 gun, Exhibit 12, in order to test parts that he was selling in order to
4 make sure they were safe.

5 What do you make of that explanation?

6 A. There is no need or it doesn't make sense to install a
7 semiautomatic configured bolt assembly, a firearm part which is
8 designed for use in a semiautomatic firearm, to test such a part in a
9 machine gun.

10 Q. Are you aware whether the defendant in this case or D&D Sales
11 had a license to manufacture full automatic machine guns?

12 A. I am not aware that he did, no.

13 Q. Without such a license, would there be any lawful use for using a
14 machine gun to test the parts that they were selling, legally selling?

15 A. No.

16 Q. I just want to briefly talk about your examination of this firearm.
17 Did you need to disassemble the firearm at all before you tested
18 it?

19 A. No.

20 Q. Did you need to do anything to restore it to function?

21 A. Restore it? No.

22 Q. Was it, as it was, capable of functioning as you received it?

23 A. No, ma'am, it didn't.

24 Q. And how was it not?

25 A. Because it was absent of a bolt. There was no bolt included with

1 the exhibit or a top cover, machine gun top cover.

2 Q. Even without those bolts and the top cover, did it still qualify as a
3 machine gun?

4 A. Yes, it did.

5 Q. And again, just to clear pick up any confusion, how is it that even
6 though it didn't function in that state without the bolt and top cover,
7 that it still qualifies as a machine gun?

8 A. It did not incorporate a machine gun bolt blocking bar, which is
9 required for a item to be classified as a semi-automatic and thus is
10 classified as a machine gun.

11 Q. How did it meet this definition in front of us then?

12 A. It's a weapon designed to shoot automatically, more than one
13 shot by a single function of the trigger, and incorporates the frame or
14 receiver of a machine gun.

15 Q. You mentioned I believe that the machine gun, Exhibit 12, had a
16 number of other features that also were characteristics of a machine
17 gun?

18 A. Yes.

19 MS. WOOLRIDGE: Your Honor, I would like the jury to be able to
20 see the machine gun without the -- but I'm concerned about passing it
21 around.

22 Perhaps if the witness could step out of the witness stand and
23 demonstrate.

24 THE COURT: Yes, you may.

25 BY MS. WOOLRIDGE:

1 A. I know they imported.

2 Q. Imported.

3 A. Uzis from IMI in Israel.

4 Q. And those do not have a blocking bar, right?

5 A. Sir?

6 Q. The Uzis they were importing selling did not have a blocking
7 bar?

8 A. I'm not aware that they ever did not have a blocking bar.

9 Q. So no one has ever -- you have never inquired, no one has ever
10 told you about the Uzis that they were importing as far as whether they
11 had a blocking bar?

12 A. No, sir. To my knowledge a blocking bar has always been
13 required in a semiautomatic Uzi type firearm.

14 Q. Can you tell me when it was required?

15 A. No, sir, I can't.

16 Q. You weren't working for ATF back in the 1980's I take it?

17 A. No, I wasn't.

18 Q. So could you tell me who made the requirement?

19 A. Well, that would have come out of our office firearms technology
20 branch.

21 Q. Can you name the human being who made the requirement?

22 A. No, sir.

23 Q. And you wouldn't know whether it was made in a written
24 document or verbally or anything like that?

25 A. Any response from firearms technology would have been a formal

1 A. No, that would be number three.

2 Q. Okay. So it has the holes but not the parts?

3 A. Right.

4 Q. Okay. Receiver, I'll write on it.

5 At what stage then, according to that letter and opinion, does it
6 become a machine gun receiver and not just an ordinary gun
7 receiver?

8 A. When it becomes a machine gun receiver or a combination of
9 parts from which a machine gun can be assembled?

10 Q. Either one.

11 A. Well, step number four, a firearm, an Uzi type firearm channel or
12 receiver with machine gun parts would be a machine gun, a
13 combination of parts from which a machine gun can be assembled, on
14 the back plate and the trunnion welded on further then becomes a
15 machine gun without the blocking bar installed.

16 Q. So number four is a machine gun or combination of parts from
17 which a machine gun can be assembled.

18 A. Correct.

19 Q. So at this point according to that letter it becomes -- I'll write
20 down MG.

21 Would you take a look at that opinion again, because didn't the
22 opinion essentially say you can sell the receiver channel with parts and
23 treat it as an ordinary firearm? I had to read it three or four times
24 myself.

25 A. No, it says receiver stamping of this type is possessed --

1 THE COURT: Read slowly, please, sir.

2 THE WITNESS: It says: Further if a receiver stamping of this
3 type -- such as your number three there -- excuse me, number four --
4 three -- with a combination of Uzi machine gun parts, it is a
5 combination of parts from which a machine gun can be assembled and
6 therefore a machine gun.

7 Q. Now what is it about having additional parts that would make an
8 ordinary gun receiver into a machine gun receiver?

9 A. Okay. So with the set of Uzi machine gun parts, a parts kit if you
10 will, which includes a cut up or destroyed Uzi machine gun, that has a
11 back plate in it, which can be welded to your number three as the front
12 trunnion, which can be welded to number three, and once those are
13 welded without the bolt blocking bar it becomes a machine gun.

14 Q. But again how does it come from being a regular firearm receiver.
15 We can all agree this is a regular firearm receiver to being something
16 else if there are parts with it?

17 A. Well, the bolt blocking bar should be installed prior to assemble of
18 any -- using any machine gun components or firearm parts to ensure
19 that the firearm frame or receiver is a firearm receiver not a machine
20 gun receiver.

21 Q. How does ATF inform the public of its --

22 THE COURT: Mr. Hardy, can you go back to the podium, please.
23 Thank you.

24 THE CLERK: Excuse me, Counsel, if I could just clarify. The last
25 number for defendant is actually 147, for the poster.

1 auto?

2 A. So you're saying if you had a machine gun receiver with a
3 semiautomatic fire control component installed?

4 Q. Yes.

5 A. Well, you'd still have a machine gun.

6 Q. I know, but would it fire full auto?

7 A. I don't believe it would.

8 Q. The Uzi you had had no bolt in it. Is that right?

9 A. That's correct.

10 Q. And before testing you put a 9mm bolt and barrel into it?

11 A. That's correct.

12 Q. So you were never able to test the actual .45 caliber barrel that
13 was in it?

14 A. No, sir. As I say, we did not possess a compatible bolt, no.

15 Q. Do you know who put on the original .45 caliber barrel?

16 A. No, sir, I don't.

17 Q. The Uzi also had no top cover; is that correct?

18 A. That is correct.

19 Q. And you put on a top cover for a machine gun; correct?

20 A. That's correct.

21 Q. Could you tell the jury the difference between the top cover for
22 semi auto and the top cover for a machine gun?

23 A. Yes. A machine gun top cover is designed to interact with a
24 machine gun fire control components as well as machine gun bolt. A
25 machine gun, an Uzi machine gun fires from the open bolt position. So

1 a machine gun top cover has a ratcheting, kind of makes a ratcheting
2 noise, kind of like a wrench ratchet, retracting the bolt to the open bolt
3 position, and a semiautomatic does not have that feature.

4 Q. So if you have a full auto bolt in an Uzi but a semi auto top cover,
5 can you fire it full auto?

6 A. Say that one more time.

7 Q. If you have a full auto -- a machine gun bolt in the Uzi but you
8 have a semiautomatic top cover, will it shoot like a machine gun, full
9 auto?

10 A. It's possible it will.

11 Q. Have you ever put it to the test?

12 A. I've had personnel in our office do that, yes.

13 Q. So basically you had to put a machine gun bolt into it -- let me
14 take that back.

15 A. You said machine gun bolt. You said semiautomatic bolt.

16 Q. I'll take it back.

17 But to back up just for a second. The purpose of the blocking bar
18 is to prevent someone from putting a full auto bolt in it. Am I right
19 there?

20 A. That is correct.

21 Q. And these somewhere people were required to make the
22 semiautomatic bolts with the slot in them that would fit around the
23 blocking bar?

24 A. That's correct. A semiautomatic bolt assembly which does not
25 have a fixed firing pin would have a slot machined on the right side of it

1 to accommodate the bolt blocking bar; yes, sir.

2 Q. So the idea is a semiautomatic bolt has a slot in it that will fit
3 around the blocking bar, the full automatic bolt does not.

4 A. That's correct.

5 Q. Are there full automatic bolts out there legal that have a slot in
6 them that will fit around the blocking bar?

7 A. Yes. There are fixed firing pin machine gun bolts that have a slot
8 machined into them, those in and of themselves are machine gun
9 conversion devices.

10 Q. So ATF allowed people to register machine gun bolts that will fit in
11 a gun with a blocking bar?

12 A. That is correct.

13 Q. Do you know how many of those bolts were registered?

14 A. No, sir.

15 Q. So it doesn't necessarily prevent a full auto bolt from being used
16 in a semi auto gun, the blocking bar, that is.

17 A. It prevents an unmodified machine gun bolt from being installed,
18 yes, sir.

19 Q. And modified machine gun bolts, those -- lost my train of thought
20 there.

21 The modified machine gun bolts, when they were registered, does
22 ATF take the position that they can be installed in a semi auto?
23 Legally?

24 A. Say that one more time.

25 Q. Semi auto, the full auto bolts with the slot in them, that will

1 function in a semiautomatic gun, does ATF take the position that you
2 can put one legally in a semiautomatic gun?

3 A. Yes, as long as that item is properly registered to the possessor,
4 yes.

5 Q. The item being the bolt?

6 A. The bolt, yes.

7 Q. So when you put the bolt in the gun, it essentially blesses the
8 entire gun, the entire gun becomes legal?

9 A. It becomes a weapon which shoots automatically, designed to
10 shoot automatically.

11 Q. And if the bolt was registered, it's a legal weapon that shoots
12 automatically?

13 A. If the bolt is properly registered, yes.

14 Q. So if someone put a registered bolt in this particular gun here,
15 the entire gun would be blessed and made legal?

16 A. No, sir.

17 Q. Why not?

18 A. Because as received this is devoid of a bolt blocking bar. The
19 milling of the machine gun bolt you're talking about is to circumvent the
20 blocking bar in a machine gun. In itself would be a conversion device
21 in a machine gun. This is a machine gun. The situation you're
22 describing there would be two machine guns.

23 Q. So you would have one gun but it would be two machine guns?

24 A. Yes.

25 Q. And they'd have to be registered separately?

1 A. That's correct.

2 Q. Even though there's only one gun?

3 A. That's correct.

4 Q. Do you know how long would it take to mill one of those slots in a
5 full auto bolt?

6 A. I do not know.

7 Q. But basically the blocking bar really isn't a barrier to installing a
8 full auto bolt if you're willing to mill the slot in the bolt?

9 A. Once you mill a fixed firing pin Uzi machine gun bolt you made a
10 machine gun.

11 Q. But the blocking bar really doesn't prevent you from using a bolt
12 of that type?

13 A. It prevents an unmodified machine gun from being installed.

14 Q. We don't know how long it would take to modify it by cutting the
15 slot?

16 A. No.

17 Q. How is the blocking bar that important to keeping a thing from
18 becoming a machine gun?

19 A. Because the milling of a slot on a machine gun bolt is the making
20 of a conversion device, a machine gun in and of itself, so the blocking
21 bar is a prohibited feature which prevents an unmodified bolt from
22 being installed.

23 Q. I'm trying to get at it why. If you can in an unknown length of
24 time make a full auto bolt that will function perfectly well in a receiver
25 with a blocking bar, why does the blocking bar make the difference

1 between it being a machine gun receiver and an ordinary receiver.

2 A. Because it prevents an unmodified machine gun bolt from being
3 installed, sir.

4 Q. And we don't know how long the modification would take?

5 A. No, sir, I don't.

6 Q. Is this something the agency just decided that the critical thing is
7 whether you can install an unmodified machine gun bolt or have to cut
8 a slot in it. Is that --

9 A. No, sir.

10 Q. We don't know who made that decision or when?

11 A. No, sir, I don't know when that decision was made.

12 Q. Have the -- has the firearm technical branch, is it true they've
13 taken the position that a shoe string can be a machine gun?

14 A. I'm not aware of that, sir.

15 Q. From time to time they take positions and reverse them. I think
16 we talked about that earlier; is that correct?

17 A. They correct erroneous classifications.

18 Q. Was there was one earlier this year about a stabilizing brace for a
19 pistol.

20 MS. WOOLRIDGE: Objection, relevance.

21 THE COURT: Sustained.

22 BY MR. HARDY:

23 Q. The regulations -- when you publish regulations in the Code of
24 Federal Regulations, those are signed off by the director of BATF or his
25 designate, am I right there?

1 A. I couldn't tell you who signs them off. No, sir, I couldn't.

2 Q. ATF rulings, who signs off on those?

3 A. Those would be signed off or approved through our headquarters,
4 yes, sir.

5 Q. Would the director see them, do you know?

6 A. I imagine he would. I can't say that I've seen him look at them
7 and sign them; no, sir.

8 Q. Letter rulings. Who signs off on those?

9 A. That would be the chief or the division chief within our office.

10 Q. Other than -- where? In Martinsburg, West Virginia?

11 A. That's correct.

12 Q. Are those run past the director of ATF?

13 A. No, sir.

14 Q. Give me your chain of command. To whom do you answer
15 directly?

16 A. I answer to my branch chief and then he answers to his division
17 chief.

18 Q. And the division chief answers to the director?

19 A. No, he answers to a deputy assistant director who answers to an
20 assistant director who answers to the director.

21 Q. An impressive chain of command. Is it possible that the director
22 of ATF would disagree with some letter rulings of your branch if he was
23 told of them?

24 MS. WOOLRIDGE: Objection, speculation.

25 THE COURT: Sustained.

1 BY MR. HARDY:

2 Q. Would you agree if I were to search the United States codes, the
3 statutes, specifically the gun laws, I wouldn't find the word Uzi in them?

4 Or probably wouldn't.

5 MS. WOOLRIDGE: Objection to speculation, relevance.

6 THE COURT: Overruled, if you know, sir.

7 THE WITNESS: I didn't understand it as a question.

8 BY MR. HARDY:

9 Q. If I were to look through the federal gun laws of the United
10 States Code, would I find the word Uzi in them?

11 A. I don't know if you would.

12 Q. If I looked through ATF's Code of Federal Regulations regulations,
13 would I find the word Uzi in them?

14 A. If you look through ATF's Code of Federal Firearms regulations,
15 our white book, you would find the mention of an Uzi.

16 Q. But I mean, yeah, the actual code of federal regs, what are its
17 provisions about Uzis?

18 A. I don't think it speaks to it per se, specifically.

19 Q. Would either the statutes or the Code of Federal Regulations use
20 the word blocking bar?

21 A. No, sir.

22 Q. So this is a requirement that exists in terms of some letters
23 within your subdivision?

24 A. Yes, sir.

25 Q. Can a corporation or trust or other business entity own a machine

1 any of your reviews of your report or of this weapon?

2 A. No, it hasn't.

3 Q. Could the defendant in this case, or anyone from D&D Sales, ask
4 ATF for a ruling on this particular weapon if they were concerned?

5 A. Yes, they could.

6 Q. And as you're aware from Exhibit 104, D&D Sales has asked for
7 rulings on other weapons; correct?

8 A. Yes.

9 Q. Are you aware of any request for a ruling on this particular
10 weapon?

11 A. No.

12 Q. I guess other than the request for your report in examining it to
13 determine that it was a machine gun?

14 A. No, ma'am.

15 Q. Is this -- you mentioned there were a number of features that
16 you -- that were consistent with the machine gun, most specifically the
17 absence of the blocking bar; correct?

18 A. That is correct.

19 Q. Was that part of your determination in finding that this was in fact
20 a machine gun?

21 A. Yes, it is.

22 Q. You also mentioned that it had a machine gun barrel; correct?

23 A. Correct.

24 Q. Would this still be a machine gun without a machine gun barrel?

25 A. That is correct.

1 Q. You mentioned it had a machine gun selector switch.

2 A. Yes.

3 Q. Would this still be a machine gun without the machine gun
4 selector switch?

5 A. Yes, it would.

6 Q. You mentioned that it had a machine gun feed ramp; correct?

7 A. Yes, it did.

8 Q. Would it still be a machine gun would that machine gun feed
9 ramp?

10 A. Yes, it would.

11 Q. Would there be any reason to have a machine gun selector
12 switch, a machine gun feed ramp and a machine gun barrel installed on
13 a machine gun without using it as a machine gun?

14 A. No.

15 Q. Did this machine gun as it came to you have all of the necessary
16 functions, the necessary parts that we talked about in that exhibit, to
17 transform it from being a number three, simply a firearm receiver to
18 number four, a machine gun receiver?

19 A. Yes.

20 Q. Did it in fact have the back plate, the machine gun back plate?

21 A. Yes.

22 Q. Did it have the machine gun front trunnion?

23 A. Yes.

24 Q. Did it in fact have the absence of a blocking bar?

25 A. Yes.

1 Q. Did you have to do any sort of modifications or changes or
2 anything to this machine gun as it was when it was found on March
3 21st to have it meet that definition of a machine gun?

4 A. No, I did not.

5 Q. There was a question, and I'm not even sure if I understood it,
6 regarding an ATF decision to require a blocking bar.

7 Was it a random decision by the ATF to require a blocking bar for
8 something not to qualify as a machine gun?

9 A. I don't believe so. When manufacturer wants to make a
10 semiautomatic copy or version of a machine gun, there are certain
11 physical characteristics that must be present for that weapon not to be
12 classified as a machine gun, and in the case of an Uzi, not being able to
13 accept an unmodified Uzi machine gun bolt is necessary.

14 Q. So is that blocking bar in fact necessary to prevent a firearm from
15 being an illegal machine gun?

16 A. Yes.

17 Q. Is it necessary to prevent a firearm to be -- from being a
18 dangerous weapon that can shoot automatically more than one round
19 with one trigger pull.

20 A. Yes.

21 Q. You have your report in front of you; correct?

22 A. Yes, ma'am.

23 Q. Just for our record purposes, what is the number on that report?

24 A. Exhibit 4.

25 MS. WOOLRIDGE: Your Honor, move to admit Exhibit 4.

1 Q. So were there parts present at the defendant's home that would
2 have allowed this firearm -- this machine gun, which is a machine gun
3 even without those parts to also be fired as a machine gun?

4 A. Yes.

5 MS. WOOLRIDGE: Thank you, sir. That's all I have.

6 THE COURT: Mr. Hardy.

7 RECROSS-EXAMINATION

8 BY MR. HARDY:

9 Q. Supposing that a person were to weld a blocking bar back into
10 the receiver that we're talking about here, would that make it a
11 semiautomatic gun?

12 A. No, sir.

13 Q. Why is that?

14 A. Because the removal of the blocking bar itself is the making of a
15 machine gun. The only way to remove a machine gun from the purview
16 of the National Firearms Act is to destroy it.

17 Q. So it was manufactured -- when it starts out at the first stages of
18 metal plate, it doesn't have a blocking bar or anything else fastened to
19 it; correct?

20 A. Correct.

21 Q. Then they weld in the various parts, and you say it should include
22 a blocking bar?

23 A. Yes.

24 Q. So it's okay to have it without the blocking bar but not okay to
25 put the blocking bar in after it's assembled. Is that right?

1 A. After it has reached its point where it's classified as a frame or
2 receiver of a machine gun, I believe it is your step number three, the
3 blocking bar needs to be installed prior to any further assembly of the
4 trunnion or the back plate.

5 Q. If a person was engaged in legal sale of parts for machine guns,
6 legal machine guns, wouldn't they need to be able to test those parts?

7 A. If a person was engaged in the business and properly licensed to
8 deal in National Firearms Act firearms, such as a machine gun, yes.

9 Q. Do you have to be licensed to deal with National Firearm Act guns
10 to sell, for example, a machine gun barrel?

11 A. No, sir.

12 Q. So some parts can be sold without the registration and all of that?

13 A. That's correct.

14 Q. When you were testing the gun, there was a full auto fire group
15 that was added at some point in time by someone we don't know?

16 A. As I received it it had one attached; yes, sir.

17 Q. And you added on a full auto bolt, a full auto top cover, and was
18 there anything else?

19 A. A machine gun barrel, a 9mm caliber.

20 Q. Did you do any machining on the receiver?

21 A. No, sir.

22 Q. Now, you didn't test it with the .45 automatic barrel that it
23 originally had. Do I remember correctly?

24 A. That's correct.

25 Q. And that's because you couldn't find the .45 auto full automatic

1 bolt to go with it?

2 A. That's correct.

3 Q. The full auto feed ramp, you're talking about full auto -- I should
4 say machine gun feed ramp. What's the difference between the full
5 auto and the semi auto?

6 A. The difference between the full auto machine gun feed ramp and
7 a semiautomatic feed ramp is where a semiautomatic has a ring
8 essentially, or a hood, that goes over the top of it which is compatible
9 with a semiautomatic configured Uzi barrel. That further prevents the
10 machine gun bolt from being installed.

11 Q. But you say even though it prevents a machine gun bolt from
12 being installed, it would still be machine gun if it had a semiautomatic
13 feed ramp. Is that right?

14 A. Can you restate the question?

15 Q. You said it would still be a machine gun even if it had a
16 semiautomatic feed ramp installed. Is that correct?

17 A. I don't believe I said that.

18 Q. Okay. Then it wouldn't be a machine gun if it had the
19 semiautomatic feed ramp installed?

20 A. As long as it had a machine gun blocking bar with a
21 semiautomatic feed ramp installed, it would be a semiautomatic
22 firearm.

23 Q. Let's assume it doesn't have a blocking bar.

24 A. It would be classified as a machine gun.

25 Q. With the semiautomatic feed ramp?

1 A. Yes.

2 Q. But the semiautomatic feed ramp keeps you from sticking full
3 auto bolt in it or functioning?

4 A. That's not a requirement.

5 Q. So it's got to be -- the full auto bolt has got to be blocked by the
6 blocking bar and not by the feed ramp, even though both would block
7 its operation?

8 A. The inclusion of the barrel blocking or the hood on the portion of
9 the feed ramp is to further prevent an unmodified machine gun from
10 being installed. The blocking bar is required by ATF.

11 Q. And the feed ramp is not?

12 A. No, sir.

13 Q. With the semiautomatic top cover installed, do you know if that
14 would let you pull a full auto bolt back far enough to cock it?

15 A. No, I don't believe it would.

16 Q. You don't believe it would prevent you from cocking it?

17 A. Well, the cocking slot on a semiautomatic, because that type of
18 weapon fires from a closed bolt, the area in which the cocking slot
19 would come back isn't as long as a machine gun top cover which is
20 designed to operate with a machine gun and fire from the open bolt.

21 Q. So with the machine gun bolt it has to come back farther,
22 operating from the full --

23 A. The machine gun receiver and the -- excuse me, Uzi trigger
24 mechanism, that's designed to fire from the open bolt. So for it to
25 operate you would need a machine gun top cover.

1 then let her take him to the hospital.

2 THE COURT: Let's get started with Ms. Loeffler and we will see
3 where we go from there.

4 Please be seated.

5 (Thereupon, at 1:12 p.m. the jurors resumed their seats in the
6 jury box afterwhich the proceedings resumed as follows:)

7 Welcome back, ladies and gentlemen of the jury. The record will
8 reflect the presence of counsel, the presence of Mr. Kuzma; and you
9 may continue, Mr. Kaufmann.

10 EVIDENCE ON BEHALF OF THE DEFENDANT

11 MR. KAUFMANN: As our first witness, we would like to call
12 Tammy Loeffler.

13 THE COURT: Ms. Loeffler, you have been sworn.

14 Please take a seat.

15 TAMMY LOEFFLER, GOVERNMENT'S WITNESS, SWORN

16 THE CLERK: State and spell your first and last name for the
17 record.

18 THE WITNESS: Tammy Alicia Loeffler, spelled T-A-M-M-Y. Last
19 name is L-O-E-F-F-L-E-R.

20 DIRECT EXAMINATION

21 BY MR. KAUFMANN:

22 Q. Ms. Loeffler, are you currently employed?

23 A. I am an independent contractor, but I work for Mr. Kuzma.

24 Q. You work for Mr. Kuzma or to you work for D&D Sales?

25 A. D&D Sales.

1 Q. How long have you worked for D&D Sales?

2 A. Almost five years, since May of 2013.

3 Q. And when you say you are a contractor, what do you mean by
4 that?

5 A. I am responsible for paying my own taxes.

6 Q. What do you do for D&D Sales?

7 A. All of the administrative work, all of the office work and
8 bookkeeping, that kind of thing.

9 Q. Five years, you are talking about 2012, 2013?

10 A. 2013 until now.

11 Q. And when you -- were working there on March 21st, 2017?

12 A. I was scheduled to work there, but I received a call telling me not
13 to come in that day.

14 Q. So prior to 3-21-17?

15 A. I have been there five or six days a week.

16 Q. Are you familiar with the premises?

17 A. Yes.

18 Q. Have you been all over the premises?

19 A. Yes.

20 Q. Just very briefly describe the premises.

21 A. Well, it is an acre or two, and there is a house on it, and I work in
22 the mobile home that is next to the house. There is a lot of cactus out
23 there, has a chain link fence. And I work in the trailer.

24 Q. And you have been in the house?

25 A. Yes.

1 Q. What is in the house?

2 A. Lots of garbage. The animals and Tom stay in the house next
3 door.

4 Q. But you work mostly in the office?

5 A. I yes, I work in -- the office is in the trailer.

6 Q. Are the business records in the office?

7 A. Yes.

8 Q. Do you know who is the owner of D&D Sales?

9 A. Donald Tatum.

10 Q. Have you met him?

11 A. Yes, I have.

12 Q. Describe for the jury Donald Tatum.

13 A. Oh, he is probably in his early 80s, and very nice, quiet
14 gentleman, very polite. And like I say, he is an elderly man.

15 Q. Let me show you some pictures.

16 Let me show you what has been marked as Exhibit 126 and ask
17 you if you recognize that?

18 A. Yes.

19 Q. Is that a picture that you took?

20 A. Yes.

21 Q. And is that a picture of how the property looked on or about
22 3-21-17?

23 A. Yes.

24 MR. KAUFMANN: Move to admit 126.

25 MS. WOOLRIDGE: No objection.

1 THE COURT: 126 is admitted and may be published.

2 BY MR. KAUFMANN:

3 Q. Let me show you what has been marked as Exhibit 134.

4 A. Yes.

5 Q. Do you recognize 134?

6 A. Yes, I do.

7 Q. Can you tell us what 134 is.

8 A. That is one view of the kitchen area.

9 Q. In the house?

10 A. Yes.

11 Q. And the house is where the parts are, and the machinery is and
12 everything else?

13 A. The workshop is in the garage of the house, which is separate
14 from the trailer.

15 Q. Is that how the house looked -- you took this picture?

16 A. I did.

17 Q. Is that approximately how this area looked when -- back in March
18 of 2017?

19 A. Yes.

20 MR. KAUFMANN: Move to admit 134.

21 MS. WOOLRIDGE: No objection.

22 THE COURT: 134 is admitted and may be published.

23 BY MR. KAUFMANN:

24 Q. Let me show you Exhibit 135.

25 Are you familiar with that picture?

1 A. Yes.

2 Q. Can you tell me what that picture describes.

3 A. Yes, that is the other side of the kitchen.

4 Q. And is that how it appeared back in March of 2017?

5 A. Yes.

6 MR. KAUFMANN: Move to admit 135.

7 MS. WOOLRIDGE: No objection.

8 THE COURT: 135 will be admitted.

9 BY MR. KAUFMANN:

10 Q. 136.

11 Can you tell us what 136 is.

12 A. That is an additional view of the kitchen area, and the cable.

13 Q. You took that picture?

14 A. Yes, I did.

15 Q. Is that how it appeared back in March of 2017?

16 A. It did.

17 MR. KAUFMANN: Move to admit 136.

18 MS. WOOLRIDGE: No objection.

19 THE COURT: 136 is admitted.

20 That's fine, Mr. Kaufmann.

21 BY MR. KAUFMANN:

22 Q. And finally, let me show you the last one, 137, and ask you if you
23 recognize 137?

24 A. Yes, I do.

25 Q. And what is 137?

1 A. That is the bedroom that Tom stays in all day.

2 Q. And that is the way it appeared back in March of 2017?

3 A. Yes.

4 Q. There is something that appears -- I move to admit 137.

5 MS. WOOLRIDGE: No objection?

6 THE COURT: 137 is admitted.

7 Q. I am pointing to some stuff here on the top. Can you see where I
8 am pointing?

9 A. Yes.

10 Q. Can you tell the jury what that is.

11 A. Those are cobwebs that have dirt in them. They have been there
12 for a long time, I believe.

13 Q. So do you have an opinion as to whether this house would
14 survive an inspection by the Pima County Health Department?

15 A. Oh, no, I don't think so.

16 MS. WOOLRIDGE: Objection, speculation.

17 THE COURT: Sustained.

18 BY MR. KAUFMANN:

19 Q. Would that I be wrong to describe this place as a pit?

20 A. No.

21 Q. So, Mr. Kuzma, can you tell us what his physical condition is, to
22 the best of your knowledge.

23 A. He has been just -- had some physical disabilities since I started
24 working for him, but his health has declined rapidly over the last several
25 months. He cannot stand up without a cane or crutches and he has

1 fallen several times lately. And his memory is --

2 THE COURT: Let's start January through March of --

3 BY MR. KAUFMANN:

4 Q. Let's talk about January through March 21st, 2017.

5 What was Mr. Kuzma's daily routine?

6 A. I would mostly communicate with him by phone, even though the
7 buildings are real close, but he doesn't get up and move around much.

8 So we communicate through our cell phones and text messages and
9 cell phones, and that's basically how we work together.

10 Q. And if you know, what does he do in the house?

11 A. Well, I am not there personally in the house. I work in the trailer
12 and I only go over there if he needs something. But he has his
13 television, and he lays in bed all day.

14 Q. So have you ever -- January through March of 2017, have you
15 ever seen him in the shop, working?

16 A. Oh, gosh, no. No, I don't think that he can even get steady
17 enough to get through the shop. There are a lot of obstacles through
18 there.

19 Q. To the best of your knowledge, does he have the ability to do the
20 work, the physical ability, excuse me.

21 A. No, due to the shaking of his hands. His hands were shaking very
22 badly at that time period, he couldn't even write or sign his name very
23 well. So, he can't use any tools.

24 Q. When you first came to work back in 2013, was he able to do any
25 kind of physical work?

1 A. I have -- never knew him to do any work on the parts or anything
2 like that, no. Tim has always done that.

3 Q. You mentioned an individual by the name of Tim?

4 A. Yes.

5 Q. Who is Tim?

6 A. Tim is a man that was -- had started working with Tom just
7 before I got there, and he did the maintenance on the vehicles and the
8 trailer and the house. And he was responsible for doing -- working all
9 the parts and packaging. And I would type up the invoices, and then
10 he would package them for shipment.

11 Q. When you say working with the parts, what do you mean?

12 A. He did everything out in the shop. I wasn't there often enough to
13 tell you exactly what he did, but anything that needed to be done, he
14 was responsible for doing it.

15 Q. There is another person's name that came up, Ron Ewer. Do you
16 know Ron Ewer?

17 A. I met him briefly.

18 Q. What did Ron --

19 A. No, Ron. I don't know Ron. I know Vince, but I don't know
20 Ron.

21 Q. You never met Ron?

22 A. Not that I recall.

23 Q. Mr. Kuzma seemed to indicate that Mr. Ewer used to haul trash?

24 A. That is my understanding. And I know a gentleman did come
25 over, and I believe was his name, but I don't believe that I ever met

- 1 A. Well, it is kind of -- it looks like Line Number 5, I believe.
- 2 Q. So the manufacturer is D&D Sales?
- 3 A. Yes.
- 4 Q. The model is what?
- 5 A. It is a Model A.
- 6 Q. The serial number is what?
- 7 A. DD000005.
- 8 Q. The type of part is what?
- 9 A. Receiver.
- 10 Q. The caliber?
- 11 A. 9mm 45-ACP, 41-AE and 122.
- 12 Q. And the date of receipt?
- 13 A. July 29, 2010.
- 14 Q. Let me show you what is marked as Exhibit 108.
- 15 A. Yes.
- 16 Q. Do you recognize 108?
- 17 A. Yes, that's the second page of the book, because the acquisition
- 18 is on the left side, and the disposition -- whenever the receiver is
- 19 transferred anywhere, it has to be written on the right side. And so this
- 20 is the right side of the log.
- 21 Q. And does this also concern the receiver that has the serial
- 22 number DD000005?
- 23 A. Yes.
- 24 Q. Is this a document that is kept in the ordinary course of
- 25 business?

1 A. Yes.

2 MR. KAUFMANN: Move to admit Document 108.

3 MS. WOOLRIDGE: No objection, but it has already been
4 published.

5 THE CLERK: Sorry.

6 THE COURT: It is admitted.

7 BY MR. KAUFMANN:

8 Q. So the date is what date?

9 A. It is June 19, 2013.

10 Q. And what does it indicate?

11 A. That was when the receiver was taken out of the inventory with
12 all the other blank receivers and moved over to the workshop.

13 Q. So does this indicate that it was sold at that time?

14 A. No, it was never sold.

15 Q. So why is it being moved to the shop, if you know?

16 A. As a testing -- as a tool for testing other parts.

17 Q. Now, let me show you what has been marked as Document 102.

18 A. Yes.

19 Q. Do you recognize Document 102?

20 A. Yes, I do.

21 Q. And can you tell the jury what Document 102 is.

22 A. I created this document. It has photos of what we call a receiver
23 with a weld-up kit. It is a kit that we sell. And it shows all the parts
24 that are included in that kit. And then there is a list underneath the
25 pictures.

1 website of all the parts that -- this is the complete parts list. It's
2 available on the website of all the parts that are sold, and they also
3 correspond with the diagram.

4 MR. KAUFMANN: I move to admit 103.

5 MS. WOOLRIDGE: No objection.

6 THE COURT: 103 is admitted.

7 BY MR. KAUFMANN:

8 Q. Just so the jury doesn't think that I am not showing them
9 everything, everything that was just on 103 corresponds to the two
10 previous diagrams?

11 A. Yes. And those are available on the website as well.

12 Q. So are you familiar with what is going on in this courtroom --

13 A. Yes.

14 Q. -- regarding the subject receiver and gun?

15 A. Yes.

16 Q. And the issue of the blocking bar?

17 A. Yes.

18 Q. Have you heard Mr. Kuzma discuss with Mr. Sink the replacement
19 of the blocking bar?

20 A. Yes.

21 Q. And could you tell the jury approximately when that was.

22 A. That would have been approximately February or March of this
23 year.

24 Q. In regards to the search? Before the search? After the search?

25 A. It was before the search, yes.

1 Q. You are pretty familiar with what kind of work that D&D does?

2 A. Yes.

3 Q. And specifically, Mr. Donald Tatum isn't around much any more;
4 correct?

5 A. He does show up occasionally, yes.

6 Q. About how often does he show up?

7 A. At least once a year, approximately.

8 Q. So the other 364 days of the year, basically, who is in charge?

9 A. He will stay three or four months at a time when he comes.

10 Q. The other, however long that might be, the other eight to nine
11 months out of the year, who is the responsible party on the federal
12 firearms license?

13 A. Well, up until March, Mr. Kuzma was.

14 Q. So Mr. Kuzma was essentially, I guess, in charge of D&D Sales
15 when Mr. Tatum was out?

16 A. Yes.

17 Q. So suffice it to say he was familiar with the type of business that
18 went on from D&D Sales?

19 A. Yes.

20 Q. He conducted that business?

21 A. Yes.

22 Q. He was the person making the sales, doing the orders, things like
23 that?

24 A. No.

25 Q. What was he doing then, being in charge of the business?

1 A. Answering my questions.

2 Q. And so you --

3 A. I spoke with the customers, and I typed up the orders, and I
4 prepared the shipping labels, and then Mr. Sink packaged them.

5 Q. And so Mr. Kuzma was involved -- he has extensive knowledge in
6 firearms?

7 A. Yes.

8 Q. He could answer your questions about the firearms, different
9 firearm parts, things like that?

10 A. Yes.

11 Q. And he essentially knew, you kept him apprised of what was
12 going on in the business?

13 A. Yes.

14 Q. As he had to be apprised, being the responsible party; correct?

15 A. Right.

16 Q. You mentioned that you did work in the trailer?

17 A. Yes.

18 Q. You didn't work in Mr. Kuzma's house?

19 A. No.

20 Q. You didn't work in Mr. Kuzma's garage?

21 A. No. I would occasionally go over there, but I didn't work in
22 there.

23 Q. And you usually communicated by phone or text message with
24 Mr. Kuzma?

25 A. Yes.

1 Q. So suffice it to say you weren't in the home or the garage all the
2 time to know what was going on?

3 A. Not all the time, no.

4 Q. Mr. Kuzma was the only one who lived in that house; right?

5 A. True.

6 Q. And that garage was attached to his house; right?

7 A. Yes.

8 Q. Now, Tim Sink was pretty much working for Mr. Kuzma?

9 A. Yes.

10 Q. Mr. Kuzma, again, was in charge, he was the responsible person?

11 A. Yes.

12 Q. And you weren't there -- I think you mentioned on direct
13 examination you weren't there all the time to know exactly what Tim
14 did?

15 A. I was there five to six days a week and eight to ten hours a day.

16 Q. But you were in the trailer?

17 A. Yes.

18 Q. So you don't know exactly what Tim or Mr. Kuzma did in the
19 house or the garage?

20 A. I didn't supervise anybody, no.

21 Q. And you weren't aware for all the conversations between Tim and
22 Mr. Kuzma?

23 A. Not all of them, but many of them.

24 Q. Now, you are aware that D&D Sales does not have a federal --
25 does not have a special SOT to deal in automatic firearms; correct?

- 1 A. I prepared the applications, and they were applied for.
- 2 Q. That was after the search warrant in this case?
- 3 A. Actually, it was before. They just hadn't been mailed yet.
- 4 Q. Okay. So you prepared applications prior to March 21st?
- 5 A. Yes.
- 6 Q. But you had never obtained an SOT?
- 7 A. No, they hadn't been mailed.
- 8 Q. And you never have obtained an SOT?
- 9 A. I don't know specifically; not that I am aware of.
- 10 Q. So you couldn't sell any automatic firearms?
- 11 A. We don't sell any firearms.
- 12 Q. You couldn't sell fully automatic parts?
- 13 A. I believe that we -- individual parts, yes.
- 14 Q. You specifically sold parts for semi-automatic Uzis?
- 15 A. Right.
- 16 Q. And that is exactly why you have listed on Exhibit 102 here, you
- 17 specify that it is a semi-automatic trunnion, semi-auto feed ramp for
- 18 your receiver with weld-up parts kit?
- 19 A. Right.
- 20 Q. You also noted that "Two-part certified 922r compliant"?
- 21 A. Yes.
- 22 Q. And you have under there, "trunnion and receiver"?
- 23 A. Right.
- 24 Q. "922r compliant" basically means that they are not prohibited
- 25 weapons?

1 present?

2 MR. KAUFMANN: I would like to call Thomas Kuzma.

3 THE COURT: Thank you. Please come forward, Mr. Kuzma.

4 THOMAS KUZMA, WITNESS ON HIS OWN BEHALF, SWORN

5 THE CLERK: Please state your full name and spell your first and
6 last name for the roamer.

7 THE WITNESS: Thomas Kuzma.

8 DIRECT EXAMINATION

9 BY MR. KAUFMANN:

10 Q. Mr. Kuzma, how old are you?

11 A. Seventy-four.

12 Q. And can you tell us a little bit about your background?

13 A. Yes. I work as a contractor prior to going into the service. I lived
14 here in Arizona most of my life, 71 years of that, and I trained as a
15 nuclear weapons specialist and a commercial test equipment calibration
16 specialist in the service.

17 Q. Where did you serve?

18 A. In the United States Army in Korea. VietNam era veteran.

19 Q. How long?

20 A. Three years.

21 Q. And when was that?

22 A. Got out in 1970. '67 is when I went in.

23 Q. How many years did you serve?

24 A. Three years.

25 Q. After the military, what did you do?

1 A. Came out, worked a short time at Hughes Aircraft as a calibration
2 technician. Constant layoffs. I went and got my contractor's license
3 and building contractor and worked as a building contractor here in
4 Tucson for, I guess, about 12 years before I got too sick to be able to
5 even manage the business.

6 Q. Give us the kind of --

7 A. That ended in about 1990, when I had to go into the VA for
8 additional care because of the complications from my service
9 connection.

10 Q. What were the issues back in 1990?

11 A. Spinal degeneration, atrial fibrillation, a disease called
12 fibromyalgia, that causes constant pain in my joints and cervical
13 degeneration of my spine and lumbar spine, which are constantly
14 painful. I just live with never-ending pain. It makes everything
15 difficult. Concentrating is difficult. In 2006, because of the difficulty, I
16 went in to the VA Hospital and they did cognitive testing.

17 MS. WOOLRIDGE: Your Honor, objection. Non-responsive and --

18 MR. KAUFMANN: I will ask questions, Your Honor.

19 BY MR. KAUFMANN:

20 Q. So in the early 1990s, were you hospitalized for these issues?

21 A. No, I was hospitalized on occasion for testing and for possible
22 heart attack with atrial fibrillation, but -- as a matter of fact, I had back
23 surgery ultimately and, of course, I was hospitalized for some time for
24 that.

25 Q. Can you tell the jury what A-fibrillation is.

1 A. The heart doesn't beat regularly and causes your body not to get
2 enough oxygen, so you get exhausted very quickly. Even an extended
3 sentence can make me exhausted so I have to catch my breath. I can't
4 do very much at all because of that. It's just getting old.

5 Q. When you say a sentence, you are not talking about a prison
6 sentence, you're talking about a sentence like in a book or a
7 magazine?

8 A. Please repeat.

9 MS. WOOLRIDGE: Your Honor.

10 THE COURT: Mr. Kaufmann, you can move on to your next
11 question.

12 BY MR. KAUFMANN:

13 Q. So you still suffer from AFib?

14 A. Pardon?

15 Q. You still suffer from AFibrillation?

16 A. Yes, and fibromyalgia. And the degeneration is getting
17 progressively more severe.

18 Q. What symptoms do you have for the -- what does it cause?

19 A. It causes shortness of breath, exhaustion, chronic fatigue.

20 Q. Are you suffering from that today?

21 A. Oh, yeah. Fibromyalgia. One of the difficulties is chronic pain
22 and chronic fatigue, and depression caused the from the constant,
23 long-term pain.

24 Q. Your degenerative issues with your back.

25 Where is that cervical lumbar?

1 A. Cervical lumbar and some dorsal.

2 Q. And what issues do you have with that?

3 A. So severe in my lower back that I am nearly --

4 MS. WOOLRIDGE: Objection. If we can limit the questioning to
5 the March 21st, the relevant time period.

6 MR. KAUFMANN: He is entitled to go back and tell the jury.

7 THE COURT: Mr. Kaufmann, you don't have to go directly to the
8 March 21st. You can address issues that affect his health as of March
9 21st or that had an affect as to how he was feeling on March 21st.

10 Go ahead.

11 BY MR. KAUFMANN:

12 Q. How long have you suffered from depression?

13 A. Oh, ever since this fibromyalgia developed. It's kind of a side
14 effect of it.

15 Q. What kind -- what was your condition from January of 2017
16 through the end of March 2017?

17 A. I was -- basically, the constant pain. I was staying bed, except
18 for getting up to go to the bathroom or to make a TV dinner. I eat
19 about once a day. And the -- I have trouble keeping track of what I am
20 talking about. And in 2006, I was I was diagnosed with cognitive
21 disorder and mild dementia, which is early onset of dementia.

22 I have not had any recent testing.

23 Q. Has that gotten worse lately?

24 A. Yes, and we have been trying to get testing here, updated here
25 for the past eight months or whatever.

1 shot down from my shoulder area to my feet or to my hands, I should
2 say, and down my spine to my legs.

3 Today, that has progressed to a numbness in my hands, and it
4 was the reason I had requested to go to the VA for concerns about --
5 well, one of the doctors told me any sudden movement could cause me
6 to sever my spine with my cervical problem.

7 MS. WOOLRIDGE: Objection.

8 THE COURT: Sustained. You need to move on, Mr. Kaufmann.

9 BY MR. KAUFMANN:

10 Q. When was the last time you took the pain medication today?

11 A. 12:00 or thereabouts.

12 Q. Did you do anything in court that helps you relieve some of the
13 pain, other than the medication?

14 A. Just change of position. That's the only thing that helps.

15 Q. Well, from time to time, I have seen you lying in the witness
16 room.

17 MS. WOOLRIDGE: Your Honor --

18 THE COURT: Sustained. Mr. Kaufmann, you need to move on.

19 Don't answer, sir. You need to move to on to your next question.

20 BY MR. KAUFMANN:

21 Q. Do you know who Don Tatum is?

22 A. Yes.

23 Q. Who is Don Tatum?

24 A. Don Tatum is my partner. We have been friend friends in various
25 businesses together since 1970. We met at Hughes Aircraft, now called

1 Raytheon.

2 Q. Do you know where Mr. Tatum lives?

3 A. Yes, he lives at 5661 South Spencer Avenue. That is his primary
4 residence. Currently he is in Colombia. He is living down there, and he
5 is actually getting some special treatment down there for some
6 disorder, blood disorder, some blood clotting of some kind that he has.
7 He is getting daily treatments.

8 Q. Does he come back occasionally to the States?

9 A. He was supposed to be back here in December, but because of
10 this disorder, it did not work out.

11 Q. Who owns D&D Sales?

12 A. Donald Tatum.

13 Q. Does he own all the parts in D&D Sales?

14 A. He owns everything, the property. I don't own anything. He
15 owns the vehicles.

16 Q. Everything?

17 A. Absolutely everything. I don't own anything there.

18 Q. Tell us about D&D Sales.

19 A. D&D Sales. That was set up by Don and his brother-in-law,
20 therefore the D&D. His brother-in-law's name was Donald Balda. And
21 we set up in Sierra Vista. And what I did for the business at the time
22 was to just work on the parts down in Tucson; the two kept separate as
23 much as possible.

24 Q. Let me just go someplace else for just a second.

25 What kind of parts did you work on?

1 A. We converted --

2 Q. Excuse me.

3 What was the business about?

4 A. Converting submachine gun parts into semi-automatic parts, and
5 the sale of both semi-automatic and submachine gun parts, individual
6 parts, very few submachine gun parts. Most people -- those can be
7 purchased anywhere by anybody. There is no licensing requirement to
8 manufacture machine gun parts or to possess them, and they are
9 imported by the tens of thousands. Century Arms is one of the major
10 importers of cut-up machine gun parts, all post-ban style copies of
11 assault weapons.

12 Q. When you say "post ban," what do you mean?

13 A. I mean, what is defined as an assault weapon is basically a fully
14 automatic firearm, and, in essence, what the post-ban version of that is
15 is a semi-automatic version of that, with an obligation to comply with
16 what is called a 920 to our compliance, which is a certain number of
17 U.S. parts that have to be put in. So you take these submachine gun
18 parts, and 90 percent are the same as semi-automatic parts. The other
19 ones, you purchase from somebody like us.

20 THE COURT: Mr. Kuzma, can you slow down a little bit.

21 MR. KAUFMANN: Mr. Kuzma, the question was: What do you
22 mean by "post ban"?

23 THE WITNESS: "Post ban" means the after-1986 manufacture of
24 firearms that are banned from importation, like Uzis, AKs, full auto
25 versions of those firearms are banned from importation. Post-ban

1 THE COURT: There was no answer.

2 Go ahead, Mr. Kaufmann.

3 THE WITNESS: I don't remember the question now.

4 THE COURT: It's going to be another question.

5 Go ahead, Mr. Kaufmann.

6 BY MR. KAUFMANN:

7 Q. So you had 19 years' experience with the Uzi?

8 A. Pardon?

9 Q. 19 years of experience?

10 A. 18. Started the business in September of 1999, I believe it was.

11 Q. And describe for the jury what your experience is with the Uzi.

12 A. All the fabrication, all the manufacturing, the entire learning
13 process with building and making parts and making sure they are safe
14 for customers. In that process, we have discovered a couple of lethal
15 defects, one that was with the original patented firearm, since the
16 firearm was patented --

17 Q. Hold on, Mr. Kuzma.

18 So you have been involved in the manufacturing for 18 years?

19 A. 18 years, yes.

20 Q. What duties do manufacturers have in respect to the products
21 that they either sell or they produce?

22 A. Well, manufacture of firearms, you can actually manufacture
23 firearms from scratch, that means taking a receiving -- stamping the
24 receiver yourself and then going ahead with, of course, approval from
25 the ATF, and then building everything on to the gun and all the parts

1 numbered 005. It has the semi-auto recall buffer in the back as well.

2 Q. Let's talk about the receiver for a moment.

3 A. Okay.

4 Q. Does the receiver in Government's Exhibit 12 match the receiver
5 that I just showed you in Defendant's Exhibit 145?

6 A. Yes. It is identical, with the exception of the addition of the parts.

7 Q. And when you say "identical," that is something that you
8 manufactured?

9 A. Yes, identical stamping; was just one of 300 or so that came in.

10 Q. Who is responsible for testing the parts that you make and sell?

11 A. Well, I used to be, but the past five years, that is what Tim Sink
12 was hired for. I was unable to do any more physical work of any kind.
13 In fact, I was no longer able to do any telephoning. I don't do anything
14 except supervise.

15 Q. I think you indicated most of the day, you lie in bed?

16 A. Yes, that is all I do.

17 Q. So how long has it been since you have done any of the physical
18 labor or work for D&D Sales?

19 A. Probably four years. Took me about a year to train Tim to do the
20 welding, and to know the different parts so that he could package, so
21 he could do whatever welding was necessary when it was necessary.

22 Q. Tell us a little bit about Tim Sink. When did you first meet him?

23 A. Tim Sink came to the gate one day, and I saw him at the gate,
24 and I went out and happened to be there. And he stopped me at the
25 gate and said, I am looking for work. And I took a look at him and he

1 had his head shaved, white T-shirt, and immediately thought of him as
2 a skinhead and decided that I wasn't going to hire him, and then
3 realized what I was doing. And as a result of that, I hired him.

4 I asked him if he knew how to fix vehicles. And I said, we will try
5 it out. And he came over and started working on the vehicles, restoring
6 them, getting them to run. We had seven or eight vehicles that had
7 been sitting, and I never sold them because I got sick. And so finally
8 he helped me get thing cleared up, so I thought that would be a good
9 way to start.

10 Q. So he worked on vehicles for a while.

11 Did there come a point when you needed to train him to do
12 gunsmithing work?

13 A. Manufacturing work, yes. Not gunsmithing.

14 Q. When did that occur?

15 A. Well, at that time, I was in a transition where I was --

16 Q. When you say the time period, what was the time period?

17 A. When I hired him, it was about five years ago is when I was at
18 the point where it was so difficult to do anything that things weren't
19 getting done, customers weren't being talked to. Basically I could not
20 run the business anymore.

21 I could not do the welding, my hand started to shake so that
22 trying to weld was -- was impossible. I still can't, and that has
23 improved with medication changes, but I still can't weld because of it.
24 And I am just can't stand the pain while I am doing it. It is just not
25 anything I do that -- the only relief I get from the pain is lying down

1 and making sure that I relax and take the pain meds.

2 Q. When was the last time you did any welding for D&D Sales?

3 A. Probably four and a half years ago, four years ago.

4 Q. When was the last time that you did any welding at all?

5 A. Three years ago.

6 Q. And when was the last -- and since that time period, who has
7 done the welding for D&D Sales?

8 A. Tim Sink.

9 Q. What other duties does Mr. Sink have in the manufacturing or
10 sales of parts?

11 A. In manufacturing and sales of parts, we -- basically all he did was
12 any welding, any assembly -- converting the parts to semi-auto parts,
13 converting the pistol groups to semi-auto, welding in the selector stop,
14 changing the stamping from machine gun stamping to semi-auto
15 stamping. That involved removing the submachine gun stamp, which
16 isn't required by law, by the way, to sell these or these kits or to have
17 them on a semi-automatic firearm.

18 The position indicator isn't an issue. A selector stop has to be put
19 in. We use a little round steel washer because people can't put it in
20 wrong, as opposed to a rectangular one or a half-shaped one, or a half
21 moon one, and that way there is no way they can make a mistake
22 putting the selector stop in, and plus, you can weld it in the middle.

23 Q. Hold on. The question is: What does Tim do?

24 A. Tim does this. This is what Tim does. He converts the pistol
25 grips to semi-auto, and this is the process for converting a pistol grip to

1 semi-auto.

2 Q. Is he familiar with all the parts that you sell?

3 A. Oh, yeah. He is familiar with all of them, so he can put the thing
4 together blindfolded.

5 Q. Do you sell fully -- do you sell fully made weapons?

6 A. No. Don't even sell welded receivers.

7 Q. What does D&D sell?

8 A. We sell parts kits, parts kits. We have, I think, ten different
9 variety of kits. Some with a receiver, which are all sent to a federal
10 firearms dealer and logged in and out, and some that just have the bolt
11 and striker assemblies and the internals for the Uzi, but pretty much a
12 complete range of what anyone would want with respect to building a
13 semi-automatic Uzi.

14 Q. Do you have a manufacturing license?

15 A. Yes, we do.

16 Q. What manufacturing license do you have?

17 A. It's an 07, which means manufacturing license. An 01 would be a
18 dealer.

19 Q. What does it allow you to do?

20 A. It allows me to manufacture firearms, any kind of firearms. We
21 could do AKs, Balls (ph). We do it on the same process. In fact, we
22 considered doing AKs, but there are too many people doing it, and they
23 just don't have any market. They have a market, but I mean it's really
24 crowded as far as sales are concerned.

25 And HK, FN FAL, IMI Galils, the HK German firearms. Virtually

1 any firearm which is a demilled machine gun. People manufacture
2 them by taking the machine gun parts and buy them -- we buy them by
3 500 or a thousand at a time, and then you convert them. And in order
4 to do that, you have to have receivers on hand. There's no way to
5 make a firearm without having the receiver or to sell the parts. All we
6 sold for the last 15 years -- about 12 or 15 years are the receiver shells
7 themselves.

8 Sorry, I'm getting shocks. Damn.

9 Q. Do you need to take a couple of minutes?

10 A. No. I just got a real sharp shock from the spinal thing. That's all
11 right. Let's go on. It's all right. I am actually enjoying being here.

12 Q. Let's take a look at Exhibit 145 again.

13 A. This is either a machine gun or semi-automatic -- in fact, by law,
14 according to the ATF Enforcement, unless this blocking bar is installed,
15 this is a machine gun, period. No ifs, ands or buts, with the exception
16 of the fact that we have a letter exempting us from that until we sell
17 these to the public.

18 Q. When you say a letter to that effect, have you seen Exhibit 104?

19 A. No, sir, I haven't.

20 This is the approval letter we got after --

21 Q. Hold on a second.

22 THE COURT: Mr. Kaufmann, are you looking for a particular
23 exhibit?

24 MR. KAUFMANN: I am looking for my copy of 104.

25 THE COURT: Would you like to use mine, Mr. Kaufmann?

1 MR. KAUFMANN: Sure.

2 BY MR. KAUFMANN:

3 Q. What I am showing you on the screen, that is Exhibit 104.

4 A. I'm sorry. Say it again, Mr. Kaufmann.

5 Q. The letter I am showing you on the screen that has been
6 admitted.

7 A. That is the same letter I have here, Exhibit 104.

8 Q. And is that the letter that you were talking about from the ATF?

9 A. We received a number of letters. I don't remember -- again, two
10 minutes after I say something to your question, I won't remember it
11 again. So we will have to keep -- I don't remember, did we talk about
12 another letter?

13 Q. No. We talked about you receiving a letter from ATF that
14 exempted you from --

15 A. Regarding the blocking bar, right.

16 Yes. This is after we disputed the fact that they had allowed
17 30,000 Group Industry receivers to be sold without blocking bars, these
18 were stamped and manufactured by Group Industries. Somehow, they
19 managed to make 30,000 defective receivers, which were sold at
20 auction for about three cents apiece, and ultimately started this entire
21 post-ban assault weapons manufacturing industry.

22 The auction was in 1995, and we advised them that if this was
23 the case, then the 30,000 Group Industries receivers were, in fact,
24 illegal machine guns without the blocking bar.

25 Q. And you did so by letter?

1 A. Yes.

2 Q. Letter to the ATF?

3 A. Yes.

4 Q. Now, this auction -- was it supervised by ATF?

5 A. As far as I understood, it was an ATF auction, but I don't know
6 that. That's all I understood.

7 Q. So as a result of that auction, you guys got -- "you," meaning
8 D&D Sales, got into the business of manufacturing receivers?

9 A. That's correct. A lot of people did. Vector started the same time
10 we did. But Ralph was smart. He bought already registered machine
11 gun receivers, and then, of course, sold legal machine guns post-ban
12 that had already been registered as machine guns. And prior to Group
13 Industries bankruptcy in 1986. They went bankrupt and had a large
14 stockpile of already registered machine guns.

15 Q. So your dispute with the ATF. What did you do?

16 A. I couldn't hear you, Mr. Kaufmann.

17 Q. Your dispute with ATF.

18 Did you send your parts that you were thinking about
19 manufacturing to ATF?

20 A. In this case, yes. I sent a receiver to get a manufacturing
21 approval. We don't always do that, but in this case we did.

22 Q. So in the back of that letter -- of 104, there are some pictures?

23 A. Yes.

24 Q. Have you seen the pictures?

25 A. Oh, yes, with the approval. It came back the approval. It was

1 part of this letter.

2 Q. Whose pictures were they?

3 A. The ATF made these pictures.

4 Q. And they made the pictures of what -- and what are the pictures
5 of?

6 A. This is pretty dark, but it appears to be one of our D&D Sales
7 receivers. They don't send back very clear pictures. These are copies
8 of pictures. The actual ATF pictures are much clearer than this.

9 Q. So the receiver that you have up there, 145?

10 A. Yes.

11 Q. 145, I believe.

12 A. Yes.

13 Q. Is that the same receiver that we see in these pictures?

14 A. Yes. If these are the pictures that came back with this letter, they
15 are the same style receiver. It is not the same receiver. This was made
16 especially for getting the approval. It was fabricated from a Group
17 Industries receiver.

18 Q. Same receiver in Government's Exhibit 12?

19 A. Yes. Exhibit 12? Is this Exhibit 12?

20 THE COURT: Yes.

21 THE WITNESS: Yes.

22 BY MR. KAUFMANN:

23 Q. So was there a dispute a ATF? Was there a dispute with ATF back
24 in 2005?

25 A. No, it was settled. We had -- as I understood it.

1 Q. Was there a dispute?

2 A. On other issues, yes. Not on this one; this was resolved.

3 Q. But before it was resolved, was there a dispute?

4 A. Yes.

5 Q. What was the dispute?

6 A. The dispute was, as I explained, based on the fact that Group
7 Industries, or the ATF auctioned and supervised the sale of 30,000
8 Uzi-style receivers similar to this, requiring much more work as
9 semi-automatic firearms, that they would, in essence, be classifying
10 30,000 receivers sold at that auction as illegal machine guns, so they
11 rescinded --

12 Q. Sold by ATF?

13 MS. WOOLRIDGE: Objection, Your Honor. First of all, this has
14 been asked and answered, and it is irrelevant.

15 MR. KAUFMANN: It is not irrelevant.

16 THE WITNESS: I apologize if I am not understanding these
17 questions properly.

18 THE COURT: Overruled.

19 Mr. Kuzma, listen to the question.

20 You may ask the question again, Mr. Kaufmann.

21 MR. KAUFMANN: Are you having a little trouble understanding
22 the questions?

23 THE WITNESS: I almost always have trouble understanding
24 questions. Sometimes I have to -- generally, I understand quite well. I
25 think I do, anyway, but I am not sure because I have never gotten into

1 have the cognitive tests. I am not sure about my decisions.

2 THE COURT: Mr. Kuzma, wait for the question.

3 Go ahead, Mr. Kaufmann.

4 THE WITNESS: I don't know what is going on.

5 BY MR. KAUFMANN:

6 Q. There was a dispute about the receiver that you were
7 manufacturing was a machine gun receiver?

8 THE WITNESS: No. We manufactured -- that was the argument.
9 The argument is that we weren't manufacturing a machine gun receiver,
10 based on the authorized sale of the Group Industry receivers.

11 However, the ATF has required McKay to actually weld these
12 receivers in. They went in to Vector Arms after they had these Group
13 Industry receivers for what, I don't know, ten years, and told them they
14 had to put blocking bars all in them before the end of the inspection.

15 So they contacted us, and we sent them our letter clarifying the
16 fact that we didn't have to do it, therefore, they wouldn't have to do it.
17 So they don't have to put the blocking bars in until they sell them to the
18 public, and they only sell a complete firearm.

19 Q. So that was originally the dispute with ATF?

20 A. Yes, on this particular issue.

21 Q. And that was resolved?

22 A. It was resolved with this letter.

23 Q. Would you turn to page 2 of the letter.

24 So Exhibit 145, what was their resolution of that?

25 A. This was not a machine gun until it was sold to the public.

1 Q. And down there in bold letters, you see that?

2 A. Yes.

3 Q. Bold letters?

4 A. Yes, I do.

5 Q. What does it say?

6 A. "We strongly recommend that you advise your customers that a
7 bolt blocking bar must be installed to prevent the possession of an
8 unregistered machine gun."

9 Q. Do you know who Sterling Nixon is?

10 A. No. I believe he was director at the time. I'm not sure. They
11 change so often. We typically write one letter and get a letter back
12 from someone else.

13 Q. Could you read that again to the jury?

14 A. "We strongly recommend that you advise your customers that a
15 bolt blocking bar must be installed to prevent the possession of an
16 unregistered machine gun."

17 Q. What did that mean to you?

18 A. Means the customer has to put the blocking bar in, and we are
19 not obligated to do it.

20 Q. That's even after all the other conditions are listed?

21 A. As I recall, and without reading them closely, they weren't
22 relevant to this particular issue, other than subject to some other
23 conditions.

24 Q. So you saw these kits; correct?

25 A. Yes.

- 1 A. That is correct.
- 2 Q. Same one as State's Exhibit 12?
- 3 A. Yes.
- 4 Q. Government's Exhibit 12?
- 5 A. That's correct.
- 6 Q. And so I circled something.
- 7 A. Yes, sir.
- 8 Q. I have circled something.
- 9 A. Yes, that is the blocking bar.
- 10 Q. So this blocking bar goes where to that receiver?
- 11 A. See the three holes -- does the jury see this?
- 12 Q. Yes.
- 13 A. See the three holes at the rear, that's the left. Those holes are
- 14 left there for the purpose of tack welding the bar into the receiver.
- 15 Q. Are those the three holes that I just circled?
- 16 A. Yes, they are the ones you just circled.
- 17 Q. So this kit is sent or sold without the blocking bar installed?
- 18 A. Yes, without it installed, but included in the kit.
- 19 Q. And according to this letter, whose responsibility is it to put in the
- 20 blocking bar?
- 21 A. The customer's.
- 22 Q. Did you rely upon this letter?
- 23 A. Absolutely. That was the final resolution to our dispute.
- 24 Q. Now, these parts that you sell -- would you take a look at Exhibit
- 25 144.

1 A. The only authority it grants is that you must register a machine
2 gun, with no clarification of how you manufactured it, how you test it;
3 that it, like the machine gun appears, and you register it. But the --
4 I'm sorry. I am losing track. What was the question again?

5 Q. The question is: First of all, what does "SOT" stand for?

6 A. Special Operating Tax. I didn't even know that. We always
7 thought of it as a Class 2 or 3 manufacturing license. I heard the
8 customer say SOT, but I never really understood it.

9 Q. Has D&D Sales ever had an SOT?

10 A. No. Dawn had suggested it, but only as a precaution with our
11 previous license. Never had one.

12 Q. Did you believe you needed an SOT to do what you were doing?

13 A. No, not for testing.

14 Q. Did you tell to that to Agent Tisch?

15 A. I don't believe so, because I really wasn't certain of that at the
16 time, but I didn't really -- like I said, I always thought of them as a
17 manufacturing license until Tammy brought it up with the license
18 renewal, that we needed to do have one. And I told her to go ahead
19 and get it prepared. That was about a week before the ATF came over.
20 I became concerned that we were missing something, but wasn't
21 certain about why we needed it. We had no intentions to make
22 machine guns any in any way, shape or form.

23 Q. Let me show you what has been marked as Exhibit 117.

24 So 117 is a transcript of your conversation with Mr. Tisch on
25 March 21st, 2017 when you were sitting in his car or your car.

1 Q. -- it's just a receiver?

2 A. No. In our case, because of the letter, without the blocking bar, it
3 is a machine gun, and our letter exempts us from that.

4 Q. With the blocking bar, it is not a machine gun?

5 A. It is not a machine gun, a semi-auto receiver.

6 Q. And if you take the blocking bar out, what is it then?

7 A. It is a machine gun, with our exception, of course.

8 Q. Pursuant to ATF definition?

9 A. And enforcement mostly. He's just asking me how this fits in
10 here so he can show the jury. It fits in here just like this. If you grab
11 hold of it from the end and crimp it, it should stay there.

12 THE COURT: Has 148 been admitted?

13 MR. KAUFMANN: Move to admit 148.

14 MS. WOOLRIDGE: No objection, Your Honor.

15 THE COURT: So 148 will be admitted.

16 BY MR. KAUFMANN:

17 Q. And what am I showing the jury now?

18 A. Pardon, sir?

19 Q. What am I showing the jury now?

20 A. I can't hear you.

21 Q. What am I showing the jury now?

22 A. You are showing the jury the back end of the receiver with the
23 blocking bar in place.

24 Q. That is where, approximately where it should be?

25 A. Pretty much exactly where it should be, about an eighth of an

1 handle.

2 Q. I am going to circle something. You see what I am circling?

3 A. Appears to be the bolt face. I believe you are trying to focus on
4 the extractor. Is that correct?

5 Q. That's correct.

6 Is that what that little bright silver thing is, the extractor?

7 A. Yes, that little bright thing on the side.

8 Q. And again, what does an extractor do?

9 A. That pulls the expent cartridge out of the chamber.

10 Q. And now I am showing you Exhibit 140, and I am circling
11 something. And what is that on Exhibit 140?

12 A. That is the extractor. I believe that is the same thing you just
13 showed me.

14 Q. One was on Exhibit 144 and one -- 140, and the other one was
15 on 141?

16 A. I am sorry. Let me look at it.

17 It doesn't have -- right, this is -- right. That is still the extractor,
18 my apology.

19 Q. So there has been some testimony that you wanted to test
20 something. Is that correct?

21 A. Absolutely.

22 Q. So what did you want to test?

23 A. Well, we wanted to make sure that the extractor was functioning
24 properly.

25 Q. That little thing we just showed the jury?

1 A. Yes.

2 Q. What was the issue?

3 A. The issue was that we had two samples come in that were too
4 loose, and then in an effort to remedy it, we -- the third sample came
5 in and it appeared to be too tight. It was measuring 5, 7-thousandths
6 too tight based on the sample tolerances that we had. And I was
7 concerned that it would not extract the cartridges. What that can cause
8 is out of battery detonation or --

9 Q. What does that mean?

10 A. It means that the round -- if it's left in the chamber and it isn't
11 extracted, the next round coming up, especially on an Uzi, comes up
12 and hits that, and then can be hit by the firing pin -- doesn't happen
13 100 percent of the time because they can go different directions.

14 Q. When it is hit by a fire pin, what happens?

15 A. It explodes inside the chamber.

16 Q. What could that cause?

17 A. Agent Tisch explained that when you asked him about what
18 happens when -- what injuries happen when a firearm explodes. And
19 that's one of the things that causes -- in fact, one of the things other
20 than material failure, like the barrel exploding or the out-of-battery
21 detonation happens, then the cartridge explodes. And in the case of an
22 Uzi, it can blow the top cover off and back; it can send shrapnel from
23 the exploding cartridge back into the person's face. It's a severe issue
24 with respect to public safety.

25 Q. What kind of injuries could it cause?

1 A. Blindness, loss of your fingers, even death. In some cases, the
2 top cover blows all the way back into the operator's face.

3 Q. And again, what is the manufacturer's liability if that happens, or
4 does the manufacturer have liability if that happens?

5 A. Civil liability for any injuries, and in the case of us knowing that
6 this was a flaw and we didn't fix it, that would be criminal negligence.

7 Q. So approximately when did you notice -- address this particular
8 issue?

9 A. Well, it was part of the process of -- we don't normally make full
10 auto parts. However, anyone -- anyone, no license required, can make
11 full auto parts, and ATF has no inspection or safety requirements. In
12 fact, I don't believe that they have any testing requirements. The
13 industry that has thousands of fatal and serious injuries to people, the
14 ATF has no testing requirements that I know of for firearms or
15 manufacturers.

16 MS. WOOLRIDGE: Non-responsive.

17 THE COURT: Overruled.

18 THE WITNESS: Okay. Question again? I forgot.

19 THE COURT: You may ask your next question. He answered.

20 THE WITNESS: I'm sorry. I forget where I am at. I apologize.

21 BY MR. KAUFMANN:

22 Q. I think you were discussing ATF policies regarding --

23 A. What happens with detonation.

24 THE COURT: I think he answered that already, Mr. Kaufmann.

25 You can move on.

1 That was answered already. His question was answered.

2 THE WITNESS: Anyway, Agent Tisch --

3 MR. KAUFMANN: I want him to answer it completely.

4 THE COURT: It has been answered completely. I am reading the
5 transcript right here.

6 You can ask your next question.

7 THE WITNESS: Which question did I just answer?

8 THE COURT: Listen to the next question, sir.

9 THE WITNESS: Thank you, Your Honor.

10 BY MR. KAUFMANN:

11 Q. So approximately what is the time period that this occurs, your
12 concern with it?

13 A. I don't understand the question. What time period that what
14 occurs?

15 Q. That you are having some questions about the safety of this
16 particular part of the parts that you sell.

17 A. I don't know. Two or three days between the parts coming in.

18 Q. In relationship to this case.

19 A. In relationship to this case, that would have been the last test we
20 had to do on it, and it was -- in other words, that was the one that
21 created the possibility of injury.

22 Q. So when you discovered this problem and the difficulties that it
23 may cause, what did you decide to do?

24 A. Before we manufactured it, we had to complete the test, and then
25 either manufacture it the way it was or modify it, and based on the

1 test -- that was a non-firing test, by the way. It did not require that we
2 fire the firearm.

3 We simply had to modify -- we simply had to modify it so the bolt
4 would slide inside the receiver, and we can check and see if the
5 extractor gripped the cartridge properly.

6 And if we do it by hand, then we weren't concerned that the extra
7 impact would have -- the extra -- any extra impact wasn't needed. So
8 we didn't need a live fire test, and it did function, so we were going to
9 manufacture it like it was. And that is when the ATF came, within a few
10 days of that or a week or something, I don't know.

11 Q. So how did you test it?

12 A. We tested it by putting the bolt inside the receiver, putting a
13 barrel in it. And, of course, a cartridge in the barrel, and then sliding
14 the bolt forward after modifying the receiver to accept the full auto bolt,
15 so that it gripped cartridge and extracted it without any problem.

16 We did multiple tests on that. And then what I am explaining is if
17 it would work by hand without any extra pressure -- if it wouldn't have
18 worked that way, then we would have needed a live five fire test to see
19 if the extra pressure would make it function. The way it was was if it
20 functioned by hand, we didn't need a live fire test, and we didn't have
21 any place to do it right now.

22 Q. To do this, did you need a receiver?

23 A. Yes, absolutely.

24 Q. The receiver that is in Government's Exhibit 12?

25 A. Yes.

1 Q. Did that receiver have a blocking bar in it?

2 A. It did. We removed it, of course, for this test.

3 Q. First of all, there has been testimony that that was removed to
4 the shop in 2013?

5 A. Yes.

6 Q. Why was it removed to the shop in 2013?

7 A. It is a semi-automatic receiver. As I explained earlier, when you
8 were talking about the pistol grip assemblies, when you convert them
9 to semi-auto, we have to check those parts.

10 Some of those parts have to be checked too, to make sure the
11 safety grip safety is working, that the pistol grip riser doesn't cause --
12 the pistol grip riser in the sear to function properly, so you don't have a
13 safety where it doesn't work as a safety. It's a safety malfunction,
14 where you put the safety on and it doesn't work, the gun still fires.

15 And so any time we put an assembly together, a part together, we
16 make sure that it's functional in the capacity -- not necessarily firing
17 testing, but that it physically functions properly for safety customer
18 safety. I don't send anything else that might be a risk to customers.

19 Q. So in 2013, you took this receiver from your stock shelves or
20 from your shelves and you moved it to the shop?

21 A. Right, for semi-auto testing the parts, which is mostly what we
22 do.

23 Q. And at that point or sometime thereafter, you added a blocking
24 bar?

25 A. No. Actually, when we moved the shop we added the -- I had

1 Tim weld it. I had Tim weld it -- and to weld the whole thing together
2 as a shop tool. You can see by the welds that it was never intended for
3 anything but shop testing, but anyway, that's when it was done.

4 Q. Show the jury what you are talking about, the weld.

5 A. Where is the other receiver?

6 Q. Show the jury the welds.

7 A. The welds I am talking about?

8 Q. The welds around the front site base where it is held on, they are
9 not finished. The back plate welds. They are not finished. The
10 receiver isn't finished, a look along the top of the receiver, the welds
11 and the top of the receiver aren't finished.

12 This particular receiver had to have a little bit of material added
13 because it wasn't quite high enough. The top cover would sit on the
14 bolts so the bolts wouldn't slide. So everything has to be tested. You
15 cannot assume anything.

16 When you put the bolt in here, the top cover may press down on
17 it so hard when it comes back that the bolt won't fit. So, you have to
18 weld or raise this. It can be in the front, but everything has to be
19 checked. And then when you get it ready, then you can go
20 manufacture it. And the point of this particular test was to get the 45
21 bolt -- we don't normally make machine gun bolts, but --

22 Q. Hold on, Mr. Kuzma. Wait until I ask the question.

23 I am now asking about the welds.

24 A. The welds weren't finished.

25 Q. So when you are talking about the welds, is one of the welds

1 here?

2 A. All the welds. None of them were finished on the gun.

3 Q. And that is because why?

4 A. Because it wasn't intended for public sale; it was just intended to
5 be used in the shop for testing semi-auto parts.

6 Q. Can you tell the jury what a shop tool is.

7 A. That's any jig or anything that we use or make to -- any jig or
8 any assembly that we make for holding parts into place on the mill, or
9 for working on the bench, or to position the bolt so you don't have to
10 measure it every time. You make little jigs to set everything, like rear
11 site base.

12 You make a little jig that you slide in and put the rear site base on
13 top in so you can weld it. But you do all that by trial and error. You
14 make the parts and you create this little kit. We used to actually sell
15 the little manufacturing kit to people.

16 Q. Mr. Kuzma.

17 A. Sorry.

18 Q. When was the blocking bar actually put into the shop receiver?

19 A. As soon as it was taken into the shop.

20 Q. So about 2013?

21 A. Yes. Within a week or so of that, because we needed to test
22 something.

23 Q. What was the necessity for taking the blocking bar out of the
24 shop -- the shop tool to do the test to see if that other part -- so you
25 are testing the extractor?

1 A. Yes.

2 Q. Why do you ask Mr. Sink to take the blocking bar off?

3 A. Because you cannot put the bolt into the semi-auto receiver
4 unless you remove the blocking bar. And you have to also remove the
5 retaining ring off of the feed ramp because the bolt dimensions on the
6 inside won't allow it to slide over the feed ramp. So in order to slide
7 the bolt in the receiver, not firing it, you have to -- the only way to test
8 it is to remove this bar and the top of the feed ramp, and then it slides
9 inside.

10 And then, of course, slide it up forward and it connects to the
11 cartridge, it pulls the cartridge back out. And then there's a little piece
12 at the back called an injector. When it pulls it back and it hits the
13 ejector, then that ejector catches it and kicks it out of the receiver.

14 Q. When you started the test, did you personally hand Mr. Sink the
15 receiver?

16 A. When I started the test? I don't understand.

17 Q. When you started to ask him to take the blocking bar out, did you
18 physically hand him the receiver? Or did you just tell him to go get it
19 and do it?

20 A. I asked him to get the receiver and weld it and bring it over to
21 me. I just came into the shop and then make sure the test was done
22 right. I didn't trust him to do that real detailed measuring. Anyway, I
23 had to make sure that it gripped the extractor, and gave it back to Tim,
24 and it was his job to put the blocking bar back in.

25 Q. What I want you to be able to show the jury is what the receiver

1 looked like when you actually did the test.

2 A. Can I take this apart?

3 Q. Yes, sir.

4 A. I need pliers. Have a barrel, nothing else in it, and I was
5 unaware until yesterday.

6 It had the -- it had the barrel in it to make certain that the -- to
7 make certain the bolt gripped on this, that little extractor thing -- to
8 make certain that the extractor gripped the cartridge here -- see, the
9 bolt can pick up a cartridge and just push it into here without the
10 extractor ever engaging.

11 So the test was to make certain that the extractor actually
12 grabbed it so it would pull it out before the next round is picked up. If
13 it does not, the next round is picked up anyway and chambers it, and
14 the round hits this and then in some percentage of the cases, the firing
15 pin is still -- firing pin is going to come forward no matter what and hit
16 that cartridge and cause it to explode inside the gun.

17 And Agent Tisch explained when he was asked about what
18 happens when firearms explode, pretty clearly explained the possibility
19 of blindness, which is the highest probability, fingers being lost and
20 even death is possible.

21 Q. So when you handed it -- when Tisch first got it, it had the
22 blocking bar in?

23 A. Say it again, sir.

24 Q. When Mr. Sink got the receiver, the blocking bar was in?

25 A. Yeah. He had to remove it. I can't do anything like that.

1 bolt was actually extracted.

2 In other words, the barrel slides forward, and it invalidates the
3 test because the extractor -- it's not going to catch it no matter what,
4 because the barrel will just move out of the way. Had to have the
5 barrel, and that is all it had to have. And I don't know how these sights
6 got put on it.

7 Q. Didn't have the sights?

8 A. Didn't have any sights.

9 Q. And what did you tell Mr. Sink to do once the test was over?

10 A. Once we finished all the testing, he was supposed to put the
11 blocking bar back in.

12 Q. And how many times and how often did you tell him to do that?

13 A. About half a dozen times.

14 Q. And that was both before and after ATF requested him not to do
15 anything more?

16 MS. WOOLRIDGE: Objection, Your Honor.

17 THE WITNESS: Yes.

18 THE COURT: Just a second, Mr. Kuzma.

19 One moment.

20 Overruled. You may answer.

21 The question was: And that was both before and after ATF
22 requested him not to do anything more?

23 THE WITNESS: All that was done before the ATF came over. In
24 fact, the last time that I handled this was -- I think it was 3-17, the
25 Friday before. But based on some other things, it could have been the

1 pistol grips out off. I handed it to him. I was really sick, and I went
2 back in and I laid down.

3 Q. Did you tell him to put the blocking bar in in the presence of
4 Tammy Loeffler?

5 A. Yes. One time in the office I asked him if he put it in, and he
6 said, one or two times -- I don't know -- she -- I said -- I was angry, a
7 little bit upset, and I asked him if he put the blocking bar in yet.

8 He came in from the shop, and I asked him if he put the blocking
9 bar in, and he said, No. So I raised my voice a little bit and I said, you
10 have to put the blocking bar back in. But that wasn't this instance.

11 Q. So the 17th, it looked exactly like that?

12 A. Exactly like this.

13 Q. When was the next time you saw it?

14 A. Saturday or Sunday I came out. I heard some noise in the
15 garage. And I came out, and as I recall, it was sitting closer to this
16 end, where we keep things. That's why I say I may be a week off on
17 the date, the 3-17 or the Friday before. I was so sick, I wasn't even
18 getting out of bed to eat.

19 At any rate, I believe I saw it on Sunday. It was laying there with
20 the pistol grips and it had -- the pistol grip was gone. The barrel was
21 laying in this direction. I didn't see the inside part, and it still had -- it
22 didn't have the pistol grip plastic; it had the pistol grip put on it.

23 Q. Did you replace the pistol grip as you saw it?

24 A. I'm sorry. When I saw it, it didn't have the barrel in it. It didn't
25 have the barrel in it. We had already taken it out because we were

1 done with the test. I had forgotten about that.

2 So when I came back, he put the barrel back on and the pistol
3 grip back on. And I looked at it, and I just was really sick, and I think it
4 was the Sunday before the ATF came out, the 3-17. Tim acknowledged
5 that, by the way, in a communication.

6 Q. How did it look?

7 Can you put it back together how it looked?

8 A. Let me take it apart how it looked.

9 Sorry. After the test, we took the barrel out, and I told him to
10 remove the plastic. And I came back out and I saw it, and it had the
11 barrel and the pistol grip put on it.

12 Q. Show us that.

13 So approximately the 17th you saw it, it was just like you
14 showed. And when you came back a couple of days later, you are
15 showing us how it looked.

16 A. I heard some noise and went out to the shop.

17 Wrong size screwdriver. It's a little out of alignment. It happens
18 sometimes on these. This is what I saw it laying here on the side, on
19 its side, and I didn't talk to him after that.

20 It was a weekend, and that was the weekend before ATF came
21 out. And I just figured that I would ask him what he thought he was
22 doing.

23 Q. When ATF came out, what did it look like?

24 A. Just like this.

25 Q. Just like that.

1 machine gun, and you can have a open bolt Uzi machine gun. The
2 parts differences are you have shown here with the closed bolt you
3 need the separate firing pin assembly, and that allows the bolt to close
4 and has a separate firing pin.

5 The open bolt, the bolt slides forward, it picks up the cartridge,
6 chambers it and slam fires it at the same time. Very inaccurate for
7 semi-automatic fire because a bolt weighs a pound and a half.

8 And if you want accurate semi-automatic fire and you wanted a
9 machine gun, and there are legitimate customers, by the way, that had
10 registered machine guns that would ask for closed bolt operation, and
11 that's the reason I looked into it in the first place.

12 Customers requesting closed bolt operation, which had been
13 available -- this wasn't available from originally from IMI. They did,
14 however, make the closed bolt operation available to customers on the
15 mini Uzi, which doesn't require this blocking bar.

16 And, by the way, the only difference between the mini and this
17 firearm, and plus slight difference of the internal parts, size of the bolt
18 and springs, it's 3 inches shorter, fires exactly the same. This one
19 requires a blocking bar and the other one doesn't. No difference in
20 function whatsoever.

21 Q. Can you have the blocking bar in and still have an automatic
22 weapon?

23 A. Oh, yeah.

24 Q. Could you explain that to the jury.

25 A. Be better if I show them.

1 Q. What do you need to show them?

2 A. That's our parts box. I was hoping Mr. Swift would go over that
3 first so he could explain how it was done.

4 Q. Let me show you Exhibit 142.

5 A. You need to include, while you have the firing pin, you don't at
6 this point, but you need to include the recoil buffers and they need to
7 be on the right one.

8 Q. We will get to that in just a second.

9 Do you need this piece?

10 A. No, we have one here.

11 Excuse me. Would you bring it because I would have to take it
12 out -- wait a minute. I will tell you what. We will use this receiver
13 anyway, and we don't have to change that to explain to the jury -- just
14 bring whatever -- bring the semi-automatic pistol grip assembly, too.

15 Q. So what is Exhibit 142?

16 A. Semi-auto bolt, like it says, but which configuration we have
17 there, I would have to look at them close. This is a semi-auto, based
18 on the length of the recoil spring rod.

19 Q. Let me show you Exhibit 139.

20 A. Yes. This is a semi-automatic pistol grip.

21 Q. Hold on. What is it?

22 A. A semi-auto pistol grip assembly.

23 Q. Do you need to show the jury?

24 A. Where are the two washers?

25 Q. Do you need these parts to show the jury?

1 too complicated. The point is that changing these is what allows us to
2 function fully automatic. And the proper adjustment of the lengths of
3 these parts makes it possible to fire closed bolt full auto.

4 Q. With or without the blocking bar?

5 A. With or without the blocking bar.

6 Blocking bar doesn't matter. The only thing the blocking bar does
7 is you can put the blocking bar back in here, and it doesn't make any
8 difference because you have the slot, the slot and the bolt.

9 Q. So let's do it in English here.

10 So the blocking bar goes into the slot, it doesn't block anything.

11 A. It doesn't block anything when you use a semi-auto bolt.

12 It just doesn't matter. You can put it in or out. You don't have to
13 have the blocking bar in for semi-automatic fire. It doesn't do anything
14 for semi-auto. It just sits there. And the slot just isn't used. It doesn't
15 stop anything, because we have the slot put in here, so it just
16 functions --

17 Q. Mr. Kuzma, is it legal to have all of these parts?

18 MS. WOOLRIDGE: Objection. Calls for a legal conclusion.

19 THE WITNESS: Yes.

20 THE COURT: Sustained.

21 BY MR. KAUFMANN:

22 Q. Is it your understanding that it is perfectly legal to have all of
23 these parts?

24 MS. WOOLRIDGE: Same objection, Your Honor. He is not
25 qualified as an expert.

1 Q. Who made that particular Exhibit 12?

2 A. Tim made it.

3 Q. What permission did you give him to make it?

4 A. I gave him the authorization to take the blocking bar out so we
5 could test the extractor function.

6 Q. Anything else?

7 A. No.

8 Q. All of that done was without your permission?

9 A. All of what done?

10 MS. WOOLRIDGE: Objection, leading.

11 THE COURT: Mr. Kaufmann, it is leading.

12 BY MR. KAUFMANN:

13 Q. What changes did he make without your permission?

14 A. He put the plastic pistol grips on, the barrel back on, and he put
15 the pistol grip assembly on.

16 Q. And until two days before the ATF, what did you know about it?

17 A. I didn't know that -- I didn't know anything. I didn't even know it
18 had a machine gun barrel in it until I saw it. I didn't actually pick it up
19 and handle it or take it apart. I relied on him to do the welding and
20 make the part.

21 Q. Can you tell the jury what a trunnion is.

22 Are you in pain?

23 A. I am dizzy, but --

24 MR. KAUFMANN: I move to take a ten-minute break.

25 THE WITNESS: I would hope that we could -- I am