

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID R. OLOFSON,

Defendant.

Case No. 06-CR-320

Milwaukee, Wisconsin

May 29, 2007

**COPY**

TRANSCRIPT OF EVIDENTIARY HEARING  
BEFORE THE HONORABLE WM. E. CALLAHAN, JR.  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S

For the Plaintiff:

United States Attorney  
By: **Mr. Gregory Haanstad**  
Assistant U.S. Attorney  
530, U.S. Courthouse  
517 E. Wisconsin Avenue  
Milwaukee, WI 53202

For the Defendant:

Federal Defender Services  
By: **Mr. Brian Mullins**  
Attorney at Law  
517 E. Wisconsin Avenue  
Milwaukee, WI 53202

REPORTED BY:

HEIDI J. TRAPP  
Federal Official Court Reporter  
310, U.S. Courthouse  
517 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
(414) 297-3074

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TRANSCRIPT OF PROCEEDINGS

1  
2 THE CLERK: United state's vs. David Olofson, Case  
3 Number 06-CR-320 for evidentiary hearing. May I have the  
4 appearances, please.

5 MR. HAANSTAD: Good afternoon, Your Honor. Gregory  
6 Haanstad for the United States. Also with me at counsel table  
7 is Special Agent Jody Keeku from the Bureau of Alcohol, Tobacco  
8 and Firearms.

9 MR. MULLINS: Good afternoon, Your Honor. Brian  
10 Mullins appears on behalf of David Olofson, who also appears.

11 THE COURT: Good afternoon to all of you. We're here  
12 this afternoon to conduct an evidentiary hearing with respect to  
13 the Defendant's motion to suppress statement which was filed on  
14 April 12th. Are the parties prepared to proceed at this time?

15 MR. HAANSTAD: Yes, Your Honor.

16 MR. MULLINS: Yes, Your Honor.

17 THE COURT: Okay. Who are your witnesses going to be,  
18 Mr. Haanstad?

19 MR. HAANSTAD: At this time, Your Honor, the  
20 Government intends to call Special Agent Jody Keeku.

21 THE COURT: How do you spell the last name?

22 MR. HAANSTAD: K-E-E-K-U.

23 THE COURT: Common spelling.

24 MR. HAANSTAD: And potentially will have a second  
25 witness, Officer Georgia Trochinski, from the Berlin Police

1 Department.

2 THE COURT: And how do you spell that name?

3 MR. HAANSTAD: T-R-O-C-H-I-N-S-K-I.

4 THE COURT: Is she the lady sitting in the back of the  
5 courtroom?

6 MR. HAANSTAD: That's right.

7 THE COURT: And Mr. Mullins, do you know who you're  
8 going to be calling, if anyone, as a witness?

9 MR. MULLINS: The only person we might call is  
10 Mr. Olofson, but we're not sure at this point.

11 THE COURT: Okay. Is either party seeking to have  
12 Officer Trochinski sequestered?

13 MR. MULLINS: Defense would like Officer Trochinski  
14 sequestered.

15 THE COURT: Officer Trochinski, you're a Police  
16 Officer, so -- but let me just -- don't leave yet. I want to  
17 make sure that I make a record on this. That I am going to  
18 excuse you and order you not to be in the courtroom when other  
19 witnesses are testifying, nor should you discuss with other  
20 witnesses what their testimony was. And you should not discuss  
21 with them what your testimony is until this case -- until the  
22 hearing is closed. Do you understand that?

23 THE WITNESS: Yes, I do.

24 THE COURT: Now, I don't -- we used to have a little  
25 witness waiting room that Judge Curran had, but I don't know --

1 I think I'm just going to have to ask you to sit outside.

2 THE WITNESS: Okay.

3 THE COURT: All right. Anything further before we  
4 start, Mr. Haanstad?

5 MR. HAANSTAD: Not from the Government, Your Honor.

6 THE COURT: Mr. Mullins?

7 MR. MULLINS: No, Your Honor.

8 THE COURT: All right. If you take the stand, please.

9 **OFFICER JODY KEEKU**, called as a witness, having been  
10 first duly sworn, on oath testified as follows:

11 THE CLERK: Would you state your name and spell your  
12 name for the record?

13 THE WITNESS: Jody Keeku, K-E-E-K-U.

14 **DIRECT EXAMINATION**

15 **BY MR. HAANSTAD:**

16 Q. Miss Keeku, could you tell the Court how you're employed?

17 A. With the Bureau of Alcohol, Tobacco, Firearms and  
18 Explosives.

19 Q. That's A.T.F.?

20 A. Yes.

21 Q. And in what capacity are you employed with A.T.F.?

22 A. I'm a Special Agent.

23 Q. And what are your responsibilities as an A.T.F. Special  
24 Agent?

25 A. I investigate violations of firearm laws, arson, and

1 explosives.

2 Q. And in the course of performing your duties as an A.T.F.  
3 Agent, have you had an opportunity to become involved in an  
4 investigation involving David Olofson?

5 A. Yes, I have.

6 Q. And I'd like to direct your attention to July 19th of 2006.  
7 Were you involved in the investigation of Mr. Olofson at that  
8 time?

9 A. Yes, I was.

10 Q. And what, specifically, were you doing in terms of your  
11 investigation on July 19th, 2006?

12 A. On July 19th, 2006, we implemented a search warrant at the  
13 home of David Olofson.

14 Q. Okay. Do you recall approximately when that was on the  
15 19th?

16 A. On July 19th at approximately 1:00 p.m. -- well, the search  
17 warrant was at approximately 11:00 a.m. in the morning.

18 THE COURT: I don't understand. The search warrant  
19 was at 11:00 o'clock a.m.? What was done at 11:00 o'clock a.m.?

20 THE WITNESS: The search warrant, Judge.

21 THE COURT: The obtaining of the search warrant? Or  
22 the execution?

23 THE WITNESS: Execution.

24 MR. HAANSTAD:

25 Q. When you say the execution of the search warrant, can you

1 just break that up for a bit? First of all, do you recall what  
2 the search warrant authorized you to search?

3 A. For the search of firearms and documents.

4 Q. Okay. At what location?

5 A. At the home -- the residence of David R. Olofson.

6 Q. Now, were you involved in the execution of that search  
7 warrant?

8 A. Yes, I was.

9 Q. And do you recall who else was involved in the execution of  
10 the search warrant?

11 A. Berlin Police Department, other A.T.F. Agents, and Green  
12 Lake County Sheriff's Department.

13 Q. And when you say you were involved -- you were involved in  
14 the execution of the search warrant, were you actually present  
15 at the residence of David R. Olofson on July 19th?

16 A. Yes.

17 Q. And can you describe just how that began? That is, when you  
18 and the other Agents arrived at the residence, what happened?

19 A. We arrived at the residence and Berlin Police Department and  
20 Green Lake County Sheriff's Department SWAT team executed a  
21 dynamic entry. They first knocked and announced at the  
22 residence before entering.

23 Q. And when you say dynamic entry, what do you mean?

24 A. They were dressed in SWAT gear, and what they do is they  
25 knock at the residence, and if no one approaches the door within

1 several minutes, they will make entry.

2 Q. And when they knocked at the door of this residence, did  
3 anyone answer the door?

4 A. Yes. David Olofson did.

5 Q. Okay. When he answered the door, were you in his presence?  
6 Were you at the door?

7 A. No, I was in a vehicle on the street.

8 Q. But you saw the other Agents meet Mr. Olofson at the door?

9 A. Yes.

10 Q. And what did those Agents do that you saw once they  
11 encountered Mr. Olofson at the door of the residence?

12 A. They basically told him that they had a Federal search  
13 warrant, and took him into custody.

14 Q. When you say that they took him into custody, what do you  
15 mean?

16 A. They secured him and handcuffed him.

17 Q. Was anyone else present?

18 A. Yes.

19 Q. In the residence?

20 A. In the residence, yes. Everett Eastman.

21 THE COURT: Who?

22 THE WITNESS: Everett Eastman. And Mr. Olofson's two  
23 children.

24 MR. HAANSTAD:

25 Q. And did you see what the Agents did with Mr. Eastman?



1 A. Yes. They took him into custody and handcuffed him.

2 Q. And what about the two kids?

3 A. One of the Officers came out and said that they had children  
4 in the basement, and asked for a female Officer. I entered the  
5 house, and at that time the children were coming up the basement  
6 stairs.

7 Q. And where did the kids go after they came up the stairs?

8 A. They took them out into the front yard, and that's when  
9 Georgia Trochinski took them into her custody and placed them in  
10 her vehicle.

11 Q. Okay. And while this was happening, what happened with  
12 Mr. Eastman and Mr. Olofson?

13 A. Mr. Eastman was placed in the back of a vehicle, of a squad  
14 car, and so was Mr. Olofson.

15 Q. In the same squad car?

16 A. No. Separate.

17 Q. And did there come a time when you yourself actually  
18 approached Mr. Olofson?

19 A. Yes.

20 Q. When did that occur?

21 A. Shortly after I spoke with Mr. Eastman.

22 Q. Do you know about how long after the initial entry by the  
23 other Agents in the residence you first encountered Mr. Olofson?

24 A. Approximately 15 minutes after entry into the residence.

25 Q. And -- I'm sorry. Where was Mr. Olofson when you first

1 encountered him?

2 A. He was in the back of a squad car in front of -- that was  
3 parked in front of the home.

4 Q. Was he in handcuffs?

5 A. Yes.

6 Q. And when you approached him in the back of the squad car,  
7 what did you do?

8 A. I informed him that we had a Federal search warrant for his  
9 home, and that we were interested in speaking with him, and if  
10 he would come down to the Police Department and speak with us.

11 Q. And where were you when you said these things to him?

12 A. I had opened one of the doors, and I was outside of the  
13 vehicle.

14 Q. Did you indicate at that time to Mr. Olofson whether he was  
15 under arrest?

16 A. I told him that he was not under arrest at this time.

17 Q. And you testified that you asked him if he would accompany  
18 you to the Berlin Police Department, is that right?

19 A. Yes.

20 Q. Did you tell him whether he had to accompany you to the  
21 Berlin Police Department?

22 A. No. I told him that he just could not enter the residence  
23 while the search was being conducted.

24 Q. And after you told him that he wasn't under arrest, and that  
25 he couldn't enter the residence but you were asking whether he

1 would accompany you to the Berlin Police Department, how did he  
2 respond?

3 A. He said he would come down and speak with us.

4 Q. Did he immediately come down and speak with you at that  
5 time?

6 A. At that time his children were still with Georgia, and we --

7 THE COURT: Now, when you say Georgia, you mean  
8 Officer Trochinski?

9 THE WITNESS: Yes, Officer Georgia Trochinski. And we  
10 needed to find supervision for his children because they could  
11 not come down to the Police Department with us.

12 MR. HAANSTAD:

13 Q. So what did you do to attempt to the find supervision for  
14 the children?

15 A. At that time two other A.T.F. Agents took the children into  
16 their custody and walked them down to a residence approximately  
17 a block away from David Olofson's home.

18 Q. Where was Mr. Olofson when that took place?

19 A. He was still in the squad car.

20 Q. Was he still in handcuffs?

21 A. Yes.

22 Q. And how did these Agents come to know to take these kids to  
23 that particular location?

24 A. I had gone to them and asked for two Agents to help us out  
25 with the children and walk them down to the house approximately

1 a block away from David's house.

2 Q. But how did you know about that house?

3 A. Mr. Olofson had told us that we could take his children down  
4 to that home, and he had also placed a phone call to his wife  
5 telling her what was going on, and I believe had asked her where  
6 the children could go. Or should go.

7 Q. Now, was he in handcuffs when he made that phone call?

8 A. No. I don't believe so.

9 Q. Were the children ultimately taken and left at that  
10 residence a block away?

11 A. No. The Agents had walked back with the children and said  
12 that the individuals could not watch the children at the time,  
13 and then Mr. Olofson had another -- had us ask Mr. Eastman if  
14 they could-- if he could watch the children.

15 Q. And did you ask Mr. Eastman that?

16 A. Yes. And Mr. Eastman said he could watch the children. And  
17 Mr. Olofson was not handcuffed, and we enacted a statement  
18 stating that Mr. Olofson was going to release his children to  
19 Everett Eastman until his wife could come home.

20 Q. And you called that a statement. What exactly was that?  
21 Did he write something out indicating that Mr. Eastman could  
22 watch his children until his wife came home?

23 A. I wrote the statement out, and then he signed it and dated  
24 it.

25 Q. After he signed that statement indicating that Mr. Eastman

1 could watch his children, Mr. Olofson's children until his wife  
2 came home, what happened with Mr. Olofson?

3 A. The children went with Mr. Eastman, and then Mr. Olofson  
4 into the vehicle with Officer Trochinski and I.

5 Q. What vehicle?

6 A. Into a tan unmarked Explorer.

7 Q. And you said that he got into that vehicle with you, is that  
8 right?

9 A. Yes. I was in the back seat with Mr. Olofson, and Officer  
10 Trochinski was driving.

11 Q. Was Mr. Olofson in handcuffs at that time?

12 A. No, he was not.

13 Q. And at that time did you drive to the Berlin Police  
14 Department?

15 A. Yes, we did.

16 Q. Do you know about how long a drive that is?

17 A. Approximately 5 blocks from Mr. Olofson's residence.

18 Q. And what happened once you arrived at the Berlin Police  
19 Department?

20 A. We parked in front of the Police Department and entered the  
21 front door of the Police Department, which is attached to the  
22 City Hall.

23 Q. And what did you do once you were inside of the Police  
24 Department?

25 A. We went into Officer Trochinski's office.

1 Q. When you say we, who all went?

2 A. Officer Trochinski, Mr. Olofson, and I.

3 Q. And about how big is Officer Trochinski's office?

4 A. It's approximately 8 feet by 10 foot office.

5 Q. And once inside, where did Officer Trochinski go?

6 A. There are two desks. Officer Trochinski sat on my right  
7 side, and I sat on the left side of her. And we were behind  
8 desks that had computers sitting at them.

9 Q. What about Mr. Olofson?

10 A. And there were approximately three chairs sitting in front  
11 of us, and Mr. Olofson sat on one of the chairs in front of us.

12 Q. Where was he seated in relation to the door of the office?

13 A. The door was very close to his left side.

14 Q. Was that door open or closed, if you remember?

15 A. It was closed at first, and then halfway through, after Mr.  
16 Olofson had gone to the bathroom, it was left open.

17 Q. Now, once the three of you arrived at Officer Trochinski's  
18 office, what did you say to Mr. Olofson?

19 A. I told him that he could not go back to the residence while  
20 the search was being conducted, but that he was not under arrest  
21 and he could leave at any time.

22 Q. And did Mr. Olofson indicate whether he understood that?

23 A. Yes. He said yes, that he would stay and speak with us.

24 Q. And do you recall about what time that was? Or let me ask  
25 that differently. Do you recall about how long it was from the

1 time that you first encountered Mr. Olofson until you advised  
2 him that he was not under arrest and was free to leave?

3 A. Approximately 45 minutes.

4 Q. And after he indicated that he understood that, what did you  
5 do?

6 A. Then we began questioning Mr. Olofson.

7 Q. And without getting into the details of it, is it fair to  
8 say that you were questioning him about the same offense or the  
9 same conduct that formed the basis for the Federal search  
10 warrant that was being executed at his residence?

11 A. Yes.

12 Q. And do you recall about how long Mr. Olofson was with you  
13 and Officer Trochinski in her office?

14 A. Probably 3 hours. From 1:00 p.m. until about 4:45 p.m.

15 Q. And during that approximately 3 hours were you asking  
16 questions of Mr. Olofson the entire time?

17 A. Not the entire time.

18 Q. Okay. What were you doing for those 3 hours?

19 A. Well, we were asking him questions specifically about  
20 firearms and the specific alleged violations, and then we were  
21 also just more or less passing time while the search warrant was  
22 being executed.

23 Q. Now, anytime during that 3 hours did Mr. Olofson indicate  
24 that he didn't want to answer anymore questions?

25 A. No, he did not.

1 Q. Did he ever ask or indicate to you that he wanted to speak  
2 with a lawyer?

3 A. No, he did not.

4 Q. Did he ever ask you whether he could leave?

5 A. No, he did not.

6 Q. Was he in Officer Trochinski's office for that entire  
7 3 hours?

8 A. No. He had gone up to use the bathroom.

9 Q. Did anyone accompany him to the bathroom?

10 A. Officer Trochinski showed him to the back of the Police  
11 Department where the bathrooms were, and she had opened up the  
12 locked door so that he could get to the bathrooms.

13 Q. While he was there he was not accompanied?

14 A. No. He was unsupervised.

15 Q. About how long was he gone, would you say?

16 A. Approximately 5 minutes.

17 MR. HAANSTAD: Those are all the questions I have at  
18 this time, Your Honor.

19 THE COURT: Mr. Mullins.

20 MR. MULLINS: Thank you, Your Honor.

21 **CROSS EXAMINATION**

22 **BY MR. MULLINS:**

23 Q. Agent Keeku, you prepared the affidavit in support of the  
24 search warrant for Mr. Olofson's residence, correct?

25 A. Yes, I did.



1 Q. And that affidavit was based on information that you had  
2 learned from a suspect who had been in possession of what you  
3 believed was an automatic weapon?

4 A. Yes.

5 Q. And that suspect would be Mr. Kernicki (phonetic), is that  
6 correct?

7 A. Yes.

8 Q. And Mr. Kernicki told you that -- or told law enforcement  
9 that Mr. Olofson had provided him the automatic firearm?

10 A. Yes.

11 Q. And it is illegal for any person to possess an automatic  
12 firearm unless they're some military, or licensed in some way,  
13 is that correct?

14 A. Registered.

15 Q. Registered.

16 A. Correct.

17 Q. So you had information when you prepared the search warrant  
18 or the affidavit in support of the search warrant -- you had  
19 enough information to arrest Mr. Olofson at that point for  
20 possessing an automatic firearm?

21 A. Yes.

22 Q. So when you executed the warrant, that was in effect to  
23 gather further evidence in support of your case?

24 A. I'm sorry?

25 Q. When you executed the warrant, when law enforcement executed

1 the warrant, you already had enough evidence to arrest him. But  
2 this was to gather additional evidence, correct?

3 A. Correct.

4 Q. And the affidavit was done on the 15th of July, was it?

5 A. I'd have to refer to my notes.

6 Q. Actually I have it right here. The 18th of July.

7 A. That the affidavit was sworn to?

8 Q. Actually doesn't say on here. Do you recall how soon before  
9 the warrant was executed that you --

10 A. Approximately a day.

11 Q. So the information was fresh?

12 A. Yes.

13 Q. And the information that -- when did you first get in  
14 contact with Mr. Kernicki -- or when did law enforcement first  
15 get in contact with Kernicki?

16 A. The exact date?

17 Q. Approximately how --

18 A. Approximately 2 to 3 days before the warrant was executed.

19 Q. Okay. And did you know -- Mr. Kernicki tell you when Mr.  
20 Olofson had transferred this gun to him? Or given him this gun?

21 A. Yes.

22 Q. And was that also just a couple days prior?

23 A. I believe it was approximately maybe a week.

24 Q. And so when you executed the warrant on the 19th,  
25 approximately how many law enforcement Officers were present?

1 Including all jurisdictions.

2 A. Approximately 20.

3 Q. 20? Okay. And you described some of the Officers as  
4 wearing SWAT wear, I believe?

5 A. Yes.

6 Q. Could you describe what SWAT wear is?

7 A. Tactical vests, knee pads, helmets. Additional firearms,  
8 handcuffs.

9 Q. They would all be armed?

10 A. Yes.

11 Q. And the guns would be drawn?

12 A. Yes.

13 Q. So when they approached the residence, the people who  
14 were -- the Officers who were the SWAT team member would have  
15 had their guns drawn?

16 A. Yes.

17 Q. And Mr. Olofson was the only person who answered the door?

18 A. No. Mr. Eastman came to I believe it was the side door.

19 Q. Okay. The children were present. Do you recall how old  
20 they were? Approximately?

21 A. Approximately 4 and 7.

22 Q. So they were young children?

23 A. Yes.

24 Q. And now there was this time between when you initially took  
25 Mr. Olofson out of the residence, handcuffed him, and told

1 him -- or you said you placed him in custody, handcuffed him,  
2 put him in the Police car. And there was sort of a -- kind of a  
3 time during which you were trying to figure out what to do with  
4 the kids. About how long did that all transpire from the time  
5 that you first made contact with Mr. Olofson, to the time when  
6 you -- when Mr. Olofson signed the form indicating that Mr.  
7 Eastman could take the kids?

8 A. I'd say approximately 10 minutes.

9 Q. Ten minutes. Okay. And during this time the kids were also  
10 handcuffed, you said?

11 A. No. The children were --

12 Q. Just placed in the squad car?

13 A. They were sitting in Officer Trochinski's unmarked Explorer.

14 Q. Mr. Eastman, though, was handcuffed?

15 A. Yes.

16 Q. And so Mr. Olofson was handcuffed for about 45 minutes?

17 A. No. I'd say close -- approximately 20 minutes.

18 Q. And he was in the squad car -- it was in the squad car where  
19 you removed the handcuffed?

20 A. When we took him out of the squad car is when we took off  
21 the handcuffs.

22 Q. Okay. But he was still -- during that time he was still in  
23 your immediate presence?

24 A. Yes.

25 Q. So he was -- I mean, I assume there were Officers

1 surrounding him?

2 A. No.

3 Q. Or at least a couple of Officers?

4 A. There was maybe one other Officer by the squad car.

5 Q. And he never really left the immediate vicinity of the squad  
6 car? During that time?

7 A. He might have.

8 Q. Do you remember?

9 A. That's why Mr. Olofson was secured in the back of the squad  
10 car, because the home was still being cleared at that time.

11 Q. Was there a point where he tried to go into the home and  
12 then you had to secure him in the squad car?

13 A. No.

14 Q. So what I'm saying is the time when he was first -- you  
15 first got to the house and he was handcuffed, and then during  
16 the 20 minutes he was handcuffed, and after that he was still --  
17 when he was un-handcuffed he was still very close to the squad  
18 car at all times?

19 A. Yes. After he was un-handcuffed there was an Officer by  
20 him.

21 Q. Okay. And then he was placed back into the squad car?

22 A. He was placed back in Officer Trochinski's vehicle after he  
23 agreed to go to the Police Department with us.

24 Q. Okay. Do you remember what exactly the conversation was  
25 between you and Mr. Olofson as far as him agreeing to go back to

1 the Police Department? Did you ask him if he would go back with  
2 you?

3 A. Yes. He was in the back of the squad car, and he was still  
4 handcuffed. And when I approached him, told him that we had a  
5 Federal search warrant for his home and that we were executing  
6 it. And then shortly after that I asked him if he would  
7 accompany us to the Police Department to answer some questions  
8 and speak with us.

9 Q. And you also told him that he could not go back into his  
10 house at that point, correct?

11 A. No. Correct. That he could not enter his residence once  
12 the search warrant was being executed and began.

13 Q. During the time that the warrant was being executed, he  
14 could not go back to the residence?

15 A. Yes.

16 Q. So at that point he's in the squad car, and you asked him if  
17 he would go back to the Police station with you. And you also  
18 told him that he could not go back to his residence while the  
19 search was being conducted?

20 A. Correct. And I also told him that he was not under arrest  
21 at that time.

22 Q. Okay. And then you went back to the Police Department on --  
23 I actually missed the answer to the Government's question  
24 regarding the description of the room in which he was  
25 interviewed. Could you just repeat that, please?

1 A. It was approximately an 8 by 10 foot office. It had two  
2 desks. Both desks had computers on them, and then in front of  
3 the desks there were approximately three chairs, and those  
4 chairs -- right next to the chairs was the door to the office.

5 Q. And this would be -- would this be kind of an administrative  
6 area, as opposed to the jail area?

7 A. Correct.

8 Q. And Mr. Olofson was not handcuffed during this time?

9 A. Correct.

10 Q. Was there ever a time when Mr. Olofson during this  
11 3-and-a-half hour period -- was there ever a time when Mr.  
12 Olofson asked if he could go back home?

13 A. He might have, but I don't recall him ever asking that. I  
14 did tell him that he couldn't go back to his home while the  
15 search warrant was being executed.

16 Q. Do you recall calling one of the other Officers who was  
17 executing the warrant on your cell phone?

18 A. Yes. I called several times to ask if they were done  
19 executing the search warrant so that he could return to his  
20 home.

21 Q. And might this have been a response to his question as to  
22 whether he could leave and go back home?

23 A. No.

24 Q. You don't believe it was?

25 A. No.

1 Q. Do you recall the Chief of the Berlin Police Department  
2 being present at the scene during -- when the -- when you first  
3 got to Mr. Olofson's residence?

4 A. He was present at the scene, yes.

5 Q. Did you hear any conversation between Mr. Olofson and the  
6 Chief of Police?

7 A. Yes.

8 Q. Do you recall what the nature of that conversation was?

9 A. I believe they were talking about their children's soccer.

10 Q. You don't recall any questioning or any direction by the  
11 Chief that Mr. Olofson needed to accompany you to the Police  
12 station?

13 A. No.

14 MR. MULLINS: I have nothing further, Your Honor.

15 THE COURT: Any redirect?

16 MR. HAANSTAD: Just briefly, Your Honor.

17 **REDIRECT EXAMINATION**

18 **BY MR. HAANSTAD:**

19 Q. Just so the record is clear, when you and Officer Trochinski  
20 were in her office with Mr. Olofson, at any time during that  
21 time period did you have firearms displayed?

22 A. We did have them on our duty belts, but they were not  
23 displayed. They were concealed.

24 Q. Concealed how?

25 A. I keep a longer shirt over mine, and then Georgia also had a



1 longer shirt on.

2 Q. Okay. And at the conclusion of that -- I think you  
3 described it was about 3 hours that you were in that office. At  
4 the end of that 3 hours, what did Mr. Olofson do?

5 A. At the end of the 3 hours we were speaking about getting  
6 dinner, and I was going to run and get everybody sub sandwiches.  
7 And I said well, I'll call and see if they're done with the  
8 search warrant. And at that time they had finished, and Mr. --  
9 we told Mr. Olofson that he could return to his residence. And  
10 he walked home. From the Police Department.

11 Q. Okay. Did he walk home alone?

12 A. Yes.

13 MR. HAANSTAD: I have nothing else, Your Honor.

14 THE COURT: Any recross within the scope of redirect?

15 MR. MULLINS: Just a couple of questions, Your Honor.

16 **RECROSS EXAMINATION**

17 **BY MR. MULLINS:**

18 Q. First of all, the nature of the questioning of Olofson, it  
19 was directed at the case you were investigating against him?

20 A. Correct.

21 Q. And you did not advise Mr. Olofson of his Miranda rights as  
22 they're commonly known?

23 A. Correct.

24 Q. And how did Mr. Olofson return home after he was able to go  
25 back home?

1 A. He walked.

2 Q. He walked. If you know this, Agent, in your experience if  
3 someone is trained to detect a concealed weapon, do you believe  
4 that the weapon that you and the other Officer were in  
5 possession of while Mr. Olofson was interviewed could have been  
6 detected by a person who is able to detect concealed weapons the  
7 way they were located on your person?

8 A. Possibly.

9 Q. Possibly? Okay. I have nothing further.

10 THE COURT: Mr. Haanstad.

11 MR. HAANSTAD: No other questions, Your Honor.

12 THE COURT: Thank you. You may step down, Special  
13 Agent.

14 MR. HAANSTAD: Your Honor, the Government has nothing  
15 further at this point.

16 THE COURT: You introduced that -- the handwritten  
17 document?

18 MR. HAANSTAD: We do. That is marked as an Exhibit,  
19 Your Honor.

20 THE COURT: When I mention that, I'm talking about the  
21 handwritten note that the Special Agent testified she prepared  
22 and then Mr. Olofson signed.

23 MR. HAANSTAD: Yes. The Government has it marked as  
24 Exhibit 3.

25 THE COURT: Do you have any objection to that,

1 Mr. Mullins?

2 MR. MULLINS: No, Your Honor.

3 THE COURT: Is the Government offering it?

4 MR. HAANSTAD: Yes, Your Honor.

5 THE COURT: All right. It's received. Now, what  
6 you're putting down there is a copy of it?

7 MR. HAANSTAD: We've got the original, Your Honor.  
8 I'm sorry. Yes, it's a copy of the -- it's a copy of the signed  
9 permission statement from Mr. Olofson.

10 MR. MULLINS: Is that in on discovery?

11 MR. HAANSTAD: No.

12 MR. MULLINS: Can I just take a look at it?

13 MR. HAANSTAD: Sure.

14 MR. MULLINS: No objection, Your Honor.

15 THE COURT: Anything else?

16 MR. HAANSTAD: No, Your Honor.

17 THE COURT: No further witnesses at this time?

18 MR. HAANSTAD: No, Your Honor.

19 THE COURT: Government rests?

20 MR. HAANSTAD: Yes.

21 THE COURT: Mr. Mullins?

22 MR. MULLINS: Can we have a 5-minute recess to  
23 discuss --

24 THE COURT: You bet. Now, don't talk to Officer  
25 Trochinski. Do you understand?

1 THE WITNESS: Yes, Judge.

2 THE COURT: Okay.

3 (Whereupon a recess was called by the Court. Upon  
4 conclusion of the recess, the proceedings continued as follows:)

5 THE COURT: Okay. Mr. Mullins?

6 MR. MULLINS: We would like to call Officer  
7 Trochinski.

8 THE COURT: Okay.

9 OFFICER GEORGIA TROCHINSKI, called as a witness,  
10 having been first duly sworn, on oath testified as follows:

11 THE CLERK: Please state your name and spell your name  
12 for the record.

13 THE WITNESS: Georgia L. Trochinski.  
14 T-R-O-C-H-I-N-S-K-I.

15 DIRECT EXAMINATION

16 BY MR. MULLINS:

17 Q. How are you employed, Miss Trochinski?

18 A. I am an investigator with the Berlin Police Department.

19 Q. And you participated in an execution of a search warrant at  
20 Mr. Olofson's residence on July 19th, 2006?

21 A. Yes.

22 Q. And specifically you participated in interviewing Mr.  
23 Olofson?

24 A. Yes.

25 Q. And that interview occurred at your office?

1 A. Correct.

2 Q. At the Berlin Police Department?

3 A. Yes.

4 Q. Could you describe the -- just the layout of your office?  
5 The approximate size?

6 A. It's approximately 8 feet by 10 feet. There are five doors  
7 to that room. An entry room door, a door to a small room where  
8 we have recording equipment, and then three doors to closets.  
9 There are also two desks, and when you come in the entry door  
10 there are two chairs right as you come in.

11 Q. Are there windows?

12 A. No. Well, there's a window to the recording room, but --

13 Q. But no windows to the outside?

14 A. No.

15 Q. And on the day that Mr. Olofson was interviewed, it -- the  
16 interview lasted about three-and-a-half hours?

17 A. The length of time he was at the Department was  
18 approximately that long. The interview didn't necessarily last  
19 that long.

20 Q. Okay. And he was allowed to go to the bathroom during that  
21 time, correct?

22 A. Yes.

23 Q. Was that about the only place he went in the Police  
24 Department during that time?

25 A. Yes.

1 Q. And where is the bathroom that he used located?

2 A. As you come out of my office door and go to the left through  
3 another door in the secure area of our building, there's a  
4 bathroom there that he was allowed to use.

5 Q. And by secure area of the building, what do you mean by  
6 that?

7 A. It's an area that we used when we have somebody who is  
8 either in custody or at the Department that needs to use the  
9 bathroom.

10 Q. Okay. So is it monitored somehow?

11 A. The area where the bathroom is? No.

12 Q. The secure area?

13 A. No. Where the bathroom is, it is not monitored. That room  
14 could be monitored, but I don't believe that it had been flipped  
15 to there.

16 Q. Okay.

17 A. There is a system of cameras where only if we have somebody  
18 in that back area do we turn that on. And then the dispatch  
19 center can monitor it. Otherwise it monitors the front door.

20 Q. Is it possible to go outside from that area? Or to leave  
21 the building?

22 A. Yes. There is an exit door back there.

23 Q. And do you recall how many times Mr. Olofson left to use the  
24 bathroom?

25 A. I know it was at least once. I don't know if it was more

1 than that.

2 Q. Do you recall if you gave Mr. Olofson anything to drink or  
3 eat during that time?

4 A. I believe I had gotten him a soda.

5 Q. And do you recall how Mr. Olofson left when he did leave?

6 A. No, not specifically. I don't recall if I had given him a  
7 ride back, or if he was allowed to walk. I honestly don't  
8 recall.

9 MR. MULLINS: I have nothing further.

10 CROSS EXAMINATION

11 **BY MR. HAANSTAD:**

12 Q. You testified that while Mr. Olofson was at the Police  
13 Department for approximately 3 hours, the interview didn't last  
14 3 hours. What do you mean by that?

15 A. That there was down time in there. We were mostly waiting  
16 for them to complete the search of the residence. He had been  
17 questioned by A.T.F. Agents. I was -- my role during that  
18 interview was simply as a note taker for the most part.

19 Q. Okay. And how would you describe Mr. Olofson's demeanor  
20 during those 3 hours?

21 A. He was fairly smug. He seemed very comfortable. I recall  
22 he noted a computer that I had in the room just off of our  
23 office with some evidence tape on it. I remember him distinctly  
24 pointing it out. He seemed fairly at ease to be there.

25 Q. And while he was in your presence was he advised that he was

1 free to leave?

2 A. Yes.

3 Q. Was he told whether he was under arrest?

4 A. Specifically I don't recall that, but -- because I think  
5 that may have taken place when I was -- when they were across  
6 the street when we were still at the scene of this house. I was  
7 watching his children at the time.

8 Q. But at the office you recall him being told that he was free  
9 to leave?

10 A. Yes.

11 Q. Who told him that?

12 A. Agent Keeku.

13 Q. And at any time during the course of this interview did he  
14 indicate that he no longer wished to answer questions?

15 A. No.

16 Q. Did he ask to speak with a lawyer?

17 A. No.

18 Q. Did he ever ask if he could leave?

19 A. No.

20 MR. HAANSTAD: Those are all the questions I have,  
21 Your Honor.

22 THE COURT: Mr. Mullins.

23 **REDIRECT EXAMINATION**

24 **BY MR. MULLINS:**

25 Q. Officer, did you interview any of the other suspects in this



1 case? I understand that there are some younger 18 year old  
2 kids, or men, who were also suspects in the case. Did you take  
3 part in interviewing any of them?

4 A. No, I did not. I was not on duty when those initial -- when  
5 this call was initiated. I was not involved in that.

6 MR. MULLINS: Okay. All right. Thank you.

7 THE COURT: You mentioned -- I'm not -- let me back  
8 up. He used the mens' room? Mr. Olofson used the men's room  
9 while he was at the Police Department, correct?

10 THE WITNESS: Correct.

11 THE COURT: Was that at his request?

12 THE WITNESS: I believe so.

13 THE COURT: And you described -- or could you describe  
14 with a little bit more particularity where the men's room is in  
15 connection with your office. And also where this exit to the  
16 outside is in relation to the door to the men's room.

17 THE WITNESS: If you -- I could draw you a diagram  
18 very easily.

19 THE COURT: Why don't you try without?

20 THE WITNESS: If you -- the entry that I believe we  
21 used to come into the Police Department is a narrow hallway, and  
22 my office is on the left hand side of that. The entry to that.  
23 If you come out of my office and take a sharp left, because  
24 there's a corner there, you'll go through another door, and if  
25 you were to continue straight out you would -- you can actually

1 see outside there. There's a series of two doors, and they both  
2 have glass in them.

3 THE COURT: And where is the men's room?

4 THE WITNESS: If you were to go left once you go  
5 through the first door, just outside my office it's off to the  
6 left.

7 THE COURT: So that one could go to the mens' room,  
8 come out, and exit the Police Department without walking past  
9 your office again?

10 THE WITNESS: You would need to be keyed out through  
11 that, but it is a secure door, but you can exit from back there.  
12 If he had asked.

13 THE COURT: When you say you need to be keyed out,  
14 what does that mean?

15 THE WITNESS: It's a secure door. We have a key fob  
16 that allows -- that unlocks the doors.

17 THE COURT: So in other words, the person would have  
18 to go to the door, turn to some other Officer within the  
19 building, and say could you unlock this to let me out?

20 THE WITNESS: Correct.

21 THE COURT: So one cannot just walk out that door?

22 THE WITNESS: No.

23 THE COURT: As opposed to the door -- or maybe I  
24 shouldn't say as opposed to. But if one were to come out of the  
25 mens' room, go to the right, go to the right again through that

1 doorway that you described, and then go down the hall to your  
2 office which would then be on the right --

3 THE WITNESS: Correct.

4 THE COURT: That door that you came into the Police  
5 Department through in order to get to your office, could one  
6 walk out that door without getting keyed out?

7 THE WITNESS: No.

8 THE COURT: You've got to be keyed out there as well?

9 THE WITNESS: Correct.

10 THE COURT: So once you're in the Police Department  
11 you can't get out without asking permission to leave?

12 THE WITNESS: Not in that portion. There is only one  
13 door that you can leave the office that you -- that you can exit  
14 to the outside without being keyed out. We have no interview  
15 areas where you can't -- the only door that we can exit through  
16 is the Officer report writing area and the Chief's office and  
17 the Captain's office.

18 THE COURT: Did Mr. Olofson ever ask to leave the  
19 Police Department?

20 THE WITNESS: No, he did not.

21 THE COURT: Did you ever tell him if he wants to leave  
22 I've got to key you out?

23 THE WITNESS: I don't know that I had said that  
24 specifically, but he never mentioned at all that he wanted to  
25 leave. If he had asked, I would have let him out.

1 THE COURT: Okay. Any further questions,  
2 Mr. Haanstad?

3 MR. HAANSTAD: No, Your Honor. Thank you.

4 THE COURT: Mr. Mullins?

5 MR. MULLINS: Just a couple, Your Honor.

6 CONTINUED REDIRECT EXAMINATION

7 **BY MR. MULLINS:**

8 Q. You say that Mr. Olofson never asked to leave, but he was  
9 told that he could not go back to his house while the search was  
10 being executed, correct?

11 A. Correct.

12 Q. And you say that in this particular area of the Police  
13 station you can't really leave without getting permission. Was  
14 Mr. Olofson placed in this area because he is a suspect or was a  
15 suspect in a crime?

16 A. No. Like I said, we don't have an area in our office where  
17 we can question anybody. We take statements from witnesses in  
18 secure areas. We have a very small Police Department, and we  
19 have no 24-hour staff there. Thus, every Officer has a key fob  
20 that's issued to them that allows them to move about in the  
21 Department. And because we don't have any secure areas, if we  
22 do have somebody in custody we have to have places where we can  
23 keep them if we need them to, which also makes it impossible for  
24 anybody to just get up and leave if they want to.

25 THE COURT: While he's consulting with his client

1 there, what's a key fob? What do you mean by that?

2 THE WITNESS: I left it in my car. It's a little  
3 plastic thing that's got a -- there's little pads next to all of  
4 those locked doors, and you hold it up to that and it unlocks  
5 the door. It would be similar to like one that would be like a  
6 key pad number. Just -- you have it on your keys.

7 THE COURT: Okay.

8 MR. MULLINS: Just one more question, Your Honor.

9 Q. Was Mr. Olofson asked to sign any kind of waiver of rights  
10 form that you're aware of?

11 A. No. He wasn't Mirandized because he wasn't in custody.

12 MR. MULLINS: Okay. Nothing further.

13 THE COURT: Mr. Haanstad?

14 MR. HAANSTAD: Nothing further, Your Honor.

15 THE COURT: Thank you, Officer. You may step down. I  
16 think I'm going to ask you to remain in the hall, however. And  
17 you're still bound by the sequestration order that I entered  
18 earlier.

19 THE WITNESS: Yes, sir.

20 THE COURT: Any further witnesses, Mr. Mullins?

21 MR. MULLINS: Yes. The defense calls Mr. David  
22 Olofson.

23 DAVID R. OLOFSON, called as a witness, having  
24 affirmed, testified as follows:

25 THE WITNESS: I can affirm to that. I cannot swear to

1 that as a Christian.

2 THE CLERK: Please be seated. Would you state your  
3 name and spell your name for the record.

4 THE WITNESS: David Roland Olofson. Last name spelled  
5 O-L-O-F-S-O-N.

6 DIRECT EXAMINATION

7 **BY MR. MULLINS:**

8 Q. Mr. Olofson, do you recall being interviewed by law  
9 enforcement at the Berlin Police Department on July 19th, 2006?

10 A. I do.

11 Q. And how did you leave the Police Department that day after  
12 your business there was done?

13 A. After Miss Keeku was informed that the search was completed,  
14 Miss Keeku and Miss Trochinski -- I believe both of them drove  
15 me back to my domicile there, and in which case Miss Keeku kept  
16 me out in the car, and they went back and forth a little bit in  
17 the house until they were assured that everyone was out of the  
18 house and everything was done.

19 Q. And did they drive you back in a squad car? Do you  
20 remember?

21 A. I don't recall exactly what vehicle it was. I'm pretty sure  
22 it was probably the one that Miss Keeku described earlier that  
23 we went down in.

24 Q. Okay. I have no further questions.

25 MR. HAANSTAD: I have no questions, Your Honor.

1 THE COURT: Nor do I. Please step down, sir. Any  
2 further witnesses, Mr. Mullins?

3 MR. MULLINS: No, Your Honor.

4 THE COURT: Any rebuttal, Mr. Haanstad?

5 MR. HAANSTAD: No, Your Honor. Thank you.

6 THE COURT: Okay. The evidentiary portion of this  
7 hearing is closed. Can I speak with counsel for a moment,  
8 please?

9 (Whereupon a side-bar conference was held off the  
10 record. Upon conclusion of the side-bar conference, the  
11 proceedings continued as follows:)

12 THE COURT: Okay. Here is the schedule we'll adopt in  
13 this case. The Court Reporter indicates that she thinks the  
14 transcript can be completed within a week. And I will just --  
15 that's really next Tuesday, but for the sake of everybody  
16 remembering it will be June 6th. D-Day, right? T-Day,  
17 transcript day. And then the parties will file simultaneous  
18 briefs -- or will be filing briefs simultaneously no later than  
19 the close of business on Friday, June 15th. 2007. It's not  
20 anticipated that either party will need to file a brief in  
21 response to their opponent's brief, but if either party thinks  
22 that will be necessary, they can seek leave of the Court to do  
23 so. Otherwise it will be fully briefed on June 15th. I will  
24 receive Government Exhibit Number 3. You've got the original,  
25 is that correct?

1 MR. HAANSTAD: Yes, Your Honor.

2 THE COURT: Anything further at this time,  
3 Mr. Haanstad?

4 MR. HAANSTAD: No. Thank you.

5 THE COURT: Mr. Mullins?

6 MR. MULLINS: No. Thank you, Your Honor.

7 THE COURT: All right. Nice to see you all.

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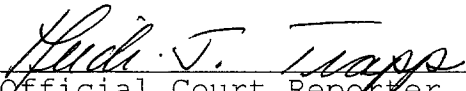
1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF WISCONSIN

3

4 I, HEIDI J. TRAPP, Official Court Reporter for the  
5 United States District Court, Eastern District of Wisconsin, do  
6 hereby certify that I reported the foregoing Transcript of  
7 Proceedings; that the same is true and correct as reflected by  
8 my original machine shorthand notes taken at said time and place  
9 before the Hon. Wm. E. Callahan, Jr.

10

11

  
\_\_\_\_\_  
Official Court Reporter  
United States District Court

12

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14 Dated at Milwaukee, Wisconsin,

15 this 5th day of June, 2007.

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