

**APPELLANT'S  
ATTACHMENTS**

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IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA            )     Criminal No. 00-00421-A  
  )  
                  v.                     )  
  )  
WILLIAM KINJO SMITH,                )  
  )  
                  Defendant            )

POSITION OF THE UNITED STATES  
WITH RESPECT TO SENTENCING FACTORS

COMES NOW The United States of America by and through its counsel, Helen F. Fahey, United States Attorney for the Eastern District of Virginia, Michael E. Rich, Assistant United States Attorney, and Kenneth W. Gaul, Special Assistant United States Attorney, and states that it concurs with the Presentence Report filed in this case with the following additions and exceptions:

1. In paragraph 57, the Probation Officer states that the defendant does not qualify for a sentence enhancement under the Armed Career Criminal section as defined in Chapter 4, Part B, of the Sentencing Guidelines. Inasmuch as the Probation Officer, in Worksheet D, correctly applies the Armed Career Criminal enhancement, this is obviously an oversight and should be corrected.

2. With respect to the Armed Career Criminal enhancement, attached hereto is the Declaration of Michael J. Cooney, a Firearms Enforcement Officer with the Bureau of Alcohol, Tobacco and Firearms in which he states that he examined and test-fired

the Bushmaster rifle depicted in Government Exhibit 17 at trial and determined that by rotating the safety/selector switch to a position corresponding to the "auto" position on an M-16 machinegun, the rifle shot automatically more than one shot, without manual reloading, by a single function of the trigger. His examination of the rifle revealed that it contained an auto sear, which is a part designed and intended solely for use in converting a firearm into a machine gun. A machine gun is described in Title 26, United States Code, Section 5845(a) and is defined in Section 5845(b) as "any weapon which shoots . . . automatically more than one shot, without manual reloading, by a single function of the trigger."

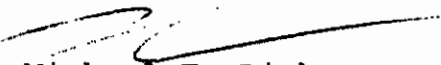
3. In Worksheet A, the Probation Officer found that the offense involved a "destruct[ive] device" and applied a two-level enhancement. SMITH was originally charged with possession of a destructive device in Count 3 of the Indictment. Prior to trial, the government moved to dismiss that count. Although the basis for the motion was not stated, in fact, it was because we concluded, after questioning our expert, that the parts found in SMITH's apartment were not "designed and intended for conversion into a grenade and readily assembled into a grenade." The "20 grenade ignition kits" listed in the Count were for smoke grenades, which do not meet the definition of destructive devices. Had one of the kits been used in assembling a grenade, because it does not have delayed ignition, the grenade would have

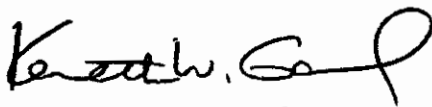
gone off instantly upon release of the spoon killing or maiming the user. Because we found U.S. Army manuals relating to the design and operation of grenades and pyrotechnics in SMITH's residence, we concluded he must have known that and would not have attempted to assemble grenades with those kits. Hence, the government does not believe that there is a factual basis for the destructive device enhancement.

4.. The government believes that this Court should find an Offense Level 34, Criminal History VI, pursuant to §4B1.4 for a sentencing range of 262 to 327 months.

Respectfully submitted,

Helen F. Fahey  
United States Attorney

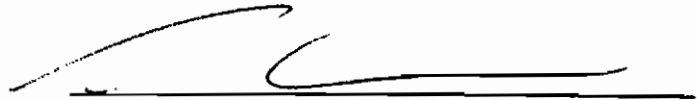
  
By: Michael E. Rich  
Assistant United States Attorney

By:   
Kenneth W. Gaul  
Special Assistant  
United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Position of the United States With Respect To Sentencing Factors was hand delivered to Angela J. Scanlon, Senior U.S. Probation Officer, and served by mail, first class postage prepaid, on counsel for defendant on this 20<sup>th</sup> day of April, at the following address:

Richard E. Gardner  
10560 Main Street, Suite 404  
Fairfax, Virginia 22030

  
\_\_\_\_\_  
Michael E. Rich  
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	Criminal No. 00-00421-A
	)	
v.	)	
	)	
WILLIAM KINJO SMITH,	)	
	)	
Defendant	)	

RULE 16(a)(1)(E) NOTICE--MARTIN G. OLS

COMES NOW the United States of America, by its attorneys Helen F. Fahey, United States Attorney for the Eastern District of Virginia, and Michael E. Rich, Assistant United States Attorney, and Kenneth W. Gaul, Special Assistant United States Attorney, and provides the following written summary of testimony the government intends to use under Rules 702, 703, and 705 of the Federal Rules of Evidence during its case at chief at trial:

1. Martin G. Ols will testify--

(a) That he is Firearms and Toolmark Examiner with the Bureau of Alcohol, Tobacco and Firearms, U.S. Treasury Department;

(b) That he ~~testified~~ the ~~firearms~~ shown in Government Exhibits 15 through 23 and determined each of the firearms with the exception of Government Exhibit 22 was found by him to have functioned normally. And that Government Exhibit 22 was received by him in an ~~inoperable condition~~ and, therefore, he did not test fire it; and

(c) That Government Exhibit 29 is a true and accurate copy of the report that he prepared setting forth the results of his examination.

2. The bases and reasons for Ols' opinion are his physical examination of each of the firearms and his training and experience in firearms design, construction, operation and functioning.

3. Ols' qualifications are set forth in his curriculum vitae filed as Government Exhibit 28.

Respectfully submitted,

HELEN F. FAHEY  
UNITED STATES ATTORNEY

By: 

Michael E. Rich  
Assistant United States Attorney

By: 

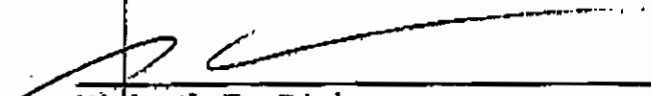
Kenneth W. Gaul  
Special Assistant  
United States Attorney



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the Government's RULE 16(a)(1)(E) NOTICE--SPECIAL AGENT MARTIN G. OLS was faxed and sent by first class mail, postage prepaid, this 15<sup>th</sup> day of February 2001, to counsel as listed below:

Richard E. Gardiner, Esq.  
10560 Main, Suite 404  
Fairfax, Virginia 22030  
Fax: (703) 359-0938

  
\_\_\_\_\_  
Michael E. Rich  
Assistant United State Attorney



DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

# Firearms Technology Branch Report of Technical Examination

Firearms Programs  
Division

Washington, D.C. 20226

Phone: (202) 927-7910

TO:

Special Agent Michael Hephner  
Bureau of Alcohol, Tobacco and Firearms  
6715 Little River Turnpike, Ste 303  
Annandale, VA 22033

DATE: 1/8/01

YOUR: 768060-00-0038

RE: Smith, William

OUR: 01-152-MJC

DATE EXHIBITS RECEIVED: 1/5/01

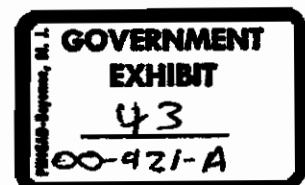
DELIVERED BY: Hand Carry

TYPE OF EXAMINATION REQUESTED:

Test, Examination, Classification

## EXHIBITS:

1. through 56. (not submitted).
57. Makarov, Model IJ70-17A, caliber .380 ACP semiautomatic pistol, identified by the serial numbers BCK7356 and E009493, with one (1) magazine.
58. Century Arms, Model PA-63, caliber 9mm Makarov semiautomatic pistol, serial number BF23994, with one (1) magazine.
59. Bushmaster, Model XM15-E2S, caliber .223-5.56mm semiautomatic rifle, serial number L100080, with two (2) magazines.
60. Special Weapons, SWS, caliber 9mm semiautomatic carbine, serial number 5-00-04-0112, no magazine.
61. Chinese, M14S, caliber 7.62x 51mm semiautomatic rifle, serial number 23032, with one (1) magazine
62. Mossberg, Model 500A, 12 gauge pump action shotgun, serial number P362649.
63. Century Arms, LIAI Sporter, caliber 7.62x51mm semiautomatic rifle, serial number 124899.
64. FMJ, M11/Ninemmm, caliber 9mm semiautomatic pistol, serial number 94-0000737, with two(2) magazines.
65. through 71. (not submitted).
72. Colt, MKIV series 80, caliber .45 ACP semiautomatic pistol, serial number FG05117, with one (1) magazine.



Findings:

Exhibit 57 was originally manufactured by IMEZ in Russia and imported by KBI of Harrisburg, Pennsylvania as a semiautomatic pistol and incorporates the frame or receiver of a firearm. Test firing disclosed that Exhibit 57 with two rounds of Samson brand .380 ACP ammunition test fired successfully.

Exhibit 58 was originally manufactured by FEG in Hungary as a semiautomatic pistol and was imported by Century Arms of St. Albans, Vermont. Exhibit 58 incorporates the frame or receiver of a firearm, Test firing disclosed that Exhibit 58 with one round of 9mm Makarov military ball ammunition test fired successfully.

Exhibit 59 is an AR-15 type rifle which incorporates a semiautomatic frame or receiver which was originally manufactured by LAR Manufacturing of West Jordan, Utah for BFI (Bushmaster Firearms Incorporated) of Windham, Maine. Examination revealed Exhibit 59 is assembled with M16 fire control components originally designed for the M16 selective fire rifle. The machinegun components are as follows:

1. M16 hammer
2. M16 trigger
3. M16 disconnecter
4. M16 selector
5. M16 bolt carrier assembly

Also found in the lower receiver unit was an AR-15 drop-in auto sear. The drop-in auto sear is a part designed and intended for use in converting a weapon into a machinegun. It consists of a sear, sear mounting body, sear pivot pin and a sear return spring. Further, a black military style sling is attached to Exhibit 59. Test firing disclosed that Exhibit 59 with the commercially available Federal brand .223 ammunition and the safety/selector in the "fire" position shoots one shot by a single function of the trigger. When the selector was rotated clockwise to an unmarked position which corresponds to "auto" position on the selective fire M16 rifle, Exhibit 59 shoots automatically more than one shot, without manual reloading, by a single function of the trigger. Three rounds were loaded and subsequently all three rounds were expelled automatically by a single pull of the trigger. This process was repeated twice.

Exhibit 60 is an HK 94 type carbine which was originally manufactured by Special Weapons of Tempe, Arizona as a semiautomatic carbine and incorporates the frame or receiver of a firearm. Test firing disclosed that Exhibit 60 with two rounds of commercially available Federal brand 9mm ammunition functioned as intended by design and shoots only in the semiautomatic mode.

Exhibit 61 was originally manufactured in the Peoples Republic of China as a semiautomatic rifle and was imported by IDE of Southfield, Michigan. Exhibit 61 incorporates the frame or receiver of a firearm. Test firing disclosed that Exhibit 61 with two rounds of commercially available Federal brand .308 ammunition functioned as intended by design.

Exhibit 62 was originally manufactured by Mossberg of North Haven, Connecticut as a pump action shotgun and incorporates the frame or receiver of a firearm. Examination revealed an aftermarket buttstock with pistol grip, a plastic shell carrier and a black military style sling are attached to Exhibit 62. Test firing disclosed that Exhibit 62 with one round of commercially available Remington brand 12 gauge shotgun ammunition test fired successfully.

Exhibit 63 is an L1A1 type rifle which incorporates a semiautomatic frame or receiver which was originally manufactured by Imbel of Brazil for Century Arms of St. Albans, Vermont. Exhibit 63 is assembled with the semiautomatic receiver and an L1A1 parts kit. A green military style sling and a aftermarket scope

mount are attached to Exhibit 63. Test firing disclosed that Exhibit 63 with two rounds of commercially available Federal brand .308 ammunition test fired successfully and shoots only in the semiautomatic mode.

Exhibit 64 was assembled by FMJ of Ducktown, Tennessee as a semiautomatic pistol and incorporates the frame or receiver of a firearm. Examination revealed that Exhibit 64 was assembled incorrectly with the hammer in the forward position. ~~Exhibit 64 was assembled properly.~~ Further examination revealed the hammer retaining clip is missing and a piece of clear tape assists in holding the hammer pin in place. A black sling is attached to Exhibit 64. Test firing disclosed that Exhibit 64 with two rounds of commercially available Federal brand 9mm ammunition functioned as intended by design.

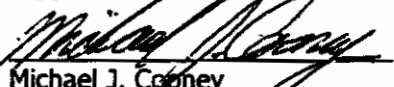
Exhibit 72 was originally manufactured by Colt Firearms of Hartford, Connecticut as a semiautomatic pistol and incorporates the frame or receiver of a firearm. Test firing disclosed that Exhibit 72 with two rounds of commercially available Winchester brand .45 ACP ammunition functioned as intended by design.

All test firing was conducted on January 8, 2001 at the ATF test range facility located in Washington, DC.

Conclusions:

Exhibits 57, 58, 59, 60, 61, 62, 63, 64, and 72 are each a "firearm" as defined in Title 18 U.S.C., Chapter 44, Section 921(a)(3), and were not manufactured in the State of Virginia.

Exhibit 59 shoots automatically more than one shot, without manual reloading, by a single function of the trigger; therefore, it is a "machinegun" as defined in Title 26 U.S.C., Chapter 53, Section 5845(b).



Michael J. Cooney  
Firearms Enforcement Officer



IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA            )     Criminal No. 00-00421-A  
  )  
                  v.                     )  
  )  
WILLIAM KINJO SMITH,                )  
  )  
                          Defendant    )

DECLARATION

I, Michael L. Hephner, make the following unsworn  
declaration pursuant to 28 U.S.C. § 1746:

1. I am currently employed as a Special Agent with the  
Bureau of Alcohol, Tobacco and Firearms in Annandale, Virginia.  
As part of my duties, I am the case agent in the above-captioned  
case, and actively participated in the investigation and  
prosecution of the case. I have received extensive training in  
the enforcement of Federal Firearms laws and the operation and  
use of firearms, including machineguns.

Smith's Machinegun Documents

2. As part of my duties relating to this case, I executed a  
Federal search warrant on the apartment of William Kinjo Smith on  
July 26, 2000. Among the items specified to be seized in the  
search warrant were the entire computer system and all  
peripherals on the computers used by Smith, as well as external  
computer storage media, including floppy disks and zip disks.  
After seizure of Smith's computers, they were examined by ATF

computer forensics personnel in Arizona, and documents and data stored on them were recovered.<sup>1</sup> Found on a computer seized from Smith's apartment were a number of saved Web pages relating to Bushmaster semiautomatic AR-15 type and automatic M-16 type rifles. Most significant were "frequently asked questions" pages from the Bushmaster Firearms Web site describing in detail the differences between a semi-automatic .223 caliber AR-15 type rifle and a fully automatic M-16 type machinegun, including detailed drawings of the relevant parts needed to convert a semi-automatic firearm into a machinegun. These Web pages appear to have been saved to Smith's computer on March 12, 2000. These Web pages are attached hereto as "Exhibit A."

3. The Web pages from Smith's computer attached as Exhibit A includes a warning entitled "Statement Regarding MachineGun Parts"<sup>2</sup>:

BATF's position is that if your AR15 type weapon has even one M16 component, it is a machine gun. If you have an AR15 from any manufacturer, check to make sure there are no M16 components in the assembly. If there are, remove them immediately; machine them to AR configuration or have them replaced and destroy the M16 components. Refer to the

---

<sup>1</sup> The forensic examination of the computers and storage media was not complete until after trial in this matter, and the documents at issue were not found and provided to me until after trial.

<sup>2</sup> Likewise, on the saved FAQ Web page entitled "Questions Regarding Upper & Lower Receivers," included in Exhibit A, it notes that Bushmaster lower receivers do not have a block to prevent use of M16 bolt carriers, but that "[i]t is illegal to use M16 carriers in AR15s."

pictures above to ascertain if you have M16 components in your assembly. If you're still not sure, give us a call and we'll be glad to supply you with the legally acceptable parts.

Immediately preceding that warning on the saved Web page is a space for a graphic. Because embedded pictures and graphics on web pages coded in HTML (hypertext markup language) are separate files, saving an HTML Web page on a computer hard drive generally will not also capture the pictures and graphics displayed on that page, even though the pictures and graphics are visible when viewing the page on the Web. I ascertained from Bushmaster Firearms personnel that the graphic preceding the warning on their Web page in March 2000 can currently be found on a revised page on their Web site. A printout of the current version, including the graphic and the warning, is attached hereto as "Exhibit B." As seen in Exhibit B, the graphic specifically shows in detail all the parts necessary to convert a semiautomatic AR-15 type rifle into an automatic M-16 type weapon, including parts numbers and descriptions of the functional differences between the semiautomatic and automatic weapon versions.

4. Also found on a seized computer was an electronic version (in Adobe PDF format) of the Operating and Safety Instruction Manual for the Bushmaster XM15 rifle. A printout of the manual is attached hereto as "Exhibit C." This manual includes detailed disassembly and reassembly instructions and parts diagrams for the Bushmaster (see, for example, pp. 22-27,

54).

The Bushmaster Machinegun

5. The firearm depicted in Government Exhibit 17 at trial in the above-captioned case is a Bushmaster, Model XM15-E2S, caliber .223-5.56mm rifle, serial number L100080 (the "Bushmaster"). The Bushmaster is based on the Colt AR-15 rifle, and is in essence an virtually identical copy of that weapon. The Bushmaster was seized by Alexandria Police on July 7, 2000, and was found on Smith's bed, loaded with a 30-round magazine and with another loaded 30-round magazine taped to the first magazine.

6. I contacted Bushmaster Firearms, Inc., the manufacturer of the Bushmaster. The manufacturer confirmed that this firearm was manufactured as a semi-automatic weapon, and further, that Bushmaster does not manufacture or sell any machineguns for civilian use, although it makes a version of the AR-15/M-16 as an automatic weapon solely for military and law enforcement customers (this fact is repeated in the FAQ pages found on Smith's Computer: "M16s built before the 1986 Full Auto Ban are no longer available from Bushmaster. Although we still build the M16 for law enforcement agencies, U.S. and Foreign Governments . . .").

7. I obtained from the ATF National Tracing Center a copy of a Firearms Transaction Record (Form 4473) memorializing the sale of the Bushmaster. The Form 4473 indicates that the



Bushmaster was transferred by All America Guns of Fairfax, Virginia, a Federally-licensed firearms dealer, to George Phillips, of 4600 Duke Street, Apt. 1411, Alexandria, VA, on March 20, 1999. This Form 4473 is attached hereto as "Exhibit D."

8. I interviewed Darren Guthrie, the manager of All America Guns, about the purchase of the Bushmaster. Guthrie explained that All America Guns is not licensed to sell machineguns, and in fact does not do so. Guthrie stated that is regular business practice is to personally inspect all firearms obtained by All American Guns before they are offered for sale. He stated that he certainly would have noticed that the Bushmaster was a machinegun when he inspected it. Guthrie is certain the Bushmaster could only operate as a semi-automatic weapon when he acquired and later resold it to George Phillips.

9. I had Guthrie examine both the Bushmaster and another weapon of the same type from the same manufacturer that was a semi-automatic firearm. Guthrie immediately noticed that the Bushmaster was a machinegun and that the other weapon was not. He opened the receiver of the Bushmaster, which is a normal part of field testing, maintenance and cleaning of this type of firearm. He identified the M-16 machinegun parts and auto sear that had been installed in the receiver of the Bushmaster. Guthrie repeated that there was no way that he would have failed to notice that this firearm was a machinegun when it entered his

inventory.

10. I also examined the Bushmaster. Consistent with the report of Federal Firearms Examiner Michael J. Cooney (provided to the Court as an attachment to the Position of the United States With Respect to Sentencing Factors), the Bushmaster has a safety/selector that has three positions: (1) the marked "safe" position, with the switch tab facing the rear, (2) the marked "fire" position, with the switch tab down, and (3) an unmarked position corresponding to the "auto" position on the M-16 machinegun, with the switch tab to the front. Photos of the safety/selector switch in all three positions are attached hereto as Exhibit E1, E2, and E3. For purposes of comparison, attached as Exhibit E4 is a U.S. Government-owned Colt AR-15/M-16 assigned to my use by the ATF, showing how the three safety/selector switch positions are marked on a legally-manufactured automatic version of the weapon.

11. I examined and moved the selector switch on the Bushmaster. William Kinjo Smith shoots left-handed (see Government Exhibits 25Y (photographs of Smith holding weapons in firing position)). I also shoot left-handed. When I moved the selector switch from the "safe" position with my left hand as one would while holding the Bushmaster to shoot, the selector switch repeatedly passed the vertical semi-automatic "fire" position and traveled to the full automatic position, even when I did not intend to move the selector switch that far. In order to ensure

that the selector switch stopped in the semiautomatic "fire" position, I had to consciously stop it with the switch tab in the down position. It takes less force to move the selector switch on the Bushmaster to full automatic position than it takes on similar weapons with which I am familiar, including my ATF AR-15/M-16 depicted in Exhibit E4. I therefore conclude that it would be virtually impossible for someone familiar with the operation of the Bushmaster not to know that the selector switch on that firearm moves to full automatic position.

Smith Obtained the Bushmaster

12. On May 24, 2001, I interviewed George Phillips, the individual identified on the above-mentioned Form 4473 as having taken possession of the Bushmaster from All America Guns. George Phillips was previously known to me to be an associate of William Kinjo Smith. George Phillips lives in the same apartment building as Smith.

13. George Phillips admitted that he signed the Form 4473 and took possession of the Bushmaster from All America Guns. He stated that he sold the Bushmaster to Karen Gail Campbell, Smith's girlfriend. George Phillips stated that he did not modify the Bushmaster before giving it to Campbell, and that he was certain it was a semi-automatic rifle at all times when it was in his possession. George Phillips denied any knowledge that the Bushmaster was a machinegun.

14. I interviewed Karen Gail Campbell on May 29, 2001.

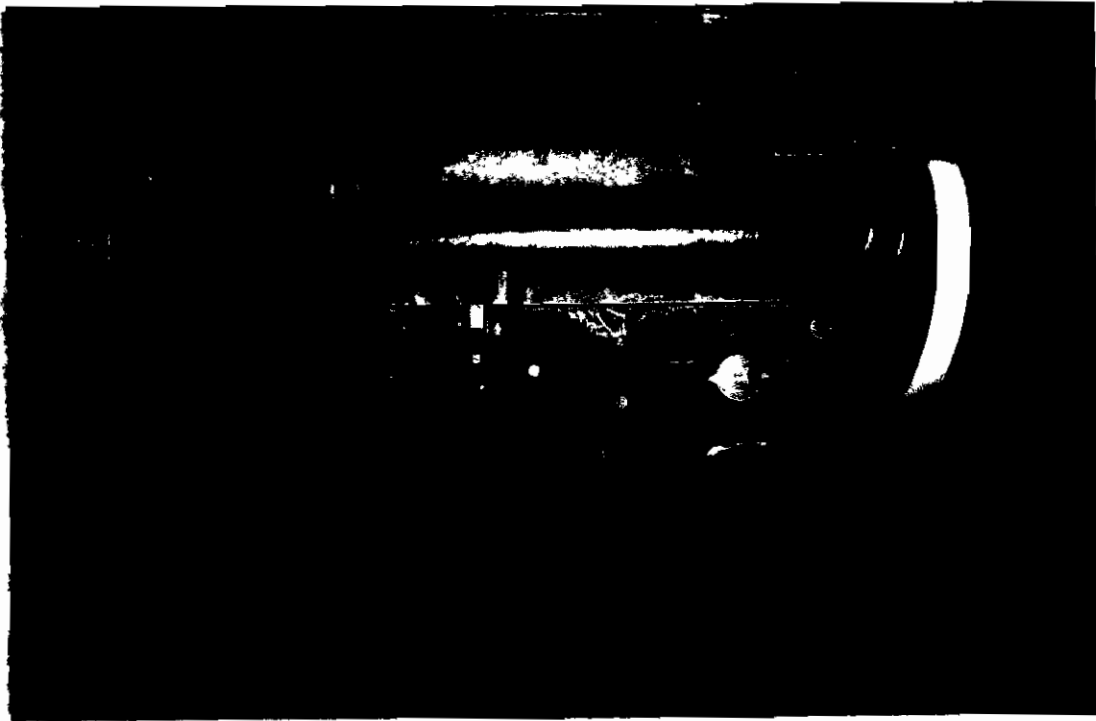
Karen Gail Campbell is the person who made the original complaint to Alexandria Police that led to William Kinjo Smith's arrest on July 7, 2000. She stated that she took possession of only one semi-automatic rifle from Phillips, but was not certain what type it was. She did so on behalf of William Kinjo Smith, and immediately gave it to Smith. She never converted the Bushmaster into a machinegun before giving it to Smith. Subsequently Campbell observed Smith cleaning this weapon, including opening the receiver and disassembling internal parts.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 29, 2001.

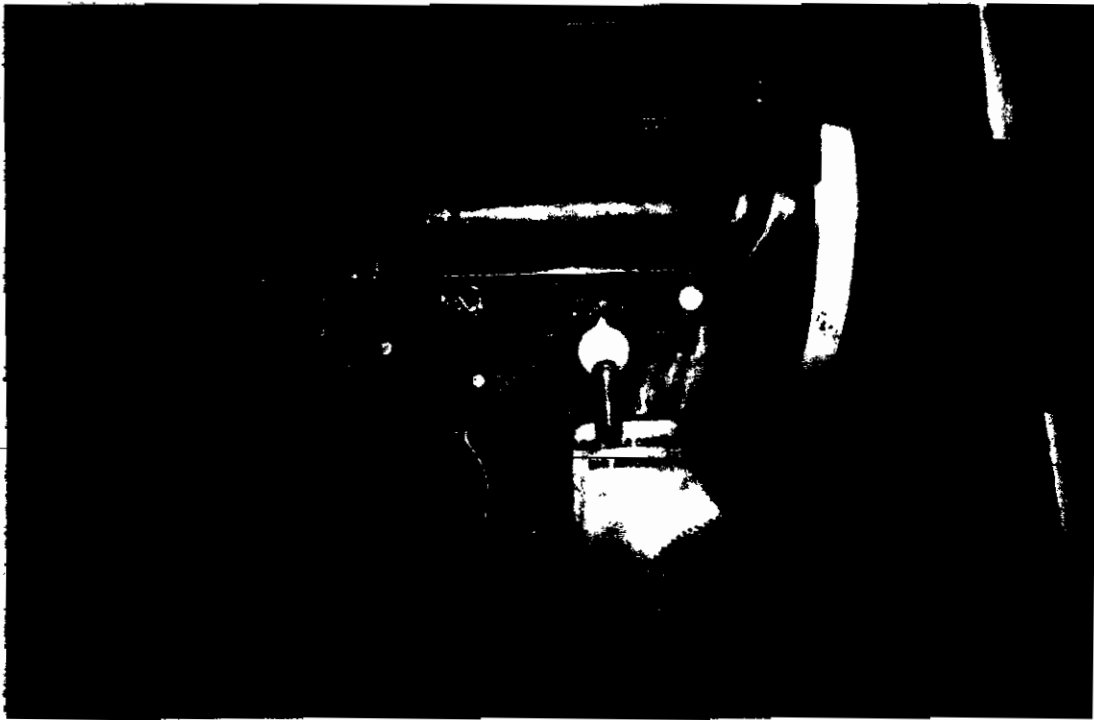


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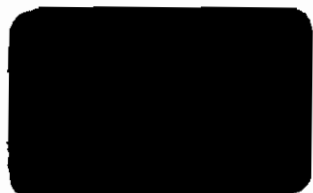
Michael L. Hephner  
Special Agent  
Bureau of Alcohol Tobacco and  
Firearms

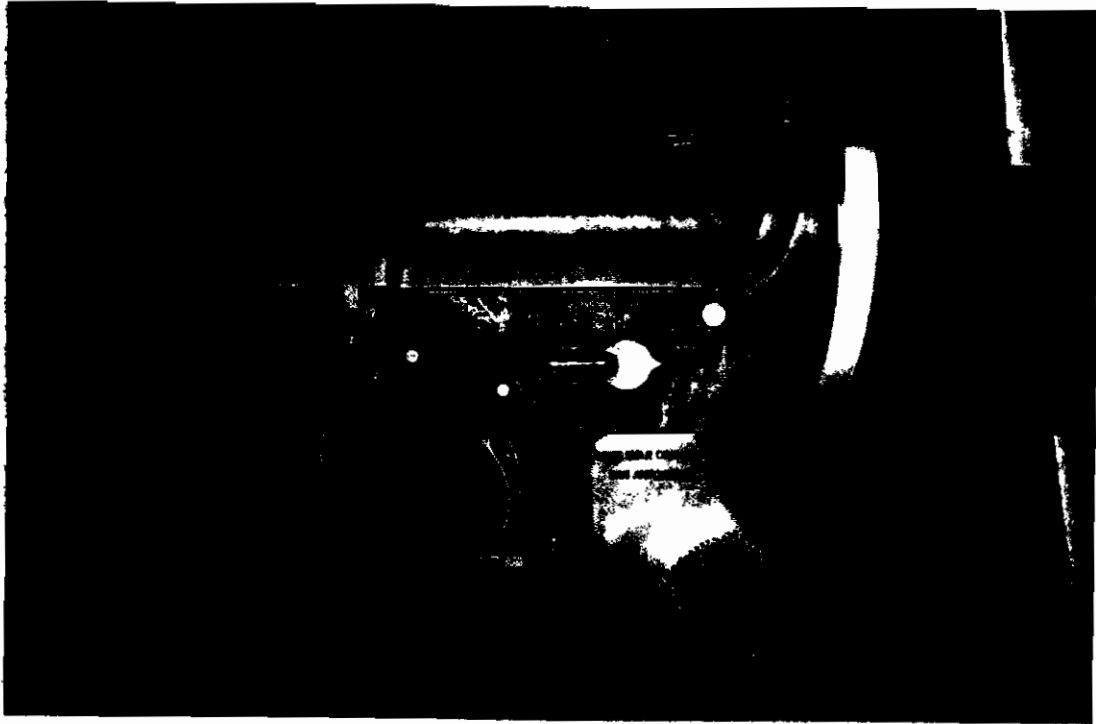


Bushmaster: Safe

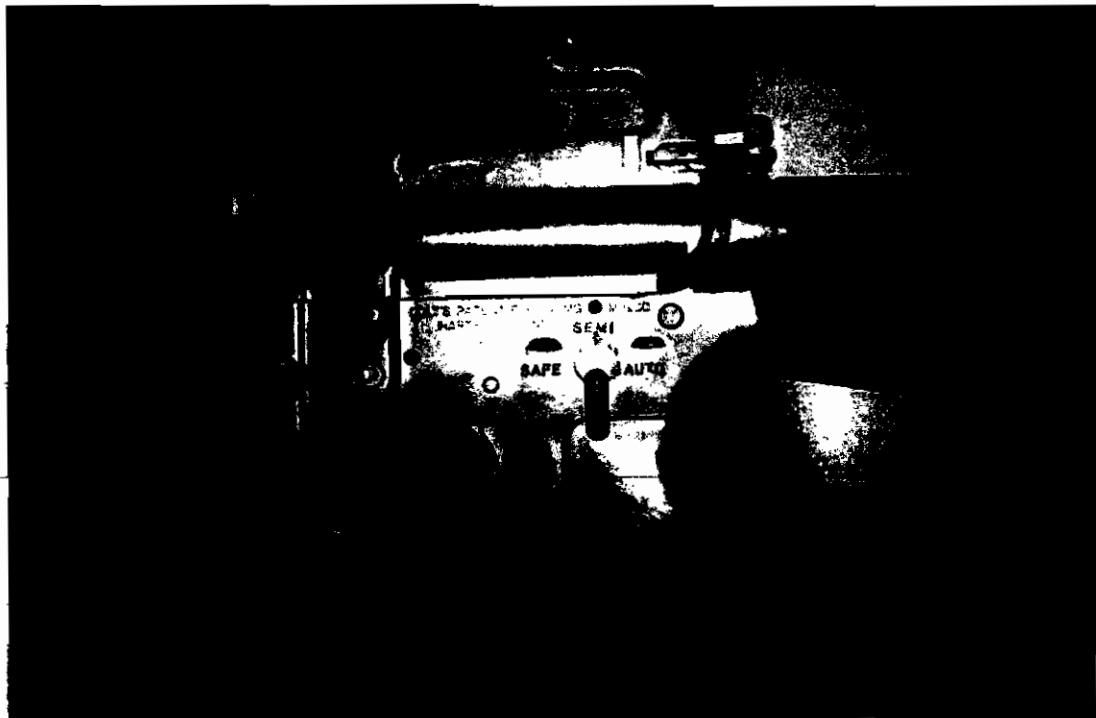


Bushmaster: Semi-automatic





Bushmaster: Automatic



AR-15/M-16 Safety/Selector Markings



**STATE OF ALABAMA**

**TYPE OF FIREARMS OR WEAPON** (Type of firearm or weapon, including make, model, caliber, and serial number, if known.)  
*Remington-Union 12 Gauge*

**TYPE AND DATE OF ORIGINAL IDENTIFICATION REQUIRED FOR ALIENS** (If applicable, provide the type and date of original identification required for aliens, such as a passport or visa.)

**THE TRANSFER OF THIS INFORMATION IN SECTION A OF THIS FORM WAS TRANSMITTED TO NICS ON THE** *05/23/01*  
**APPROPRIATE STATE AGENCY ON** *05/23/01*

**THE RESPONSE RECEIVED BY NICS ON THE APPROPRIATE STATE AGENCY WAS AS FOLLOWS:**  
 **PROCESSED**     **REJECTED**     **DELAYED**

**IF A TOTAL AND OR STATE RESPONSE WAS RECEIVED, THE FOLLOWING RESPONSE WAS RECEIVED FROM NICS OR THE APPROPRIATE STATE AGENCY ON:**  
 **PROCESSED**     **REJECTED**     **NO RESPONSE PROVIDED WITHIN 3 BUSINESS DAYS**

**DATE OF TRANSFER**    **DATE OF PURCHASE**    **BUYER'S NAME**    **BUYER'S ADDRESS**    **BUYER'S PHONE NUMBER**

**REMARKS:** IF THE TRANSFER OF THE FIREARMS TOOK PLACE ON A DIFFERENT DAY FROM THE DATE THAT THE TRANSFER INFORMATION WAS TRANSMITTED TO NICS, THE TRANSFER SHOULD BE REPORTED TO THE APPROPRIATE STATE AGENCY ON THE DATE OF THE TRANSFER. THIS INFORMATION IS FOR THE APPROPRIATE STATE AGENCY USE ONLY. IF YOU CHECK THIS RESPONSE, YOU ARE CERTIFYING THAT THE INFORMATION PROVIDED ON THIS FORM IS TRUE AND CORRECT.

**BUYER'S SIGNATURE**    **DATE**

**SELLER'S SIGNATURE**    **DATE**

**ON THE BASIS OF (1) THE STATEMENTS IN SECTION A; (2) THE VALIDATION OF SERIAL NUMBERS IN SECTION B; AND (3) THE INFORMATION IN THE CURRENT FBI OF FIREARMS IDENTIFICATION, IT IS MY BELIEF THAT IT IS NOT UNLAWFUL TO TRANSFER, PURCHASE, OR OTHERWISE ACQUIRE THE FIREARMS DESCRIBED BELOW TO THE PERSON IDENTIFIED IN SECTION A OF THIS FORM AND THAT THE INFORMATION PROVIDED ON THIS FORM IS TRUE AND CORRECT.**

BUYER'S NAME	BUYER'S ADDRESS	BUYER'S PHONE NUMBER	TYPE OF FIREARMS (See Section A)	CALIBER OR GUAGE
<i>Michael J. ...</i>	<i>100000</i>	<i>...</i>	<i>Rifle</i>	<i>.223</i>

**ALL AMERICAN RIFLE**  
**807-B LEE HWY.**  
**BIRMINGHAM, AL 35202**

DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
FIREARMS TRANSACTION RECORD PART I - OVER THE COUNTER

TRADING SHOWS  
SERIAL NUMBER  
001718

SECTION A - MUST BE COMPLETED INDIVIDUALLY BY THE BUYER

BUYER'S (Buyer's) NAME Last, First, Middle Initial  
Philippe, George  
ADDRESS  
1400 Dale St #1117  
Alexandria, VA 22304  
CITY STATE ZIP  
Alexandria VA 22304  
DATE OF BIRTH  
6 10 90  
PLACE OF BIRTH  
Texas

OPTIONAL INFORMATION - The following information is optional but will help to ensure the accuracy of the sale and avoid the possibility of being misclassified as a felon or other prohibited person.

SOCIAL SECURITY NUMBER  
456-21-1503

ALIEN IDENTIFICATION NUMBER

CELLULAR NUMBER (Area Code)

1. Are you the subject of a court order, injunction, or other legal proceeding that prohibits you from possessing, using, or transferring a firearm or other dangerous weapon? (See Important Notice 1.)

2. Are you under indictment or information in any court for a crime for which the judge could prohibit you for more than one year? An indictment is a formal accusation of a crime made by a prosecuting attorney.

3. Have you been convicted in any court of a crime for which the judge could have imprisoned you for more than one year even if the judge actually gave you a shorter sentence? (See Important Notice 1 and EXCEPTIONS.)

4. Are you a fugitive from justice?

5. Are you an unlawful user of, or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?

6. Have you ever been adjudicated mentally defective or have you been committed to a mental institution?

7. Have you been discharged from the Armed Forces under dishonorable conditions?

8. Are you or alien illegally in the United States?

9. Have you ever renounced your United States citizenship?

10. Are you subject to a court order restraining you from harassing, stalking, or threatening an intimate partner or child of such partner? (See Important Notice 6 and Subsection 4.)

11. Have you been convicted in any court of a misdemeanor crime of domestic violence? This includes any misdemeanor conviction involving the use or attempted use of physical force committed by a current or former spouse, parent, or guardian of the victim or by a person with a similar relationship with the victim. (See Subsection 6.)

12. Are you a citizen of the United States?

13. What is your State of residence? Virginia

If you are not a citizen of the United States, you have a State residence only if you have resided in the State for at least 90 days prior to the date of this sale. (See Subsection 6.)

I CERTIFY THAT THE ABOVE ANSWERS ARE TRUE AND CORRECT. I UNDERSTAND THAT A PERSON WHO ANSWERS "YES" TO QUESTION 10 IS PROHIBITED FROM PURCHASING A FIREARM. I UNDERSTAND THAT A PERSON WHO ANSWERS "YES" TO ANY OF THE QUESTIONS 11 THROUGH 12 IS PROHIBITED FROM PURCHASING OR POSSESSING A FIREARM. I ALSO UNDERSTAND THAT THE MAKING OF A FALSE ORAL OR WRITTEN STATEMENT ON THE IDENTIFICATION OF ANY FELON OR INDENTIFIED IDENTIFICATION WITH RESPECT TO THIS TRANSACTION IS A CRIME PUNISHABLE AS A FELONY. I FURTHER UNDERSTAND THAT MY REPEATED PURCHASE OF FIREARMS FOR THE PURPOSE OF WHOLE FOR LIVELIHOOD AND PROFIT WITHOUT A FEDERAL FIREARMS LICENSE IS A VIOLATION OF LAW. (SEE IMPORTANT NOTICE 7.)

BUYER'S SIGNATURE  
Philippe  
DATE  
5/23/01



IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	Criminal No. 00-00421-A
	)	
v.	)	
	)	
WILLIAM KINJO SMITH,	)	
	)	
Defendant	)	

DECLARATION

I, Martin G. Ols, make the following unsworn declaration pursuant to 28 U.S.C. § 1746:

1. I am employed as a Firearms and Tool Mark Examiner with the Bureau of Alcohol, Tobacco and Firearms. In that capacity I have been qualified to testify as an expert in various Federal and State courts, including in United States District Court for the Eastern District of Virginia.

2. My current duties include test-firing firearms recovered by law enforcement personnel to obtain a firearm's "ballistic fingerprint" in the form of unique markings on shell casings and bullets fired from that firearm. The ballistic information I recover from these test-firings is entered in the ATF's computerized Integrated Ballistics Identification System, and is employed to trace the use of firearms in crimes. As a necessary part of this process, I learn whether a firearm will expel a projectile by the action of an explosive, which is one of the ways a firearm is defined in 18 U.S.C. § 921(a)(3). If so, the

firearm can be said to "function normally."

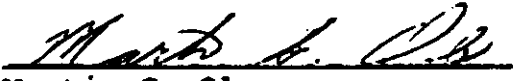
3. It was in this context that on October 18, 2000, I prepared a report that, among other things, concluded that a Bushmaster rifle, Model XM15-E2S, caliber .223-5.56mm rifle, serial number L100080, which was depicted in Government Exhibit 17 at trial in the above-captioned case, (the "Bushmaster"), was "examined, test fired and found to function normally." I test-fired the the Bushmaster by placing a single round in the chamber, confirming that the safety/selector switch was set to the "fire" position, and pulling the trigger. The bullet was, in fact, expelled by explosion. I then collected and processed the ballistic evidence obtained from this bullet, and noted in my report that the firearm functioned "normally."

4. At no time did I examine the Bushmaster to determine whether it was a machinegun as defined in 26 U.S.C. § 5845(b), as this was not part of my assignment. Indeed, because I placed only a single round in the chamber, I would not have noticed whether the Bushmaster shot automatically more than one shot, without manual reloading, by a single function of the trigger, as defined in 26 U.S.C. § 5845(b).

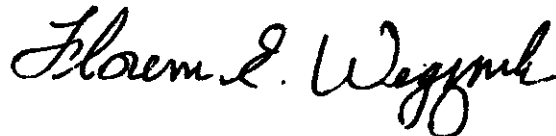
5. I understand that the Bushmaster was subsequently examined by Michael J. Cooney, an ATF Firearms Enforcement Officer, and found to be a machinegun as defined in 26 U.S.C. § 5845(b). In contrast with my focus on ballistics, making such a determination would have been a regular part of Mr. Cooney's

duties.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 25, 2001.

  
Martin G. Ols  
Firearms and Toolmark Examiner

Signed before me this day May 25, 2001.  
State of Maryland, Montgomery County.



FLORENCE E. WEGZNEK  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires December 1, 2003