

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO.: 3:18CR162
)	
Plaintiff,)	JUDGE JAMES G. CARR
)	
v.)	
)	
KELLAND WRIGHT,)	<u>UNITED STATES OF AMERICA'S</u>
)	<u>DISCLOSURE OF EXPERT WITNESS</u>
Defendant.)	

Pursuant to Federal Rule of Criminal Procedure 16(a)(1)(G), the Government hereby advises Defendant that it intends to call the following witness as an expert witness offering opinion testimony:

Eve E. Eisenbise, Firearms Enforcement Officer, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Officer Eisenbise will testify as an expert witness on firearm classifications. She is expected to testify about her analysis, findings, and conclusions, regarding the firearm identified in Count 1 of the Indictment: a Spike's Tactical, model The Jack, AT-type rifle, serial number JACK 12022 (hereinafter the "Firearm"). She will testify about her conclusions and the bases for those conclusions, which are contained in the report and results that the Government provided to defense counsel the morning of July 13, 2018, at Bates range GOVT 26-41. The Government files the report, supporting photographs, and statement of qualifications contemporaneously with this Notice. (Ex. 1.)

Officer Eisenbise will testify about her analysis and methods, which include the following:

- (1) her method for measuring the Firearm's barrel length;

- (2) her method for measuring the Firearm's overall length;
- (3) her method for measuring the Firearm's length of pull;
- (4) her method for photographing the Firearm; and
- (5) her method for test firing the Firearm.

Officer Eisenbise will testify about her findings, which include the following:

(1) the Firearm is a Spike's Tactical, model The Jack, 300 BLK caliber, AR-type rifle, serial number JACK 12022, which was assembled with a removable muzzle device (flash suppressor/blast diffuser), forward grip, and a collapsible shoulder stock;

(2) the collapsible stock has been assembled by using a piece of black cord to attach a rubber pad (Nev-a-slip brand cane tip) to the back end of a Maxim Defense collapsible "extension only" device. The redesign of the extension device was done in such a manner that provides a pad for shouldering, and in a manner which creates a length of pull that facilitates its use as a shoulder stock;

(3) the Firearm was designed or redesigned with characteristics and features that are for the purpose of being fired from the shoulder;

(4) the Firearm's barrel length is approximately 7-11/16 inches;

(5) the Firearm's overall length is approximately 25-3/4 inches; and

(6) the Firearm's length of pull is approximately 13-3/4 inches (as compared to most standard factory rifles, which have a length of pull from 13-1/2 inches to 14-1/2 inches).

Officer Eisenbise will testify about her conclusions, which include the following:

(1) the Firearm is a rifle having a barrel less than 16 inches in length;

(2) the Firearm is a "firearm" as defined in 18 U.S.C. § 921(a)(3); and

(3) the Firearm is a “firearm” as defined in 26 U.S.C. § 5845(a)(3).

Respectfully submitted,

JUSTIN E. HERDMAN
United States Attorney

By: /s/ Noah P. Hood
Noah P. Hood (MI: P75564)
Assistant United States Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of July 2018 a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

/s/ Noah P. Hood

Noah P. Hood

Assistant U.S. Attorney

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

**Firearms Technology Criminal Branch
 Report of Technical Examination**



244 Needy Road #1600
 Martinsburg, WV 25405

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

To:
 Special Agent Dennis Bennett
 Bureau of Alcohol, Tobacco, Firearms and Explosives
 433 North Summit Street
 Suite 701
 Toledo, OH 43604

Date: **JUL 12 2018**

UI#: 773060-18-0077

RE: WRIGHT, Kelland

FTCB#: 2018-589-EEE-EXP
 309209

Date Exhibit Received: June 29, 2018

Type of Examination Requested:

Delivered By: FedEx 7725 7602 6728

Examination, Test, Classification

Exhibit:

1: A Spike's Tactical, model The Jack, 300 BLK caliber firearm, serial number JACK12022 (suspected short barreled rifle).

Pertinent Authority:

Title 28 of the United States Code (U.S.C.) provides the Bureau of Alcohol, Tobacco Firearms and Explosives (ATF) the authority to investigate criminal and regulatory violations of Federal firearms law at the direction of the Attorney General. Under the corresponding Federal regulation at 28 CFR § 0.130, the Attorney General provides ATF with the authority to investigate, administer, and enforce the laws related to firearms, in relevant part, under 18 U.S.C. Chapter 44 (Gun Control Act) and 26 U.S.C. Chapter 53 (National Firearms Act). Pursuant to the aforementioned statutory and regulatory authority, the ATF Firearms Ammunition and Technology Division (FATD) provides expert technical support on firearms and ammunition to federal, state and local law enforcement agencies regarding the Gun Control Act (GCA) and the National Firearms Act (NFA).

The GCA, 18 U.S.C. § 921(a)(3) defines "firearm" as: (A) 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) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

The GCA, 18 U.S.C. § 921(a)(8) defines the term "short barreled rifle" to mean: "...a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches."

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Pertinent Authority (Continued):

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 (e); (6) a machinegun; (7) any silencer (as defined in section 921 of title 18, United States Code); 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 Secretary 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.*

Findings:

Exhibit I is a Spike's Tactical, model The Jack, 300 BLK caliber, AR-type rifle, serial number JACK12022, which uses a receiver manufactured by 3rd Gen Machine Inc., in Logan, Utah for Spike's Tactical in Apopka, Florida. As received, I noted that the Exhibit was assembled with a removable muzzle device (flash suppressor/blast diffuser), a forward grip, and a collapsible shoulder stock.

The collapsible stock has been assembled by using a piece of black cord to attach a rubber pad (Nev-a-slip brand cane tip) to the back end of a Maxim Defense collapsible “extension only” device. The redesign of the extension device is done in such a manner that provides a pad for shouldering, and in a manner which creates a length (of pull) that has no other purpose than to facilitate its use as a stock.

Exhibit I has been designed or redesigned with characteristics and features that are for the purpose of being fired from the shoulder.

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

I placed the Exhibit on a flat surface and then closed the bolt. I removed the muzzle device and inserted a cylindrical scale into the muzzle of the barrel until it touched the bolt face, noted the measurement, and removed the cylindrical scale from the barrel. I determined that the length of the barrel is approximately 7-11/16 inches.

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

I placed the Exhibit on a flat surface and measured the distance between the extreme ends of the Exhibit and measured along a line parallel to the center line of the bore. I noted the Exhibit has an overall length of approximately 25-3/4 inches.

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Findings (Continued):

I measured the length of pull in the following manner:

I placed the Exhibit on a flat surface and measured the distance from the center of the trigger to the center of the rear butt-plate or recoil pad. The Exhibit has a length of pull of approximately 13-3/4 inches. Most standard factory rifles have pull lengths of from 13-1/2 to 14-1/2 inches.

I noted the following markings on Exhibit 1:

On the right side of the receiver:

**DESIGN BY SHARPS BROS.
MDL. THE JACK
CAL. MULTI**



(selector marking at the 3 o'clock position)

(selector marking at the 12 o'clock position)

(selector marking at the 9 o'clock position)

On the left side of the receiver:

**SPIKE'S TACTICAL
APOPKA, FL U.S.A.
JACK12022**

(serial number on receiver)



(selector marking at the 9 o'clock position)

(selector marking at the 12 o'clock position)

(selector marking at the 3 o'clock position)

On the upper assembly:

BLACKBEARD

I performed a manual function test of the Exhibit to observe the functioning of the fire-control components. The test revealed that Exhibit 1 mechanically functioned as a semi-automatic rifle.

In order to determine if Exhibit 1 is capable of expelling a projectile by the action of an explosive I inserted a compatible magazine, obtained from the National Firearms Collection (NFC), with one round of commercially available Sellier & Bellot brand, 300 BLK caliber ammunition, into the Exhibit. With the selector lever in the position indicated for "FIRE", I squeezed the trigger. Exhibit 1 expelled a projectile by the action of an explosive. I repeated this test by with two rounds of ammunition, and achieved the same results. I then repeated this test with five rounds of ammunition, and achieved the same results. Exhibit 1 fired semi-automatically each time.

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Findings (Continued):

I conducted this examination and test firing at the ATF test facility in Martinsburg, West Virginia, on July 10, 2018.

Conclusions:

Exhibit 1, being a weapon which will expel a projectile by the action of an explosive, and incorporating the frame or receiver of a firearm, is a "firearm" as defined in 18 U.S.C. § 921(a)(3).

Exhibit 1, being a rifle having a barrel less than 16 inches in length, is a "short barreled rifle" as defined in 18 U.S.C. § 921(a)(8).

Exhibit 1, being a rifle having a barrel less than 16 inches in length, is a "firearm" as defined in 26, U.S.C., § 5845(a)(3).

Examined By:



Eve E. Eisenbise
Firearms Enforcement Officer

Approved By:



Max M. Kingery
Chief, Firearms Technology Criminal Branch

Attachment: 12 pages bearing a total of 49 photographs.

Enclosed is a Firearms Technology Criminal Branch report provided in response to your request for assistance. Please be aware that these documents 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.

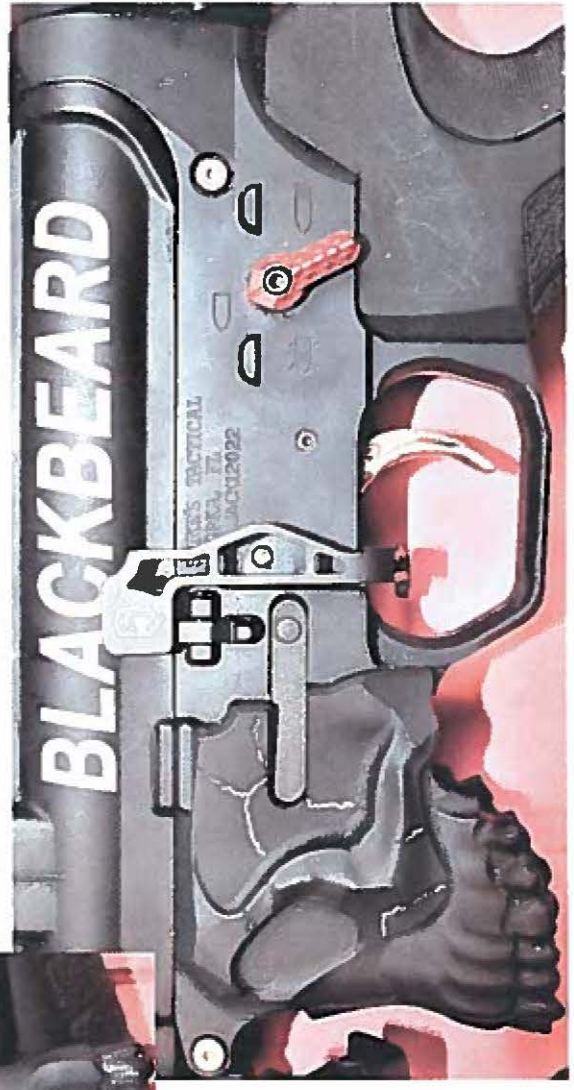
309209 - Exhibit 1 - Picture 1: Right side.



309209 - Exhibit 1 - Picture 2: Left side.



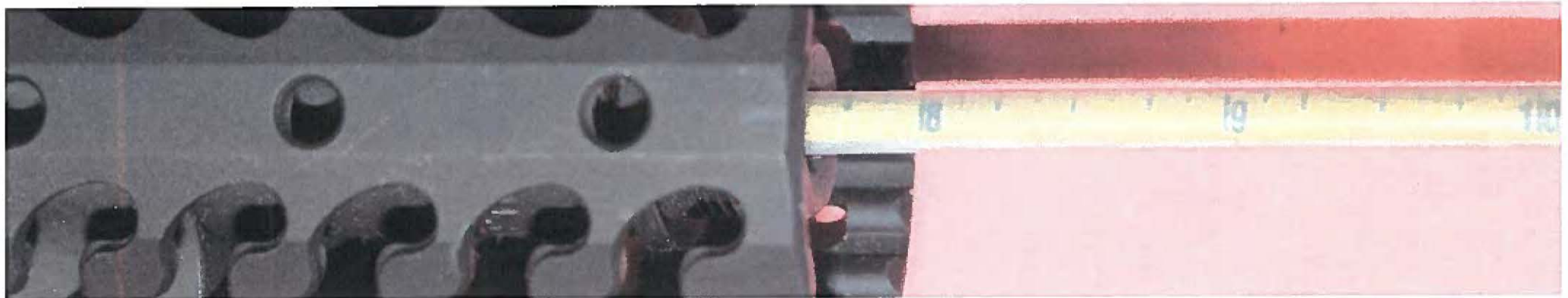
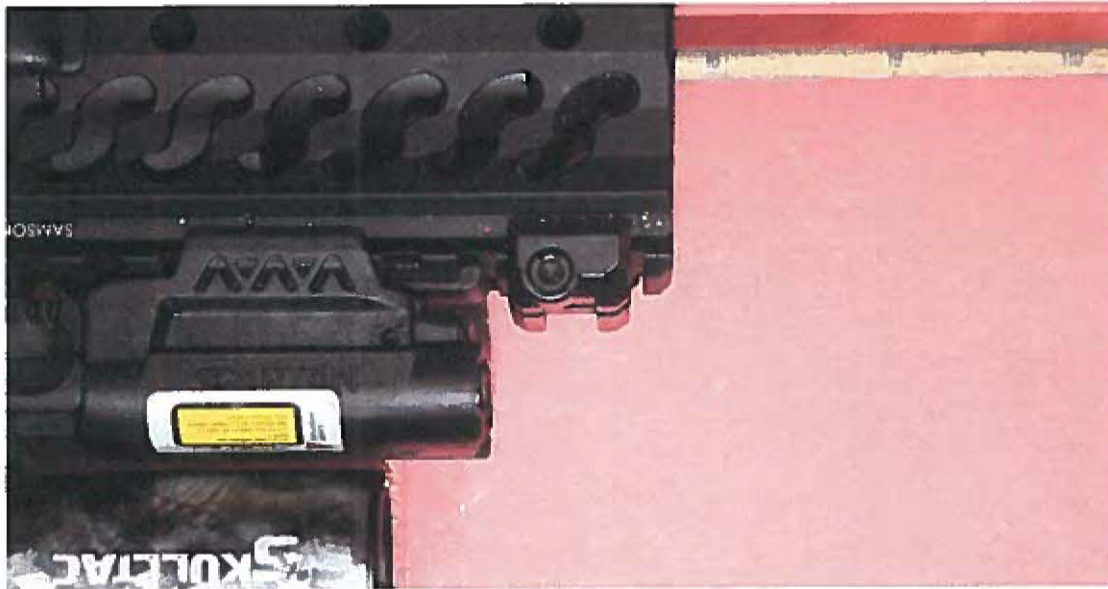
309209 - Exhibit 1 – Pictures 3 & 4: Receiver portion.



309209 - Exhibit 1 – Pictures 5 - 7: Overall Length measurement = approximately 25-3/4 inches.



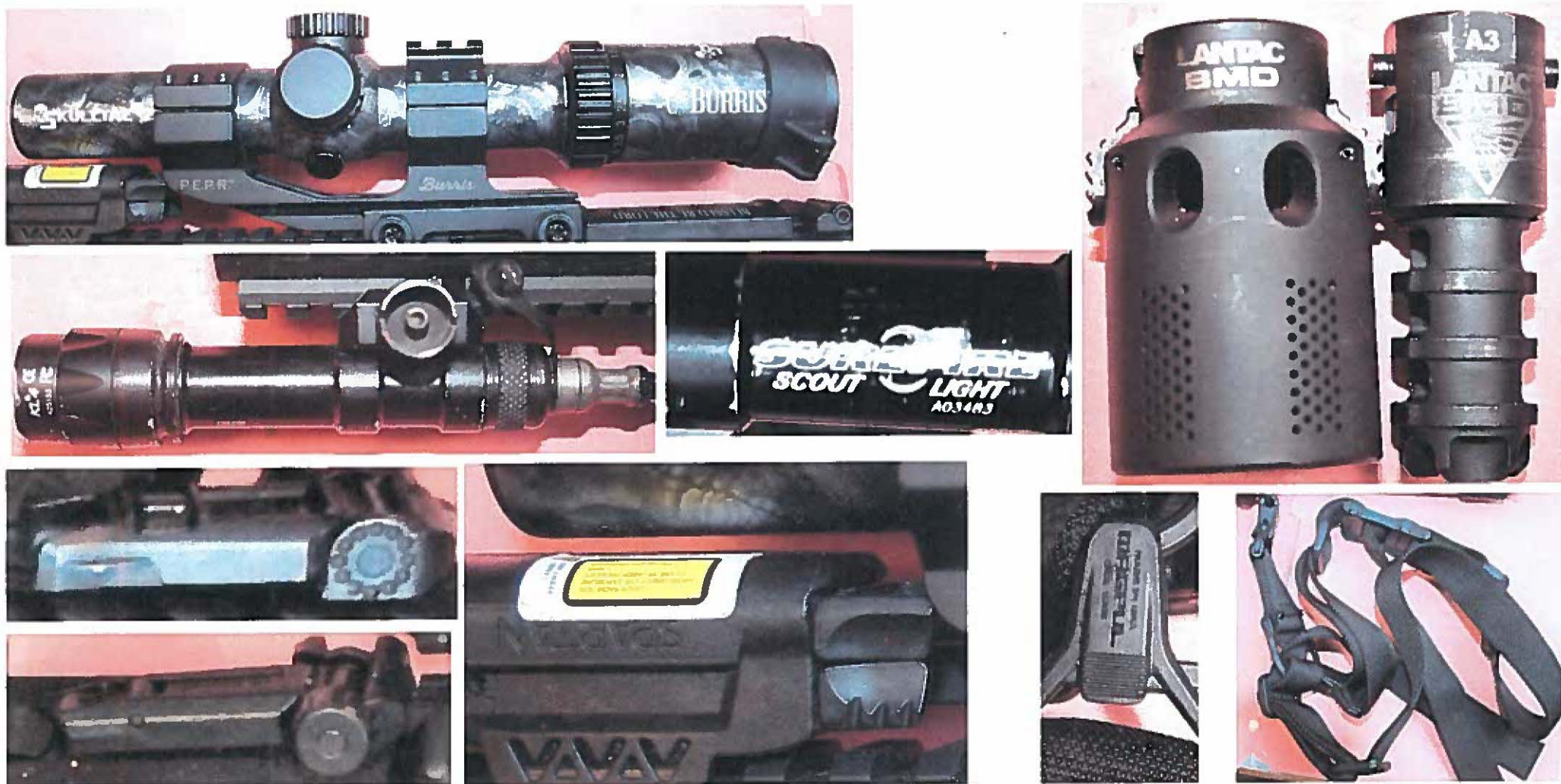
309209 - Exhibit 1 – Pictures 8 - 10: Barrel length measurement = approximately 7-11/16 inches.



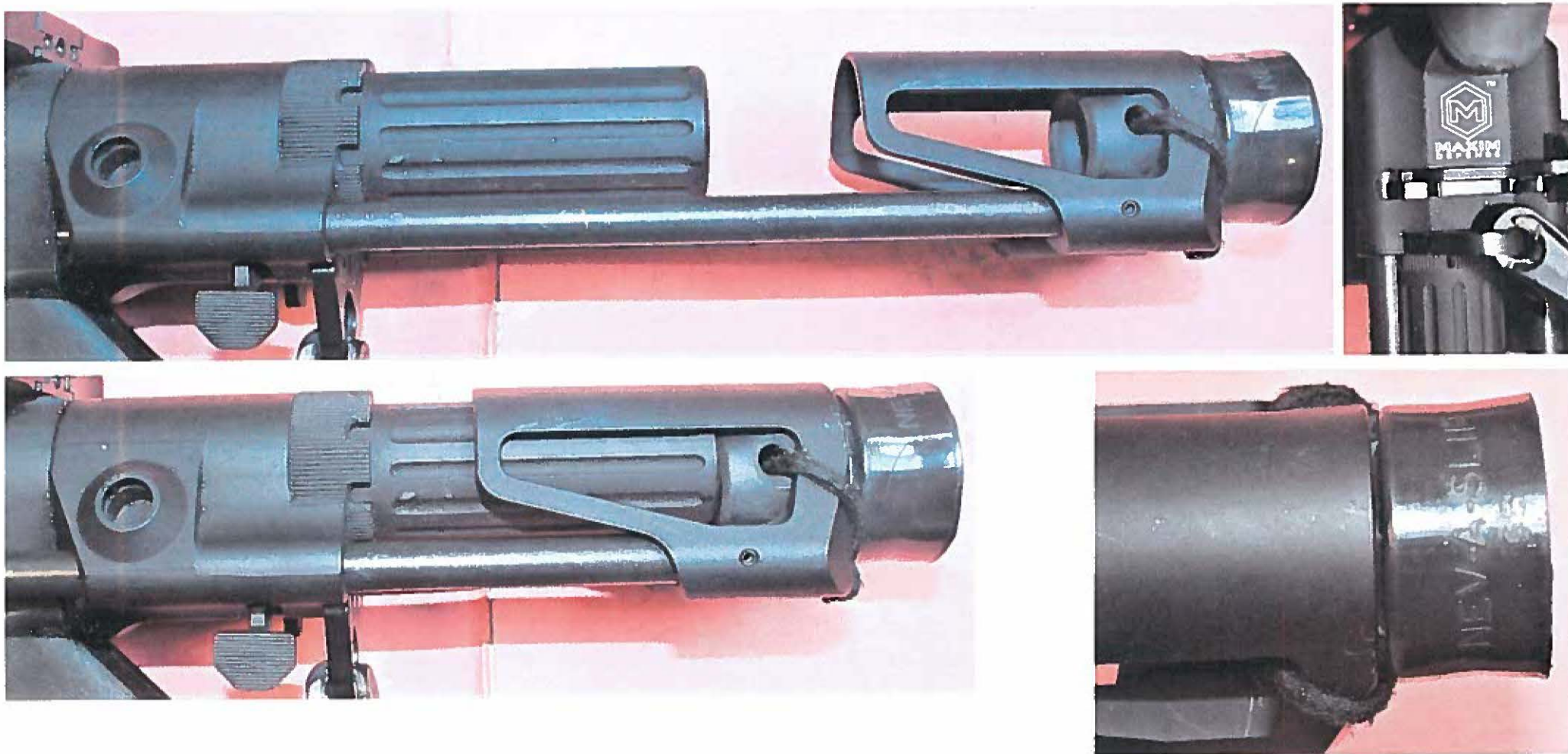
309209 - Exhibit 1 – Pictures 11 - 13: Measurement – Length of pull = approximately 13-3/4 inches.



309209 - Exhibit 1 – Pictures 14 - 22: Accessories attached to Exhibit 1.



309209 - Exhibit 1 – Pictures 23 - 26: Maxim Defense brand collapsible extension with rubber pad (Nev-A-Slip brand cane-tip) assembled on back end with black cord.



309209 - Exhibit 1 – Pictures 27 - 30: Stark brand forward grip.



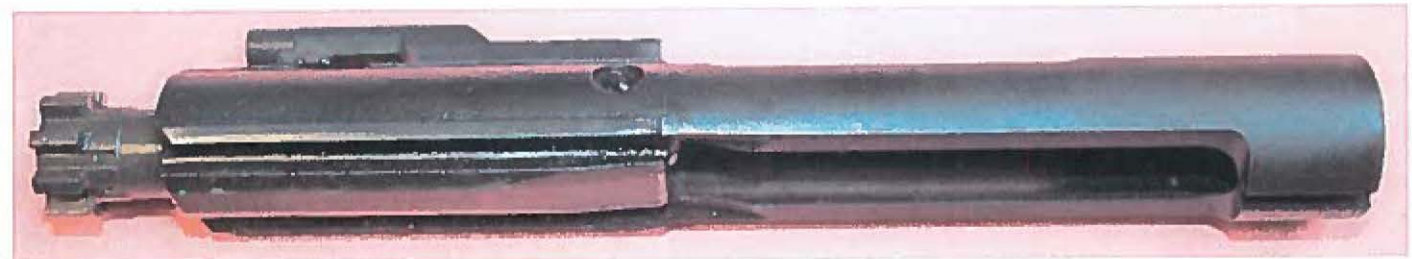
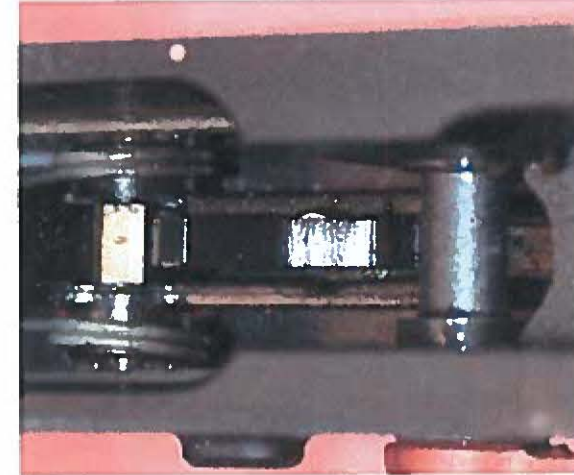
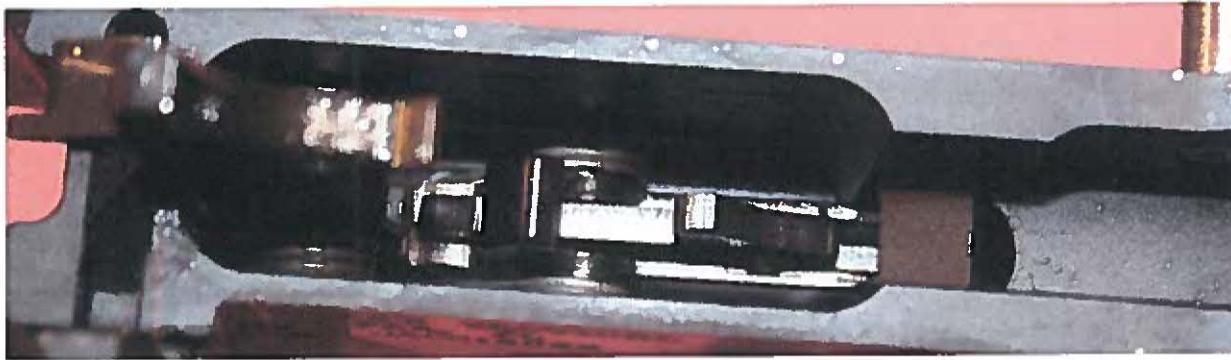
309209 - Exhibit 1 – Pictures 31 - 34: Receiver markings.



309209 - Exhibit 1 – Pictures 35 - 45: Markings on parts, accessories, and barrel.



309209 - Exhibit 1 – Pictures 46 - 49: Fire control parts - AR-type bolt carrier assembly, hammer and disconnecter, and M16-type trigger.





STATEMENT OF QUALIFICATIONS

Eve E. Eisenbise, Firearms Enforcement Officer
Bureau of Alcohol, Tobacco, Firearms and Explosives
Martinsburg, West Virginia

I, Eve E. Eisenbise, hereby declare and state:

I am employed as a Firearms Enforcement Officer with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and have been so employed since April 2014. As a Firearms Enforcement Officer, one of my responsibilities is conducting technical examinations and evaluations of firearms, ammunition, and silencers in response to alleged violations of the Federal firearms laws, as well as inquiries from the firearms industry and the public.

I am knowledgeable and experienced as to firearms and ammunition and the interstate nexus of firearms and ammunition, due to investigations, research, records, familiarity, conferring with other experts, training, teaching, and certifications. I prepare reports, official correspondence, and Congressional responses relating to the identification, origin, and technical classification of firearms and ammunition under the provisions of the Federal firearms laws.

During the course of my duties, I have examined hundreds of firearms, silencers, and rounds of ammunition for the purpose of determining the manufacturer, model, caliber/gauge, serial number, place of manufacture, function, design, and status as related to the National Firearms Act and Federal firearms laws.

I routinely coordinate with the ATF National Tracing Center to request firearms traces concerning the manufacture and interstate/intrastate shipment of firearms. I have also assisted federal, state and local law enforcement agencies with technical classifications, firearm traces, and making nexus determinations.

I have had numerous contacts with firearms dealers and manufacturers who are Federal firearms licensees, regarding technical classifications of firearms and ammunition, licensing, firearms transfer, acquisition, disposition, compliance, and criminal enforcement matters. I continue to do so as part of my duties as an ATF Firearms Enforcement Officer.

I have received formal training for military and law enforcement personnel in both a general and specific nature as it pertains to the recognition and identification of firearms and ammunition and their place of manufacture. This training includes, but is not limited to the following:

- Silencer Principles Training, Phoenix Defense Technologies, by Dr. Phil Dater – 06/2018
- ATF Advanced Instructor Development (AID) 1801, Huntsville, AL (2017)
- Small Arms Repair School, Aberdeen Proving Ground, MD (1993)
- Colt M16/AR15 Armorer Course - 11/1997
- Law Enforcement Firearms Instructor Course - 06/1999
- Law Enforcement Rifle Instructor Course - 09/1998
- Law Enforcement Shotgun Instructor - 08/2003
- Revolver Instructor Course - 12/2003
- Range Master Course - 10/2003 (SIG Sauer Academy)

- SIG Sauer Armorer Instructor Seminar – 03/2006
- GLOCK Firearms Armorer’s Course, 07/2014
- LWRC Armorer Course - 05/2014
- Remington Armorer Course - 07/2014
- Heckler & Koch Armorer Course - 08/2014
- Keystone Arms, PA tour (2015)
- Fabrique Nationale (FN) PS90 & SCAR Armorer Course - 8/2017
- Departmental Firearms Transition – 2003/2004 (Manchester Police Department)
- Springfield Armory Museum Tour – 07/2014
- ATF Firearms Interstate Nexus Training Course - 06/2014
- ATF Advanced Interstate Nexus Training, New England Factory Tours - 07/2014
- ATF Advanced Interstate Nexus Training, Florida Factory Tours – 09/2014
- Institute of Military Technology Museum Tour, Titusville, FL – 09/2014
- History of the AR Rifle System Presentation, by Mr. C. Reed Knight – 09/2014

For a major firearms manufacturer, SIG Sauer, Inc., I have conducted live fire demonstrations, attended numerous trade shows, using my expertise for troubleshooting, repair, and training to address complex technical and mechanical issues. In addition to examining the manufacturing of hundreds of firearms, endurance testing numerous makes and models, and conducting factory tours.

During the training at the Firearms Interstate Nexus Training Course in Martinsburg, West Virginia, I personally examined the ATF, Firearms and Ammunition Technology Division Reference Collection, which includes more than 17,000 firearms.

I have personally toured the following firearms and ammunition manufacturing plants, and museums, where I examined numerous types of firearms and ammunition being produced or displayed:

- SIG Sauer, Inc., Exeter, NH
- LWRC International, Cambridge, MD
- Remington Arms Company, Ilion, NY
- Heckler & Koch, Sterling, VA
- Sturm Ruger & Company, Inc., Newport, NH
- Colt Defense, LLC, Hartford, CT
- O. F. Mossberg & Sons, Inc., New Haven, CT
- Smith & Wesson, Springfield, MA
- Kahr Arms, Worcester, MA
- Taurus International Manufacturing, Miami, FL
- Heritage Manufacturing/Rossi USA/Braztech/Taurus Imports, Miami, FL
- KelTec CNC Industries, Inc., Cocoa, FL
- Diamond Back Firearms, Cocoa, FL
- ExOne - Digital Part Materialization, North Huntingdon, PA
- Kent Ammunition - Martinsburg, WV
- Winchester Ammunition - Oxford, MS
- Remington Ammunition - Lonoke, AK

As an instructor I have provided formal training to law enforcement and other government personnel in various disciplines of firearms training. My expertise, relative to the various disciplines of firearms, ammunition or interstate nexus has been requested and recognized by the following agencies:

- United States Marine Corps
- Manchester Police Department (Manchester, NH)
- Bureau of Alcohol, Tobacco, Firearms and Explosives
- IRS, Criminal Investigation Division (Seattle Field Office)

As a full time police officer in the state of New Hampshire, for over 11 years, I routinely testified in State and District courts during criminal cases, and civil hearings.

I maintain current information regarding a historical list of licensed U.S. and foreign manufacturers, importers, and distributors, as well as, common firearms proof marks utilized by numerous foreign countries. In addition I provide assistance in maintaining the ATF, Firearms Technology Branch Reference Library.

For over 25 years I have had a personal interest in the history, collection, nomenclature, and sporting and professional use of firearms and ammunition. I have also accumulated a personal reference library of firearms and ammunition related publications such as *Gun Trader's Guide*, *Gun Digest*, *Flayderman's Guide to Antique American Firearms*, *Blue Book of Gun Values*, *Guns and Ammo*, and *The Rifleman Magazine* in order to remain familiar with firearms and firearm trends.

I have been interviewed, by the writer Mr. Walter Rousch, for a published article in *Combat Handgun Magazine* regarding "Real World Impressions" and my researched opinion on new firearm developments.

As a current ATF Firearms Enforcement Officer I am tasked with teaching firearms safety, nomenclature, The Gun Control Act, and The National Firearms Act, Assault Weapons, Ammunition, and Firearms Importation, to special agents, inspectors, task force agents, and other enforcement officers.

ATF - AWARDS AND COMMENDATIONS:

Aug 2016 – Special Acts Award
June 2017 – Special Acts Award

A handwritten signature in black ink that reads "Eve E. Eisenbise". The signature is written in a cursive style with a horizontal line underneath the name.

Eve E. Eisenbise, Firearms Enforcement Officer