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7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
501 "I" STREET, SACRAMENTO, CA 95814

10
11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 RYAN McGOWAN, ROBERT
15 SNELLING, ULYSSES SIMPSON
16 GRANT EARLY IV, and THOMAS
17 LU,

18 Defendants.

CASE NO.: 2:12-CR-00207 TLN

DEFENDANT ULYSSES SIMPSON
GRANT EARLY's MOTION FOR
JUDGMENT OF ACQUITTAL

Fed. R. Crim. Proc. 29

Date: October 10, 2014
Time: 9:30 a.m.
Judge: Troy L. Nunley (TLN)
Courtroom: 2, 15th Floor

19
20 Please take NOTICE that at the dates, times and places indicated herein, or
21 as soon as the Government Closed its evidence, the Defendant ULYSSES SIMPSON
22 GRANT EARLY, IV will move this Court, pursuant to Rule 29 of the Federal Rule
23 of Criminal Procedure for Judgment of Acquittal.

24
25 **Facts for Acquittal**

26 This Court should take the following undisputed and/or conclusively proven
27 facts into consideration for the conspiracy theory relating Count #6 of the
28 indictment:

- 1 1. Since January 1, 2001, California statutory law and various administrative
2 regulations have created a roster of "Safe Handguns." See: California Penal
3 Code §§ 31900 - 32110 inclusive. California law makes it a crime for any
4 person to manufacture, import or offer for retail sale any firearm that is not
5 listed on the state's roster of "Safe Handguns." There are exceptions to this
6 statutory scheme.¹ Relevant to this case are:
- 7 a. The sale, loan or transfer of any firearm pursuant to California Penal
8 Code § 28050. (Sales between private parties.) Penal Code § 32110(a).
 - 9 b. The sale or purchase of any firearm to any sworn members of any
10 police department or sheriff's office. California Penal Code §
11 32000(b)(4).
- 12 2. The Indictment (Doc #1) filed on May 31, 2012 references this mechanism for
13 non-law-enforcement persons to acquire off-roster firearms ¶ 4:
- 14 Pursuant to State law, certain firearms known as roster"
15 firearms are not on the approved list of firearms and may not be
16 offered for sale to the public as a new firearm by FFLs in
17 California, but may only be purchased new by sworn law
18 enforcement officers. Such firearms may later be lawfully sold
19 by a law enforcement officer to the public in a "private party"
20 transaction conducted through an FFL.
- 21 3. Special Agent Blake Graham of the California Department of Justice testified
22 on the first date of trial that this series of transactions is still the state of law
23 as today.
- 24 4. The following facts are before the Court by stipulation of the parties (Doc
25 180), and therefore conclusively proven that (from paragraphs 29-36):
- 26 A. IT IS FURTHER STIPULATED between the parties that on or about
27 April 29, 2010, Christopher Kjellberg, who was a sworn law
28 enforcement officer at that time, began the DROS process to purchase

¹ The roster itself is wholly arbitrary and is the subject of a civil action
challenging the this statutory scheme here in the Eastern District. *Pena, et al., v.*
Lindley, 2:09-CV-01185 KJM-CKD. Dispositive motions are pending.

1 a Sturm Ruger & Co., Model LCP, .380 caliber handgun, serial number
2 37300127, from Snellings Firearms.

- 3 B. IT IS FURTHER STIPULATED between the parties that Kjellberg
4 paid for the Sturm Ruger & Co., Model LCP, .380 caliber handgun,
5 serial number 37300127, the sales tax, and the Dealer Record of Sale
6 Fee with his own money, totaling \$360.00.
- 7 C. IT IS FURTHER STIPULATED between the parties that Kjellberg
8 conducted the transaction for the Sturm Ruger & Co., Model LCP, .380
9 caliber handgun, serial number 37300127, through, Robert Snellings, a
10 federally licensed and state approved firearms dealer.
- 11 D. IT IS FURTHER STIPULATED between the parties Kjellberg was
12 subjected to a background check that was approved and the
13 transaction was entered in the California Department of Justice
14 Automated Firearms System database.
- 15 E. IT IS FURTHER STIPULATED between the parties that on May 27,
16 2010, Kjellberg and Defendant EARLY went to Snellings Firearms, the
17 same Federally Licensed Firearms Dealer and filled out the paperwork
18 for a private party transfer of the firearm from Kjellberg to Early.
- 19 F. IT IS FURTHER STIPULATED between the parties Defendant Early
20 completed and signed an ATF Form 4473 and a California Dealer
21 Record of Sale. He paid the Dealer Record of Sale fee directly to the
22 firearms dealer and the transaction was entered in the California
23 Department of Justice Automated Firearms System database.
- 24 G. IT IS FURTHER STIPULATED between the parties that on or about
25 May 27, 2010, Defendant EARLY paid Kjellberg for the cost of the gun,
26 the sales tax, the DROS fee.
- 27 H. IT IS FURTHER STIPULATED between the parties that on or about
28 June 7, 2010, after the applicable waiting period and after passing a

1 background check, Early picked up the firearm from Snellings
2 Firearms.

3
4 **ARGUMENT**

5 It should not escape the Court's attention that the government has failed to
6 charge "C.K." (Kjellberg) with any crime. At first blush, if we use the recent case of
7 *United States v. Abramski* (2014) 134 S. Ct. 2259 as a template; then "C.K."
8 (Kjellberg) would step into Abramski's shoes and Defendant GRANT EARLY would
9 be the stand-in for Abramski's uncle. However there are important distinctions:

- 10 a. As a matter of law, KJELLBERG was not acting as the agent of
11 EARLY.
- 12 i. Kjellberg used his own money.
- 13 ii. He paid for his own transfer fee.
- 14 iii. He paid the sales tax.
- 15 iv. He took possession of the gun.
- 16 v. California, one of the only states to create "legal title" in
17 firearms enrolled the gun as belonging to Kjellberg for the
18 period of 29 days between the first DROS and the second.
- 19 b. No government agency (federal or state) in this case was deprived of
20 the information that there was to a later reconveyance of the gun. That
21 point was important to the *Abramski* Court. *Id.*, at 2268-69.
22 Furthermore, the transfer to Abramski's uncle took place in another
23 state! In this case the government has alleged that the same FFL was
24 privy to the entire (intended) series of transactions all along. Which
25 also means that one of the "red flags" of straw-purchase (hiding or
26 obscuring the transferee of the firearm) is missing by government's
27 tactic of alleging a conspiracy.
- 28 c. All other applicable state and federal laws were followed. The whole
case turns on the Governments obtuse definition of "transferee/buyer."

1 **A. Kjellberg Is the “Transferee” as a Matter of Law.**

2 **His Intent Is Irrelevant.**

3 In a case that upheld a conviction against a claimed jury instruction error
4 that equating “disposing” of a firearm with “transfer” of a firearm, the defendant in
5 *U.S. v. Jefferson*, 334 F.3d 670 (2003) was found to have “transferred” the fire by
6 giving dominion and control of the firearm to his brother, who was unfortunately a
7 known convicted felon. That Seventh Circuit opinion had no trouble finding that
8 with “[...] *Jefferson's transfer to his brother and his brother's undisputed exclusive*
9 *control over the firearm, we see no problem with the district courts' definition of*
10 *"dispose of," "to transfer a firearm so that the transferee acquires possession of the*
11 *firearm."* *Id.*, at 675.

12 Furthermore, California law is in accord:

- 13 1. Buyer – means a person that buys goods in good faith, without
14 knowledge that the sale violates the rights of another person in the
15 goods, and in the ordinary course from a person, who is in the business
16 of selling goods of that kind. A person buys goods in the ordinary
17 course if the sale to the person comports with the usual or customary
18 practices in the kind of business in which the seller is engaged or with
19 the seller's own usual or customary practices. A buyer in ordinary
20 course of business may buy for cash, by exchange of other property, or
21 on secured or unsecured credit, and may acquire goods or documents of
22 title under a preexisting contract for sale. A buyer who takes
23 possession of the goods also acquires title to that good. [CA Uniform
24 Commercial Code § 1201(a)(9).]
- 25 2. Purchaser – means the purchaser or transferee of a firearm or the
26 person being loaned a firearm. [CA Penal Code §§ 28150(b), 28200(b)]
- 27 3. Purchase – means the purchase, loan, or transfer of a firearm. [CA
28 Penal Code §§ 28150(a), 28200(a)]

1 4. Transfer – is an act by which the title to property is conveyed from one
2 living person to another. A transferee is someone to whom property is
3 transferred. [CA Civil Code § 1039]
4

5 **B. Any Retroactive Definition of the term “Transferee/Buyer”**
6 **Violates Due Process.**

7 At best, the term “transferee/buyer” as used in question 11.a. on the ATF Form
8 4473, was only acquiring a firmer definition in this Circuit in 2012. See generally,
9 *United States v. Johnson*, 680 F.3d 1140, 1146. (9th Cir. 2012). And the definitive
10 definition by a Court was only revealed to us this summer in *United States v.*
11 *Abramski*, 134 S. Ct. 2259; 189 L. Ed. 2d 262; 2014 U.S. LEXIS 4170 (2014)

12 All of this invites the question: Why is the government seeking to expand the
13 definition of and make up new criminal law with regard to the doctrine of “straw-
14 man” purchases by seeking criminal indictments? Why not have the regulatory
15 agency that oversees federal gun law engage in some rule making? Or issue an
16 industry memo? Or lobby Congress to change the law?

17 Another fact that this Court must be kept in mind when ruling on this
18 motion, is that EARLY, SNELLINGS and “C.K.” were engaged in commerce
19 relating to the acquisition of arms to exercise their fundamental rights under the
20 Second Amendment. EARLY (such a nefarious criminal) even registered this “crime
21 gun” with the Sheriff of Sacramento County when he applied for and was granted a
22 Concealed Weapons Carry Permit. He sought and obtained that permit for the
23 purpose of exercising his “right of self-defense.”

24 The Second Amendment reads: "A well regulated Militia, being necessary to
25 the security of a free State, the right of the people to keep and bear Arms, shall not
26 be infringed." U.S. Const. Amend. II. The Second Amendment right to keep and
27 bear arms is an individual right and a fundamental right. See *McDonald v. City of*
28 *Chicago*, 130 S.Ct. 3020, 3042 (2010); *District of Columbia v. Heller*, 554 U.S. 570,

1 595 (2008); *Nordvke v. King*, 681 F.3d 1041, 1043 (9th Cir. 2012) (en banc). The
2 Second Amendment "protects a personal right to keep and bear arms for lawful
3 purposes, most notably for self-defense within the home." *McDonald*, 130 S.Ct. at
4 3044; see also *Heller*, 554 U.S. at 630.

5 While the Second Amendment's protections are not unlimited, and
6 longstanding regulatory measures such as "prohibitions on the possession of
7 firearms by felons and the mentally ill, or laws forbidding the carrying of firearms
8 in sensitive places such as schools and government buildings, or laws imposing
9 conditions and qualifications on the commercial sale of arms," may be
10 presumptively lawful [*McDonald*, 130 S.Ct. at 3047; *Heller*, 554 U.S. at 626-27;
11 *United States v. Chovan*, 735 F.3d 1127, 1133 (9th Cir. 2013)] – that does not
12 detract from the proposition that this court is duty bound to scrutinize the
13 government's highly technical reading of a criminal statute that regulates a
14 fundamental right by imposing prison sentences.

15 EARLY is not arguing that he has a Second Amendment right to defy federal
16 law just because he is engaged in commerce relating to guns. He is arguing for a
17 recognition that fundamental fairness requires Constitutionally significant notice of
18 criminal liability when the government seeks to regulate a fundamental right.
19 First Amendment jurisprudence is instructive for the present case.

20 A fundamental principle in our legal system is that laws which
21 regulate persons or entities must give fair notice of conduct that is
22 forbidden or required. See *Connally v. General Constr. Co.*, 269 U. S.
23 385, 391, 46 S. Ct. 126, 70 L. Ed. 322 (1926) ("[A] statute which either
24 forbids or requires the doing of an act in terms so vague that men of
25 common intelligence must necessarily guess at its meaning and differ
26 as to its application, violates the first essential of due process of law");
27 *Papachristou v. Jacksonville*, 405 U. S. 156, 162, 92 S. Ct. 839, 31 L.
28 Ed. 2d 110 (1972) ("Living under a rule of law entails various
suppositions, one of which is that '[all persons] are entitled to be
informed as to what the State commands or forbids' " (quoting *Lanzetta
v. New Jersey*, 306 U. S. 451, 453, 59 S. Ct. 618, 83 L. Ed. 888 (1939)
(alteration in original))). This requirement of clarity in regulation is
essential to the protections provided by the Due Process Clause of the
Fifth Amendment. See *United States v. Williams*, 553 U. S. 285, 304,

1 128 S. Ct. 1830, 170 L. Ed. 2d 650 (2008). It requires the invalidation
2 of laws that are impermissibly vague. A conviction or punishment fails
3 to comply with due process if the statute or regulation under which it
4 is obtained "fails to provide a person of ordinary intelligence fair notice
5 of what is prohibited, or is so standardless that it authorizes or
6 encourages seriously discriminatory enforcement." *Ibid.* As this Court
7 has explained, a regulation is not vague because it may at times be
8 difficult to prove an incriminating fact but rather because it is unclear
9 as to what fact must be proved. See *id.*, at 306, 128 S. Ct. 1830, 170 L.
10 Ed. 2d 650.

11 Even when speech is not at issue, the void for vagueness doctrine
12 addresses at least two connected but discrete due process concerns:
13 first, that regulated parties should know what is required of them so
14 they may act accordingly; second, precision and guidance are necessary
15 so that those enforcing the law do not act in an arbitrary or
16 discriminatory way. See *Grayned v. City of Rockford*, 408 U.S. 104,
17 108-109, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972). When speech is
18 involved, rigorous adherence to those requirements is necessary to
19 ensure that ambiguity does not chill protected speech.

20 These concerns are implicated here because, at the outset, the
21 broadcasters claim they did not have, and do not have, sufficient notice
22 of what is proscribed. And leaving aside any concerns about facial
23 invalidity, they contend that the lengthy procedural history set forth
24 above shows that the broadcasters did not have fair notice of what was
25 forbidden. Under the 2001 Guidelines in force when the broadcasts
26 occurred, a key consideration was " 'whether the material dwell[ed] on
27 or repeat[ed] at length' " the offending description or depiction. 613
28 F.3d, at 322. In the 2004 *Golden Globes Order*, issued after the
29 broadcasts, the Commission changed course and held that fleeting
30 expletives could be a statutory violation. *Fox I*, 556 U. S., at 512, 129
31 S. Ct. 1800, 173 L. Ed. 2d 738. In the challenged orders now under
32 review the Commission applied the new principle promulgated in the
33 *Golden Globes Order* and determined fleeting expletives and a brief
34 moment of indecency were actionably indecent. This regulatory
35 history, however, makes it apparent that the Commission policy in
36 place at the time of the broadcasts gave no notice to Fox or ABC that a
37 fleeting expletive or a brief shot of nudity could be actionably indecent;
38 yet Fox and ABC were found to be in violation. The Commission's lack
39 of notice to Fox and ABC that its interpretation had changed so the
40 fleeting moments of indecency contained in their broadcasts were a
41 violation of § 1464 as interpreted and enforced by the agency "fail[ed]
42 to provide a person of ordinary intelligence fair notice of what is
43 prohibited." *Williams*, supra, at 304, 128 S. Ct. 1830, 170 L. Ed. 2d
44 650. This would be true with respect to a regulatory change this

1 abrupt on any subject, but it is surely the case when applied to the
2 regulations in question, regulations that touch upon "sensitive areas of
3 basic First Amendment freedoms," *Baggett v. Bullitt*, 377 U. S. 360,
4 372, 84 S. Ct. 1316, 12 L. Ed. 2d 377 (1964); see also *Reno v. ACLU*,
5 521 U. S. 844, 870-871, 117 S. Ct. 2329, 138 L. Ed. 2d 874 (1997) ("The
6 vagueness of [a content-based regulation of speech] raises special First
7 Amendment concerns because of its obvious chilling effect").

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F.C.C. v. Fox Television Station, Inc.,
132 S. Ct. 2307, 2317 (2012)

It bear emphasis here. EARLY is NOT making the argument that Abramski did (that 4473 Question 11.a is not material). He's making the argument that Abramski failed to preserve in the trial court. There is a lack of fundamental fairness that **such an important "material" term** is not properly defined.

One of the helpful gems for EARLY that can be gleaned from the *Abramski* decision is the breakdown on the votes. The Supreme Court Justices split a 5-4 decision regarding what constitutes materially false statement when buying a gun. If that fact alone does not establish, as a matter a law, the proposition that the "Straw-Man Doctrine" – at least with respect to the government's fantastical allegation of conspiracy against EARLY – is vague and ambiguous, it is difficult to imagine a circumstance where that conclusion could be made.

This might be a different case if the AUSA had cast "C.K." in roll of defendant, his actions come closest to the conduct described in *Abramski*. But it is a bridge too far to criminalize EARLY's agreement to buy a gun from "C.K." after "C.K." buys the gun with his own money, runs the first transaction through a (state and federal) licensed dealer, and then wait 30 days to run a second transaction through the same FFL.

How does all of this rise to the specter of a felony indictment with a man's liberty and other fundamental rights at stake? How, and in what manner was the government deprived of revenue? Information? An opportunity to stop the transaction based on felony or domestic violence convictions? When police officers make technical mistakes about the law, even mistakes that result in the

1 deprivation of a citizen's constitutional rights, liability for that mistake, when
2 there is no case law directly on point is shielded by the doctrine of Qualified
3 Immunity.

4 If that "notice" doctrine can be invoked to shield a government defendant
5 from paying damages, why can't an analogous doctrine be invoked to shield a
6 criminal defendant, who is arguably exercising a fundamental right, for the same
7 reasons? Surely there is room in the Due Process Clause of the Fifth Amendment
8 for such a doctrine in circumstances like this?

9 Analogizing that Fifth Amendment Due Process notice requirements to
10 Qualified Immunity, we can look to the Supreme Court's two-part analysis for
11 resolving government officials' immunity claims. See *Saucier v. Katz*, 533 U.S. 194,
12 201 (2001), overruled in part on other grounds by *Pearson v. Callahan*, 555 U.S.
13 223, 236 (2009). First, the court must consider whether the facts "[t]aken in the
14 light most favorable to the party asserting the injury . . . show [that] the
15 [defendant's] conduct violated a constitutional right[.]" *Saucier*, 533 U.S. at 201; see
16 also *Scott v. Harris*, 550 U.S. 372, 377 (2007); *Brosseau v. Haugen*, 543 U.S. 194,
17 197 (2004) (per curiam); *Hope v. Pelzer*, 536 U.S. 730, 736 (2002); *Inouye v. Kemna*,
18 504 F.3d 705, 712 (9th Cir. 2007); *Kennedy v. City of Ridgefield*, 439 F.3d 1055,
19 1060 (9th Cir. 2006); *Estate of Ford v. Ramirez-Palmer*, 301 F.3d 1043, 1050 (9th
20 Cir. 2002); *Sorrels v. McKee*, 290 F.3d 965, 969 (9th Cir. 2002).

21 Second, the court must determine whether the right was clearly established
22 at the time of the alleged violation. *Saucier*, 533 U.S. at 201; *Scott*, 550 U.S. at 377;
23 *Brosseau*, 543 U.S. at 199-201; *Hope*, 536 U.S. at 739; *Garcia v. County of Merced*,
24 639 F.3d 1206, 1208 (9th Cir. 2011); *Rodis v. City & County of San Francisco*, 558
25 F.3d 964, 968 (9th Cir. 2009); *Inouye*, 504 F.3d at 712; *Kennedy*, 439 F.3d at 1060;
26 *Estate of Ford*, 301 F.3d at 1050; *Sorrels*, 290 F.3d at 969.

27 Even if the violated right was clearly established at the time of the violation,
28 it may be "difficult for [the defendant] to determine how the relevant legal doctrine .

1 . . . will apply to the factual situation the [defendant] confronts. . . . [Therefore, i]f the
 2 [defendant's] mistake as to what the law requires is reasonable . . . the [defendant]
 3 is entitled to the immunity defense.” (Emphasis added) *Saucier*, 533 U.S. at 205;
 4 *Kennedy*, 439 F.3d at 1061; *Estate of Ford*, 301 F.3d at 1050; cf. *Inouye*, 504 F.3d at
 5 712 n.6 (explaining that the inquiry into the reasonableness of the defendant’s
 6 mistake is not the “third” step in the *Saucier* analysis, but rather, is part of the
 7 second step of *Saucier*’s two-step analysis). “The reasonableness inquiry is objective,
 8 evaluating ‘whether the officers’ actions are ‘objectively reasonable’ in light of the
 9 facts and circumstances confronting them, without regard to their underlying intent
 10 or motivation.” (emphasis added) *Huff v. City of Burbank*, 632 F.3d 539, 549 (9th
 11 Cir. 2011) (quoting *Graham v. Connor*, 490 U.S. 386, 397 (1989)).

12 Transplanting that analysis to the Conspiracy Charged in Count #6 against
 13 EARLY, and given the Supreme Court’s split decision in *Abramski*, this Court
 14 should conclude that EARLY’s innocent agreement to buy a gun from “C.K.” –
 15 through a series of transactions that the government concedes is legal under state
 16 law (see ¶ 4 of the Indictment, Doc 1) then Count #6 does not need to be submitted
 17 to the Jury. This Court can enter a judgment of acquittal under Rule 29.

18 A final point on the Supreme Court’s First Amendment jurisprudence is
 19 instructive on the point of due process, notice and fundamental fairness when laws
 20 impinge on fundamental rights:

21 Due process requires that laws give people of ordinary
 22 intelligence fair notice of what is prohibited. *Grayned v. City of*
 23 *Rockford*, 408 U.S. 104, 108, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972).
 24 The lack of such notice in a law that regulates expression “raises
 25 special First Amendment concerns because of its obvious chilling effect
 26 on free speech.” *Reno v. American Civil Liberties Union*, 521 U.S. 844,
 27 871-872, 117 S. Ct. 2329, 138 L. Ed. 2d 874 (1997). Vague laws force
 28 potential speakers to “ ‘steer far wider of the unlawful zone’ . . . than if
 the boundaries of the forbidden areas were clearly marked.” *Baggett v.*
Bullitt, 377 U.S. 360, 372, 84 S. Ct. 1316, 12 L. Ed. 2d 377 (1964)
 (quoting *Speiser v. Randall*, 357 U.S. 513, 526, 78 S. Ct. 1332, 2 L. Ed.
 2d 1460 (1958)). While “perfect clarity and precise guidance have never
 been required even of regulations that restrict expressive activity,”
Ward v. Rock Against Racism, 491 U.S. 781, 794, 109 S. Ct. 2746, 105
 L. Ed. 2d 661 (1989), “government may regulate in the area” of First
 Amendment freedoms “only with narrow specificity,” *NAACP v.*

1 *Button*, 371 U.S. 415, 433, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963); see
2 also *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489,
499, 102 S. Ct. 1186, 71 L. Ed. 2d 362 (1982).

3 *Brown v. Entertainment Merchants Association*,
4 131 S. Ct. 2729; 2743 (2011)

5 Said another way? If the transactions described as a criminal conspiracy in
6 Count #6 of the indictment had taken place after July 18, 2014 (the date the
7 *Abramski* decision became final), this might – arguably – be a different case. With
8 no controlling case law before that date, EARLY must be acquitted of Count #6.

9
10 **C. Under the Rule of Lenity, Early Must be Acquitted.**

11 It is a "familiar principle" that "ambiguity concerning the ambit of criminal
12 statutes should be resolved in favor of lenity." *Skilling v. United States*, 561 U. S.
13 358, 410, 130 S. Ct. 2896, 177 L. Ed. 2d 619 (2010). That principle prevents courts
14 from giving the words of a criminal statute "a meaning that is different from [their]
15 ordinary, accepted meaning, and that disfavors the defendant." *Burrage v. United*
16 *States*, 571 U. S. ___, ___, 134 S. Ct. 881, 187 L. Ed. 2d 715, 726 (2014).

17 Furthermore, when a criminal statute has two possible readings, courts do
18 not "choose the harsher alternative" unless Congress has "spoken in language that
19 is clear and definite." *United States v. Bass*, 404 U. S. 336, 347-349, 92 S. Ct. 515,
20 30 L. Ed. 2d 488 (1971).

21 It is undisputed that even the federal government condoned the transaction
22 described in Count #6. The *Abramski* Dissent pointed out (and the majority did not
23 dispute this recapitulation of ATF's interpretation of the 4473, Question 11.a.) the
24 following:

25 Consider the following scenarios in which even the
26 Government regards the man at the counter as the
27 "person" to whom the dealer "sell[s]" the gun:

28 . Guns Intended as Gifts. In the Government's view, an
individual who buys a gun "with the intent of making a

1 gift of the firearm to another person" is the gun's "true
2 purchaser." ATF, Federal Firearms Regulations Reference
3 Guide 165 (2005) (hereinafter 2005 ATF Guide). The
4 Government's position makes no exception for situations
5 where the gift is specifically requested by the recipient (as
6 gifts sometimes are). So long as no money changes hands,
7 and no agency relationship is formed, between gifter and
8 giftee, the Act is concerned only with the man at the
9 counter.

10 **. Guns Intended for Resale. Introducing money into**
11 **the equation does not automatically change the**
12 **outcome. The Government admits that the man at**
13 **the counter is the true purchaser even if he**
14 **immediately sells the gun to someone else. Tr. of**
15 **Oral Arg. 34-35. And it appears the Government's**
16 **position would be the same even if the man at the**
17 **counter purchased the gun with the intent to sell it**
18 **to a particular third party, so long as the two did**
19 **not enter into a common-law agency relationship.**

20 . Guns Intended as Raffle Prizes. The Government
21 considers the man at the counter the true purchaser even
22 if he is buying the gun "for the purpose of raffling [it] at
23 an event"--in which case he can provide his own
24 information on Form 4473 and "transfer the firearm to
25 the raffle winner without a Form 4473 being completed or
26 a [background] check being conducted" on the winner.
27 2005 ATF Guide 195.

28 *United States v. Abramski*, (Dissent)
134 S. Ct. 2259; 2014 U.S. LEXIS 4170 (2014)
[Emphasis Added]

29 The fact that 9 Supreme Court justices, as late as 2014, thought that there
30 were multiple interpretations of this term "transferee/buyer" is conclusive proof
31 that the lay gun-owner in 2010 should not be held to have understood this term.
32 This Court should apply the Rule of Lenity and Acquit Mr. Early of Count #6.

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CONCLUSION

For the foregoing reasons, Defendant EARLY requests that the Court enter a Judgment of Acquittal under Rule 29 of the Federal Rule of Criminal Procedure.

Date: October 10, 2014

/s/ Donald Kilmer
Attorney for Defendant EARLY