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United States of America
7

8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,
11 Plaintiff,
12 v.
13 RYAN MCGOWAN, ET AL.,
14 Defendants.
15

CASE NO. 2:12-CR-00207 TLN
GOVERNMENTS PROPOSED AMENDED JURY
INSTRUCTIONS
DATE: September 29, 2014
TIME: 9:00 a.m.
COURT: Hon. Troy L. Nunley

16 The United States of America by and through its attorneys, BENJAMIN B. WAGNER, United
17 States Attorney for the Eastern District of California, William S. Wong and Michael D. Anderson,
18 Assistant United States Attorneys, respectfully requests that the Court include in its standard charge to
19 the jury the following instructions from the Manual of Model Criminal Jury Instructions for the Ninth
20 Circuit (2010 Edition). The government respectfully requests that these Amended Jury Instructions
21 replace the government's proposed Jury Instructions filed on September 22, 2014.

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ADDITIONAL INSTRUCTIONS DURING TRIAL

The United States requests permission to amend or supplement these instructions depending on the evidence presented during the trial.

Dated: September 24, 2014

BENJAMIN B. WAGNER
United States Attorney
By: /s/ Michael D. Anderson
MICHAEL D. ANDERSON
WILLIAM S. WONG
Assistant United States Attorneys

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INSTRUCTION NO.

Jurors: You now are the jury in this case, and I want to take a few minutes to tell you something about your duties as jurors and to give you some preliminary instructions. At the end of the trial I will give you more detailed [written] instructions that will control your deliberations. When you deliberate, it will be your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. To the facts as you find them, you will apply the law as I give it to you, whether you agree with the law or not. You must decide the case solely on the evidence and the law before you and must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. Please do not take anything I may say or do during the trial as indicating what I think of the evidence or what your verdict should be—that is entirely up to you.

9TH CIR. CRIM. JURY INST. 1.1 (2010)
Plaintiff's Proposed Jury Instruction No. _____
GIVEN _____
GIVEN AS MODIFIED _____
REFUSED _____
WITHDRAWN _____

JUDGE

INSTRUCTION NO.

This is a criminal case brought by the United States government. The government charges the defendant Ryan McGowan with one Count of Engaging in the Business of Dealing Firearms Without a License, in violation of Title 18, United States Code, Section 922(a)(1)(A). The indictment also charges defendants Ryan McGowan, Robert Snellings, and Ulysses S. Grant Early, IV, Conspiracy to Make a False Statement on a Firearms Record, in violation of Title 18, United States Code, Section 371. The charges against the defendants are contained in the indictment. The indictment simply describes the charges the government brings against the defendants. The indictment is not evidence and does not prove anything.

The defendant has pleaded not guilty to the charges and is presumed innocent unless and until the government proves the defendant guilty beyond a reasonable doubt. In addition, the defendant has the right to remain silent and never has to prove innocence or to present any evidence.

[In order to help you follow the evidence, I will now give you a brief summary of the elements of the crime[s] which the government must prove to make its case: [supply brief statement of elements of crime[s]].]

9TH CIR. CRIM. JURY INST. 1.2 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

The evidence you are to consider in deciding what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which are received in evidence; and
- (3) any facts to which the parties agree.

9TH CIR. CRIM. JURY INST. 1.3 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

The following things are not evidence, and you must not consider them as evidence in deciding the facts of this case:

- (1) statements and arguments of the attorneys;
- (2) questions and objections of the attorneys;
- (3) testimony that I instruct you to disregard; and
- (4) anything you may see or hear when the court is not in session even if what you

see or hear is done or said by one of the parties or by one of the witnesses.

9TH CIR. CRIM. JURY INST. 1.4 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

9TH CIR. CRIM. JURY INST. 1.5 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

There are rules of evidence that control what can be received in evidence. When a lawyer asks a question or offers an exhibit in evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, or the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer would have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider the evidence that I told you to disregard.

9TH CIR. CRIM. JURY INST. 1.6 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) the witness's opportunity and ability to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case, if any;
- (5) the witness's bias or prejudice, if any;
- (6) whether other evidence contradicted the witness's testimony;
- (7) the reasonableness of the witness's testimony in light of all the evidence; and
- (8) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

9TH CIR. CRIM. JURY INST. 1.7 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

I will now say a few words about your conduct as jurors.

First, keep an open mind throughout the trial, and do not decide what the verdict should be until you and your fellow jurors have completed your deliberations at the end of the case.

Second, because you must decide this case based only on the evidence received in the case and on my instructions as to the law that applies, you must not be exposed to any other information about the case or to the issues it involves during the course of your jury duty. Thus, until the end of the case or unless I tell you otherwise:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via email, text messaging, or any Internet chat room, blog, website or other feature. This applies to communicating with your fellow jurors until I give you the case for deliberation, and it applies to communicating with everyone else including your family members, your employer, the media or press, and the people involved in the trial, although you may notify your family and your employer that you have been seated as a juror in the case. But, if you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Because you will receive all the evidence and legal instruction you properly may consider to return a verdict: do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own.

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1 The law requires these restrictions to ensure the parties have a fair trial based on the same
2 evidence that each party has had an opportunity to address. A juror who violates these restrictions
3 jeopardizes the fairness of these proceedings. If any juror is exposed to any outside information, please
4 notify the court immediately.

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23 9TH CIR. CRIM. JURY INST. 1.8 (2010)
24 Plaintiff's Proposed Jury Instruction No. ____
25 GIVEN ____
26 GIVEN AS MODIFIED ____
27 REFUSED ____
28 WITHDRAWN ____

JUDGE

INSTRUCTION NO.

At the end of the trial you will have to make your decision based on what you recall of the evidence. You will not have a written transcript of the trial. I urge you to pay close attention to the testimony as it is given.

9TH CIR. CRIM. JURY INST. 1.9 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

If you wish, you may take notes to help you remember the evidence. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note-taking distract you from being attentive. When you leave court for recesses, your notes should be left in the courtroom. No one will read your notes.

Whether or not you take notes, you should rely on your own memory of the evidence. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

9TH CIR. CRIM. JURY INST. 1.10 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

The next phase of the trial will now begin. First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. A party is not required to make an opening statement.

The government will then present evidence and counsel for the defendant may cross-examine. Then, if the defendant chooses to offer evidence, counsel for the government may cross-examine.

After the evidence has been presented, [I will instruct you on the law that applies to the case and the attorneys will make closing arguments] [the attorneys will make closing arguments and I will instruct you on the law that applies to the case].

After that, you will go to the jury room to deliberate on your verdict.

9TH CIR. CRIM. JURY INST. 1.11 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

Although the defendants are being tried together, you must give separate consideration to each defendant. In doing so, you must determine which evidence in the case applies to each defendant, disregarding any evidence admitted solely against some other defendants. The fact that you may find one of the defendants guilty or not guilty should not control your verdict as to any other defendants.

9TH CIR. CRIM. JURY INST. 1.13 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE
INSTRUCTION NO.

1 You are about to hear evidence that [defendant name] made one or more statements to the
2 witness. I instruct you that this evidence is admitted only for the limited purpose of establishing the
3 guilt of [defendant name] and, therefore, you must consider it only for that limited purpose and not for
4 any other purpose. You may not consider the statements made by [defendant name] to determine the
5 guilt of [non-statement defendant].
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22 Source: *Bruton v. United States*, 391 U.S. 123 (1968)

23 Plaintiff's Proposed Jury Instruction No. _____

24 GIVEN _____

24 GIVEN AS MODIFIED _____

25 REFUSED _____

25 WITHDRAWN _____

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27 _____
JUDGE

INSTRUCTION NO.

We are about to take our first break. Remember, until the trial is over, do not discuss this case with anyone, including your fellow jurors, members of your family, people involved in the trial, or anyone else, and do not allow others to discuss the case with you. This includes discussing the case in Internet chat rooms or through Internet blogs, Internet bulletin boards, emails or text messaging. If anyone tries to communicate with you about the case, please let me know about it immediately. Do not read, watch, or listen to any news reports or other accounts about the trial or anyone associated with it, including any online information. Do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials, and do not make any investigation about the case on your own. Finally, keep an open mind until all the evidence has been presented and you have heard the arguments of counsel, my instructions on the law, and the views of your fellow jurors.

If you need to speak with me about anything, simply give a signed note to the clerk to give to me.

9TH CIR. CRIM. JURY INST. 2.1 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

From time to time during the trial, it may become necessary for me to take up legal matters with the attorneys privately, either by having a conference at the bench or, when necessary, by calling a recess.

We will do what we can to keep the number and length of these conferences to a minimum. I may not always grant an attorney's request for a conference.

9TH CIR. CRIM. JURY INST. 2.2 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

The parties have agreed to certain facts that have been stated to you. You should therefore treat these facts as having been proved.

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9TH CIR. CRIM. JURY INST. 2.4 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

You are about to view a recording that has been received in evidence. A transcript of the recording is being provided to help you identify speakers and to help you decide what the speakers say. Remember that the recording is the evidence, not the transcript. If you hear something different from what appears in the transcript, what you heard is controlling. Listen carefully; the transcript will not be available during your deliberations.

9TH CIR. CRIM. JURY INST. 2.7 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

You are about to hear evidence that the defendant committed other [crimes] [wrongs] [acts] not charged here. You may consider this evidence only for its bearing, if any, on the question of the defendant's [intent] [motive] [opportunity] [preparation] [plan] [knowledge] [identity] [absence of mistake] [absence of accident] and for no other purpose. [You may not consider this evidence as evidence of guilt of the crime for which the defendant is now on trial.]

9TH CIR. CRIM. JURY INST. 2.10 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

You are about to hear evidence that [describe evidence to be received for limited purpose]. I instruct you that this evidence is admitted only for the limited purpose of [describe purpose] and, therefore, you must consider it only for that limited purpose and not for any other purpose.

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9TH CIR. CRIM. JURY INST. 2.11 (2010)
Plaintiff's Proposed Jury Instruction No. _____
GIVEN _____
GIVEN AS MODIFIED _____
REFUSED _____
WITHDRAWN _____

JUDGE

INSTRUCTION NO.

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law that applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. It is also your duty to apply the law as I give it to you to the facts as you find them, whether you agree with the law or not. You must decide the case solely on the evidence and the law and must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. You will recall that you took an oath promising to do so at the beginning of the case.

You must follow all these instructions and not single out some and ignore others; they are all important. Please do not read into these instructions or into anything I may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

9TH CIR. CRIM. JURY INST. 3.1 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

The indictment is not evidence. The defendants have pleaded not guilty to the charges. Each defendant is presumed to be innocent unless and until the government proves the defendant guilty beyond a reasonable doubt. In addition, each defendant does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charges beyond a reasonable doubt as to each defendant.

9TH CIR. CRIM. JURY INST. 3.2 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

A defendant in a criminal case has a constitutional right not to testify. You may not draw any inference of any kind from the fact that the defendant did not testify.

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9TH CIR. CRIM. JURY INST. 3.3 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

The defendant has testified. You should treat this testimony just as you would the testimony of any other witness.

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9TH CIR. CRIM. JURY INST. 3.4 (2010)
Plaintiff's Proposed Jury Instruction No. _____
GIVEN _____
GIVEN AS MODIFIED _____
REFUSED _____
WITHDRAWN _____

JUDGE

INSTRUCTION NO.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

9TH CIR. CRIM. JURY INST. 3.5 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

The evidence you are to consider in deciding what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits received in evidence; and
- (3) any facts to which the parties have agreed.

9TH CIR. CRIM. JURY INST. 3.6 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

In reaching your verdict you may consider only the testimony and exhibits received in evidence.

The following things are not evidence and you may not consider them in deciding what the facts are:

1. Questions, statements, objections, and arguments by the lawyers are not evidence. The lawyers are not witnesses. Although you must consider a lawyer's questions to understand the answers of a witness, the lawyer's questions are not evidence. Similarly, what the lawyers have said in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.

2. Any testimony that I have excluded, stricken, or instructed you to disregard is not evidence. [In addition, some evidence was received only for a limited purpose; when I have instructed you to consider certain evidence in a limited way, you must do so.]

3. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

9TH CIR. CRIM. JURY INST. 3.7 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which you can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

9TH CIR. CRIM. JURY INST. 3.8 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) the witness's opportunity and ability to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case, if any;
- (5) the witness's bias or prejudice, if any;
- (6) whether other evidence contradicted the witness's testimony;
- (7) the reasonableness of the witness's testimony in light of all the evidence; and
- (8) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserve.

9TH CIR. CRIM. JURY INST. 3.9 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

You are here only to determine whether each defendant is guilty or not guilty of the charges in the indictment. Each defendant is not on trial for any conduct or offense not charged in the indictment.

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9TH CIR. CRIM. JURY INST. 3.10 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

A separate crime is charged against one or more of the defendants in each count. The charges have been joined for trial. You must decide the case of each defendant on each crime charged against that defendant separately. Your verdict on any count as to any defendant should not control your verdict on any other count or as to any other defendant.

All the instructions apply to each defendant and to each count [unless a specific instruction states that it applies only to a specific [defendant] [count]].

9TH CIR. CRIM. JURY INST. 3.13 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

You have heard testimony that the defendant made a statement. It is for you to decide (1) whether the defendant made the statement, and (2) if so, how much weight to give to it. In making those decisions, you should consider all the evidence about the statement, including the circumstances under which the defendant may have made it.

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9TH CIR. CRIM. JURY INST. 4.1 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

You have heard evidence that the defendant committed other [crimes] [wrongs] [acts] not charged here. You may consider this evidence only for its bearing, if any, on the question of the defendant's [intent] [motive] [opportunity] [preparation] [plan] [knowledge] [identity] [absence of mistake] [absence of accident] and for no other purpose. [You may not consider this evidence as evidence of guilt of the crime for which the defendant is now on trial.]

9TH CIR. CRIM. JURY INST. 4.3 (2010)
Plaintiff's Proposed Jury Instruction No. _____
GIVEN _____
GIVEN AS MODIFIED _____
REFUSED _____
WITHDRAWN _____

JUDGE

INSTRUCTION NO.

You have heard evidence that Ryan McGowan has previously been convicted of a crime. You may consider that evidence only as it may affect the defendant's believability as a witness. You may not consider a prior conviction as evidence of guilt of the crime for which the defendant is now on trial.

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9TH CIR. CRIM. JURY INST. 4.6 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

You have heard testimony from Christopher Kjellberg, Christopher Lenert and Brent Gentilcore, witnesses who received immunity and/or admitted to being an accomplice to the crime charged. That testimony was given in exchange for a promise by the government that the witness will not be prosecuted. An accomplice is one who voluntarily and intentionally joins with another person in committing a crime.

You have heard testimony from Thomas Lu, a witness received favored treatment from the government in connection with this case and pleaded guilty to a crime arising out of the same events for which the defendant is on trial. This guilty plea is not evidence against the defendants, and you may consider it only in determining this witness's believability.

For these reasons, in evaluating the testimony of Christopher Kjellberg, Christopher Lenert and Brent Gentilcore, you should consider the extent to which or whether his testimony may have been influenced by any of these factors. In addition, you should examine the testimony of each of these witnesses with greater caution than that of other witnesses.

9TH CIR. CRIM. JURY INST. 4.9 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

You have heard testimony from undercover agents who were involved in the government's investigation in this case. Law enforcement officials may engage in stealth and deception, such as the use of informants and undercover agents, in order to investigate criminal activities. Undercover agents and informants may use false names and appearances and assume the roles of members in criminal organizations.

9TH CIR. CRIM. JURY INST. 4.10 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

You have heard evidence that Ryan McGowan made one or more statements to law enforcement officers. This evidence has been admitted only for the limited purpose of establishing the guilt of Ryan McGowan. Therefore, you must consider it only for that limited purpose and not for any other purpose.

You have also heard evidence that Robert Snellings made one or more statements to law enforcement officers. This evidence has been admitted only for the limited purpose of establishing the guilt of Robert Snellings. Therefore, you must consider it only for that limited purpose and not for any other purpose.

You have also heard evidence that Ulysses S. Grant Early, IV, made one or more statements to law enforcement officers. This evidence has been admitted only for the limited purpose of establishing the guilt of Ulysses S. Grant Early, IV. Therefore, you must consider it only for that limited purpose and not for any other purpose.

You may not consider the statements made by McGowan to determine the guilt of Snellings or Early; you also may not consider the statements of Snellings to determine the guilt of McGowan or Early; and you also may not consider the statements of Early to determine the guilt of McGowan or Snellings.

Plaintiff's Proposed Jury Instruction No. _____

GIVEN _____

GIVEN AS MODIFIED _____

REFUSED _____

WITHDRAWN _____

JUDGE

INSTRUCTION NO.

You have heard testimony from persons who, because of education or experience, were permitted to state opinions and the reasons for their opinions.

Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

9TH CIR. CRIM. JURY INST. 4.14 (2010)
Plaintiff's Proposed Jury Instruction No. _____
GIVEN _____
GIVEN AS MODIFIED _____
REFUSED _____
WITHDRAWN _____

JUDGE

INSTRUCTION NO.

During the trial, certain charts and summaries were shown to you in order to help explain the evidence in the case. These charts and summaries were not admitted in evidence and will not go into the jury room with you. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts or figures shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the underlying evidence.

9TH CIR. CRIM. JURY INST. 4.15 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

Certain charts and summaries have been admitted in evidence. Charts and summaries are only as good as the underlying supporting material. You should, therefore, give them only such weight as you think the underlying material deserves.

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9TH CIR. CRIM. JURY INST. 4.16 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

9TH CIR. CRIM. JURY INST. 5.6 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

The defendants have been charged in an indictment. The indictment is not evidence. In relevant part, the indictment charges:

1. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is an agency of the United States Government tasked with the responsibility of supervising, controlling, and licensing the sale of firearms.

2. A Federal Firearms Licensee (FFL) is an individual or entity, who after submitting an application and undergoing an investigation by ATF, is then granted a license to sell certain firearms, and other controlled items. Federal firearms laws require anyone who is a firearms dealer to obtain a federal firearms license. Private persons can sell firearms without a license, provided they are not engaged in the business of selling firearms, such as the occasional sale of a portion of a personal firearms collection.

3. An ATF Form 4473 is a document required to be completed by the actual buyer of a firearm from any FFL. Under California law, private persons who sell a firearm must use an FFL to transfer the firearm. The FFL must assure that ATF Form 4473 is completed by the actual buyer of a firearm prior to the sale or transfer of the firearm between private parties and must retain the original completed ATF Form 4473 on his/her premises. The ATF Form 4473, Section A must be completed by the actual buyer and must contain, among other information, the name and residence address of the actual buyer, along with the assurance that the buyer is the actual buyer of the firearm and is not acquiring the firearm on behalf of another person.

4. Pursuant to State law, certain firearms known as “off roster” firearms are not on the approved list of firearms and may not be offered for sale to the public as a new firearm by FFLs in California, but may only be purchased new by sworn law enforcement officers. Such firearms may later be lawfully sold by a law enforcement officer to the public in a “private party” transaction conducted through an FFL.

COUNT ONE: [18 U.S.C. § 922(a)(1)(A) – Engaging in the Business of Dealing in Firearms Without a License]

The Grand Jury charges: T H A T

1 RYAN McGOWAN,

2 defendant herein, beginning on or about February 2008, and continuing through at least November 2011,
3 in the County of Sacramento, State and Eastern District of California, and elsewhere, not having
4 received a license to engage in the business of dealing in firearms as required by Title 18 of the United
5 States Code, Section 923, did engage in the business of dealing in firearms and, in the course of such
6 business, received firearms that had been shipped and transported in interstate and foreign commerce, in
7 violation of Title 18, United States Code, Section 922(a)(1)(A).

8 COUNT TWO: [18 U.S.C. § 371 – Conspiracy to Make a False Statement with Respect to
9 Firearm Records]

10 The Grand Jury further charges: T H A T

11 RYAN McGOWAN, and
12 ROBERT SNELLINGS,

13 defendants herein, beginning on or about July 1, 2009, and continuing through July 27, 2009, in the
14 County of Sacramento, State and Eastern District of California, and elsewhere, did conspire with each
15 other, and with other persons known and unknown to the Grand Jury, to knowingly make a false
16 statement and representation with respect to information required to be kept under federal law by an
17 FFL, specifically representing on Form 4473 that defendant RYAN McGOWAN was the actual buyer of
18 a Sturm, Ruger & Co., Model LCP, .380 caliber handgun, serial number 37182507, when he was not the
19 actual buyer, in violation of Title 18, United States Code, Section 924(a)(1)(A).

20 Overt Acts

21 As part, and in furtherance of the conspiracy, overt acts were committed including, but not
22 limited to, the following:

23 1. On or about July 1, 2009, defendant ROBERT SNELLINGS purchased a Sturm, Ruger &
24 Co., model LCP, .380 caliber handgun, serial number 37182507, as an FFL (on behalf of Snellings'
25 Firearms), for \$359.70 in cash. The gun was delivered that same day by River City Gun Exchange to
26 Snellings' Firearms as an FFL to FFL transfer.

27 2. The very next day, on or about July 2, 2009, defendant RYAN MCGOWAN purchased
28 the same Sturm, Ruger & Co., model LCP, .380 caliber handgun, serial number 37182507, from
Snellings' Firearms. This handgun is not on the roster of approved handguns for sale to the public in

1 California and can only be purchased new from an FFL by a peace officer. Defendant RYAN
2 MCGOWAN was able to purchase this firearm due to his peace officer status.

3 3. During the purchase of this firearm, on or about July 2, 2009, defendant RYAN
4 MCGOWAN filled out ATF Form 4473. Question 12a on ATF Form 4473, asks: "Are you the actual
5 buyer of this firearm(s) listed on the form?" On the form, defendant RYAN MCGOWAN answered
6 "yes" to question 12a. If defendant RYAN MCGOWAN did not answer "yes", the sale would have been
7 prohibited by law.

8 4. On July 13, 2009, 11 days after the purchase, and one day after the expiration of the ten
9 day waiting period under California law, defendant RYAN MCGOWAN private party transferred the
10 firearm back to defendant ROBERT SNELLINGS as a private party (not as an FFL).

11 5. On July 27, 2009 (14 days after defendant RYAN MCGOWAN transferred the firearm to
12 defendant ROBERT SNELLINGS), defendant ROBERT SNELLINGS private party transferred the
13 firearm to W.P. This gun was later listed on a CCW (carry concealed weapon) permit for W.P. on April
14 20, 2011.

15 All in violation of Title 18, United States Code, Section 371.

16 COUNT THREE: [18 U.S.C. § 371 – Conspiracy to Make a False Statement With Respect to
17 Firearm Records]

18 The Grand Jury further charges: T H A T

19 ROBERT SNELLINGS,
20 defendant herein, beginning on or about June 17, 2010, and continuing through July 5, 2010, in the
21 County of Sacramento, State and Eastern District of California, and elsewhere, did conspire with other
22 persons known and unknown to the Grand Jury, to knowingly make a false statement and representation
23 with respect to information required to be kept under federal law by an FFL, specifically representing on
24 Form 4473 that unindicted coconspirator C.L. was the actual buyer of a Sturm, Ruger & Co., Model
25 LCP, .380 caliber handgun, serial number 37437161, when he was not the actual buyer, in violation of
26 Title 18, United States Code, Section 924(a)(1)(A).

27 Overt Acts
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1 As part, and in furtherance of the conspiracy, overt acts were committed including, but not
2 limited to, the following:

3 1. On June 17, 2010, Sacramento Police Officer C.L. started the Dealer's Record of Sale
4 (DROS) process for two Sturm, Ruger & Co., model LCP, .380 caliber handguns with serial numbers
5 37437161 and 37437405. This transaction was completed by defendant ROBERT SNELLINGS as an
6 FFL for Snellings' Firearms. These firearms were "off roster" firearms, not on the approved list of
7 handguns for sale in California, and could only be purchased new from an FFL by a peace officer. At
8 the time C.L. filled out ATF Form 4473, he and defendant ROBERT SNELLINGS knew that B.G. was
9 the actual buyer and not C.L.

10 2. Approximately 19 days later, on July 5, 2010, C.L. private party transferred the Sturm, Ruger
11 & Co., model LCP, .380 caliber handgun, with serial number 37437161, to B.G. The private party
12 transfer was completed by defendant ROBERT SNELLINGS as an FFL.

13 3. In furtherance of the conspiracy, B.G. paid defendant ROBERT SNELLINGS directly for the
14 firearm.

15 All in violation of Title 18, United States Code, Section 371.

16 COUNT FOUR: [18 U.S.C. § 371 – Conspiracy to Make a False Statement with Respect to
17 Firearm Records]

18 The Grand Jury further charges: T H A T

19 ROBERT SNELLINGS,
20 defendant herein, beginning on or about August 12, 2010, and continuing through on or about
21 September 13, 2010, in the County of Sacramento, State and Eastern District of California, and
22 elsewhere, did conspire with other persons known and unknown to the Grand Jury, to knowingly make a
23 false statement and representation with respect to information required to be kept under federal law by
24 an FFL, specifically representing on Form 4473 that unindicted coconspirator C.L. was the actual buyer
25 of a Carl Walther, model PK 380, .380 caliber handgun, serial number PK038993, when he was not the
26 actual buyer, in violation of Title 18, United States Code, Section 924(a)(1)(A).

27 Overt Acts
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1 As part, and in furtherance of the conspiracy, overt acts were committed including, but not
2 limited to, the following:

3 1. On or about August 12, 2010, Sacramento Police Officer C.L. started the DROS process
4 for a semiautomatic, Carl Walther, model PK380, “.38 caliber” handgun, serial number PK038993.
5 Defendant ROBERT SNELLINGS was listed as the FFL that completed the paperwork for this firearm.
6 The entry of the caliber on August 12, 2010 as “.38” is not correct. This handgun is not on the roster of
7 approved handguns for sale to the public in California and can only be purchased new from an FFL by a
8 peace officer.

9 2. On September 13, 2010, approximately 32 days later, C.L. private party transferred the
10 same firearm to defendant ROBERT SNELLINGS as a private person to complete the “straw purchase”
11 transaction. The firearm was transferred to defendant ROBERT SNELLINGS, using defendant
12 ROBERT SNELLINGS’ business as the FFL to conduct the paperwork.

13 All in violation of Title 18, United States Code, Section 371.

14 COUNT FIVE: [18 U.S.C. § 371 – Conspiracy to Make a False Statement with Respect to
15 Firearm Records]

16 The Grand Jury further charges: T H A T

17 ROBERT SNELLINGS,

18 defendant herein, beginning on or about July 9, 2009, and continuing through on or about August 4,
19 2009, in the County of Sacramento, State and Eastern District of California, and elsewhere, did conspire
20 with other persons known and unknown to the Grand Jury, to knowingly make a false statement and
21 representation with respect to information required to be kept under federal law by an FFL, specifically
22 representing on Form 4473 that unindicted coconspirator C.K. was the actual buyer of a Carl Walther,
23 Model PPS, .40 caliber handgun, serial number AD3719, when he was not the actual buyer, in violation
24 of Title 18, United States Code, Section 924(a)(1)(A).

25 Overt Acts

26 As part, and in furtherance of the conspiracy, overt acts were committed including, but not
27 limited to, the following:
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1 1. On or about July 9, 2009, Roseville Police Officer C.K. started the DROS process for the
2 purchase of a Carl Walther, model PPS, .40 caliber handgun, serial number AD3719. This handgun is
3 not on the roster of approved handguns for sale to the public in California and can only be purchased
4 new from an FFL by a peace officer. Defendant ROBERT SNELLINGS was the FFL that completed
5 the ATF Form 4473 paperwork. C.K. listed himself as the actual buyer of the handgun, when in fact the
6 actual buyer of the handgun was defendant ROBERT SNELLINGS.

7 2. The same firearm was later transferred to defendant ROBERT SNELLINGS, as a private
8 person, using ROBERT SNELLINGS, as the FFL, to complete the transfer. This is the same firearm
9 C.K. obtained the month prior.

10 All in violation of Title 18, United States Code, Section 371.

11 COUNT SIX: [18 U.S.C. § 371 – Conspiracy to Make a False Statement With Respect to
12 Firearm Records]

13 The Grand Jury further charges: T H A T

14 ROBERT SNELLINGS, and
15 ULYSSES SIMPSON GRANT EARLY, IV,
16 defendants herein, beginning on or about April 29, 2010, and continuing through on or about May 27,
17 2010, in the County of Sacramento, State and Eastern District of California, and elsewhere, did conspire
18 with each other, and other persons known and unknown to the Grand Jury, to knowingly make a false
19 statement and representation with respect to information required to be kept under federal law by an
20 FFL, specifically representing on Form 4473 that unindicted co-conspirator C.K. was the actual buyer of
21 a Sturm, Ruger & Co., model LCP, .380 caliber handgun, serial number 37300127, when he was not the
22 actual buyer, in violation of Title 18, United States Code, Section 924(a)(1)(A).

23 Overt Acts

24 As part, and in furtherance of the conspiracy, overt acts were committed including, but not
25 limited to, the following:

26 1. On or about April 29, 2010, Roseville Police Officer C.K. started the DROS process to
27 purchase a Sturm, Ruger & Co., model LCP, .380 caliber handgun, serial number 37300127, from
28 Snellings' Firearms. This handgun is not on the roster of approved handguns for sale to the public in

1 California and can only be purchased new from an FFL by a peace officer. Unindicted co-conspirator
2 C.K. was able to purchase this firearm due to his peace officer status.

3 2. During the purchase of this firearm, C.K. filled out ATF Form 4473. Question 12a asks: "Are
4 you the actual buyer of this firearm(s) listed on the form?" On the form, C.K. answered "yes" to
5 question 12a. If C.K. did not answer "yes", the sale would have been prohibited by law. At the time
6 C.K. filled out ATF Form 4473, he and defendants ROBERT SNELLINGS and ULYSSES SIMPSON
7 GRANT EARLY, IV, had no doubt that C.K. was not the actual buyer, but that the true actual buyer was
8 defendant ULYSSES SIMPSON GRANT EARLY, IV.

9 3. On May 27, 2010, approximately 28 days later, C.K. private party transferred the Sturm, Ruger
10 & Co., model LCP, .380 caliber handgun, serial number 37300127, to ULYSSES SIMPSON GRANT
11 EARLY, IV. The private party transfer was completed by defendant ROBERT SNELLINGS as the
12 FFL.

13 All in violation of Title 18, United States Code, Section 371.
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23 Plaintiff's Proposed Jury Instruction No. _____
24 GIVEN _____
25 GIVEN AS MODIFIED _____
26 REFUSED _____
27 WITHDRAWN _____

28 _____
JUDGE

INSTRUCTION NO.

Defendant Ryan McGowan is charged in Count One of the indictment with dealing firearms without a license, in violation of Section 922(a)(1) of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant willfully engaged in the business of dealing in firearms within the dates specified in the indictment; and

Second, the defendant did not have a license as a firearms dealer.

The government must prove beyond a reasonable doubt that the defendant engaged in a greater degree of activity than the occasional sale of a hobbyist or collector, and that the defendant devoted time, attention and labor to selling firearms as a trade or business with the intent of making profits through the repeated purchase and sale of firearms. For a person to engage in the business of dealing in firearms, it is not necessary to prove an actual sale of firearms.

A business is an activity which occupies a person's time, attention and labor, with some regularity or continuity, for the purpose of livelihood or profit. One may be engaged in a business even though the business does not require all, or even a substantial portion, of his working time. Nor is it necessary to show that a profit was actually made.

A person engages in the business of dealing in firearms if he has guns on hand or is ready and able to procure them, in either case for the purpose of selling some or all of them to such person as he might from time to time accept as customers. Such business need not be the defendant's primary business, nor must he make a certain amount of profit from the business. The statute is aimed at those who hold themselves out as a source of firearms, or those who engage in regular and repeated buyings and/or sellings of firearms, as opposed to an isolated or occasional transaction.

The distinction between collecting as a hobby and dealing as a business is not unknown to the law and where transactions of sale, purchase or exchange of firearms are regularly entered into in expectation of profit, the conduct amounts to engaging in business.

Willfully, as used in this statute, requires proof that the defendant knew that his or her conduct

1 was unlawful, but does not require proof that the defendant knew of the federal licensing requirement.

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9TH CIR. CRIM. JURY INST. 8.53(2014) (Modified); *U.S. v. Bieier*, 813 F.2d 212,214 fn1 (91th Cir. 1987).

Plaintiff's Proposed Jury Instruction No. _____

GIVEN _____

GIVEN AS MODIFIED _____

REFUSED _____

WITHDRAWN _____

JUDGE

INSTRUCTION NO.

Defendants Ryan McGowan, Robert Snellings, and Ulysses Simpson Grant Early, IV, are charged in Count Two through Six of the Indictment with Conspiracy to make a false statement on a firearms record, in violation of 18 United States Code, Section 371. In order for defendant McGowan, Snellings, or Early to be convicted of one of these counts, the government must prove each of the following elements beyond a reasonable doubt:

First, beginning on or about the period charged in the indictment, and ending on or about the date charged for that count, there was an agreement between two or more persons to make a false statement on a firearms record in violation of Title 18, United States Code, Section 924(a)(1)(A) as charged in the indictment; and

Second, the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it; and

Third, one of the members of the conspiracy performed at least one overt act for the purpose of carrying out the conspiracy, with all of you agreeing on a particular overt act that you find was committed.

A conspiracy is a kind of criminal partnership—an agreement of two or more persons to commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful; it does not matter whether the crime agreed upon was committed.

For a conspiracy to have existed, it is not necessary that the conspirators made a formal agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that they simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. You must find that there was a plan to commit at least one of the crimes alleged in the indictment as an object of the conspiracy with all of you agreeing as to the particular crime which the conspirators agreed to commit.

One becomes a member of a conspiracy by willfully participating in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy, even though the person does not have full knowledge of all the details of the conspiracy. Furthermore, one who willfully joins an existing conspiracy is as responsible for it as the originators. On the other hand, one who has no knowledge of a

1 conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does
2 not thereby become a conspirator. Similarly, a person does not become a conspirator merely by
3 associating with one or more persons who are conspirators, nor merely by knowing that a conspiracy
4 exists.

5 An overt act does not itself have to be unlawful. A lawful act may be an element of a conspiracy
6 if it was done for the purpose of carrying out the conspiracy. The government is not required to prove
7 that the defendant personally did one of the overt acts.

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23 9TH CIR. CRIM. JURY INST. 8.20
24 Plaintiff's Proposed Jury Instruction No. _____
25 GIVEN _____
26 GIVEN AS MODIFIED _____
27 REFUSED _____
28 WITHDRAWN _____

JUDGE

INSTRUCTION NO.

You must decide whether the conspiracy charged in the indictment existed, and, if it did, who at least some of its members were. If you find that the conspiracy charged did not exist, then you must return a not guilty verdict, even though you may find that some other conspiracy existed. Similarly, if you find that any defendant was not a member of the charged conspiracy, then you must find that defendant not guilty, even though that defendant may have been a member of some other conspiracy.

9TH CIR. CRIM. JURY INST. 8.21 (Edited and Modified)
Plaintiff's Proposed Jury Instruction No. _____
GIVEN _____
GIVEN AS MODIFIED _____
REFUSED _____
WITHDRAWN _____

JUDGE

INSTRUCTION NO.

In order for the defendant to be found guilty of making a false statement with respect to firearms records in violation of Section 924(a)(1)(A) of Title 18 of the United States Code, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly made a false statement;

Second, the statement pertained to information that the law requires a Federal Firearms Licensee to keep; and

Third, the defendant made the statement during the purchase of a firearm.

Form 4473 and its question that asks who is the “actual buyer” of a firearm is information that the law requires a Federal Firearms Licensee to keep.

18 U.S.C. 924(a)(1)(A); *United States v. Johnson*, 680 F.3d 1140 (9th Cir. 2012)

Plaintiff's Proposed Jury Instruction No. _____

GIVEN _____

GIVEN AS MODIFIED _____

REFUSED _____

WITHDRAWN _____

JUDGE

INSTRUCTION NO.

A conspiracy may continue for a long period of time and may include the performance of many transactions. It is not necessary that all members of the conspiracy join it at the same time, and one may become a member of a conspiracy without full knowledge of all the details of the unlawful scheme or the names, identities, or locations of all of the other members.

Even though a defendant did not directly conspire with another defendant or other conspirators in the overall scheme, the defendant has, in effect, agreed to participate in the conspiracy if the government proves each of the following beyond a reasonable doubt that:

(1) the defendant directly conspired with one or more conspirators to carry out at least one of the objects of the conspiracy;

(2) the defendant knew or had reason to know that other conspirators were involved with those with whom the defendant directly conspired; and

(3) the defendant had reason to believe that whatever benefits the defendant might get from the conspiracy were probably dependent upon the success of the entire venture.

It is not a defense that a person's participation in a conspiracy was minor or for a short period of time.

9TH CIRCUIT CRIM. JURY INSTRUCTION. 8.23

Plaintiff's Proposed Jury Instruction No. _____

GIVEN _____

GIVEN AS MODIFIED _____

REFUSED _____

WITHDRAWN _____

JUDGE

INSTRUCTION NO.

When you begin your deliberations, elect one member of the jury as your foreperson who will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

9TH CIR. CRIM. JURY INST. 7.1 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

Because you must base your verdict only on the evidence received in the case and on these instructions, I remind you that you must not be exposed to any other information about the case or to the issues it involves. Except for discussing the case with your fellow jurors during your deliberations:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via email, text messaging, or any Internet chat room, blog, website or other feature. This applies to communicating with your family members, your employer, the media or press, and the people involved in the trial. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own.

The law requires these restrictions to ensure the parties have a fair trial based on the same evidence that each party has had an opportunity to address. A juror who violates these restrictions jeopardizes the fairness of these proceedings. If any juror is exposed to any outside information, please notify the court immediately.

9TH CIR. CRIM. JURY INST. 7.2 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

9TH CIR. CRIM. JURY INST. 7.3 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

The punishment provided by law for this crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

9TH CIR. CRIM. JURY INST. 7.4 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

A verdict form has been prepared for you. [Explain verdict form as needed.] After you have reached unanimous agreement on a verdict, your foreperson should complete the verdict form according to your deliberations, sign and date it, and advise the clerk that you are ready to return to the courtroom.

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9TH CIR. CRIM. JURY INST. 7.5 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE

INSTRUCTION NO.

If it becomes necessary during your deliberations to communicate with me, you may send a note through the clerk, signed by any one or more of you. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, on any question submitted to you, including the question of the guilt of the defendant, until after you have reached a unanimous verdict or have been discharged.

9TH CIR. CRIM. JURY INST. 7.6 (2010)
Plaintiff's Proposed Jury Instruction No. ____
GIVEN ____
GIVEN AS MODIFIED ____
REFUSED ____
WITHDRAWN ____

JUDGE