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16 UNITED STATES DISTRICT COURT
17 SOUTHERN DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

21 GIOVANNI VINCENZO TILOTTA (3),
22 aka "Gio Tilotta,"
23 WAIEL YOUSIF ANTON (5),
24 aka "Will Anton,"

25 Defendants.

Case No. 19-CR-4768-GPC

**UNITED STATES' PROPOSED
JURY INSTRUCTIONS**

26 COMES NOW, the plaintiff, UNITED STATES OF AMERICA, by and through
27 its counsel LINDA FRAKES, Attorney for the United States Acting Under Authority
28 Conferred By 28 U.S.C. § 515, and Andrew R. Haden and Nicholas W. Pilchak,
Assistant U.S. Attorneys, and hereby files its Proposed Jury Instructions, per the
Court's Second Amended Pretrial Order. Although the United States submitted these
proposed instructions to the defense, at this time it has not yet heard back on whether
the parties may be in agreement on any of the instructions below.

**PATTERN INSTRUCTIONS FOR PRELIMINARIES, COURSE OF TRIAL,
AND PARTICULAR EVIDENCE.**

The United States will ask the Court to deliver the model instructions listed below at the preliminary phase, in the course of trial, and concerning particular evidence expected to be admitted at this trial.

No.	Instruction
	PRELIMINARIES
1.1	Duty of Jury
1.2	The charge—presumption of innocence
1.3	What is evidence
1.4	What is not evidence
1.5	Direct and circumstantial evidence
1.6	Rule of objections
1.7	Credibility of witnesses
1.8	Conduct of the jury
1.9	No transcript available to jury
1.10	Taking notes
1.11	Outline of trial
1.13	Separate consideration for each defendant
1.14	Questions to witnesses by jurors during trial
	COURSE OF TRIAL
2.1	Cautionary instruction—first recess
2.3	Stipulations of fact
2.6	Transcript of recording in English
2.10	Other crimes, wrongs or acts of defendant

1	2.12	Evidence for limited purpose
2	2.14	Dismissal of some charges against defendant
3	2.15	Disposition of charge against codefendant
4		PARTICULAR EVIDENCE
5	3.1	Statements by defendant
6	3.3	Other crimes, wrongs or acts of defendant
7	3.9	Testimony of witnesses involving special circumstances—immunity,
8		benefits, accomplice, plea
9	3.10	Government’s use of undercover agents and informants
10	3.14	Opinion evidence, expert witness
11	3.16	Charts and summaries not admitted into evidence
12	3.17	Charts and summaries admitted into evidence

1 **11.1 CONSPIRACY TO MAKE FALSE STATEMENTS IN THE**
2 **ACQUISITION OF A FIREARM**

3 Defendant TILOTTA is charged in Count 1 of the indictment with conspiracy
4 to make false statements in the acquisition of a firearm, in violation of Sections 371
5 and 924(a)(1)(A) of Title 18 of the United States Code. For Defendant TILOTTA to
6 be found guilty of that charge, the government must prove each of the following
7 elements beyond a reasonable doubt:

8 First, beginning on or about October 21, 2015, and ending on or about
9 February 13, 2019, there was an agreement between two or more persons to commit
10 the crime of making false statements in the acquisition of a firearm;

11 Second, the defendant became a member of the conspiracy knowing of its object
12 and intending to help accomplish it; and

13 Third, one of the members of the conspiracy performed at least one overt act for
14 the purpose of carrying out the conspiracy.

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16 The crime of making false statements in the acquisition of a firearm has the
17 following elements:

18 First, the person knowingly made a false statement or representation;

19 Second, the person made the statement or representation to a Federal Firearms
20 Licensee; and

21 Third, the statement pertained to information that the law requires the Federal
22 Firearms Licensee to keep.

23
24 The government need not prove that the false statements related to the
25 lawfulness of the underlying sale or acquisition of the firearm. Instead, the
26 government must prove only that the person knowingly made a false statement with
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1 respect to the information required under law to be kept by federally licensed firearms
2 dealers.

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

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

15 One becomes a member of a conspiracy by willfully participating in the
16 unlawful plan with the intent to advance or further some object or purpose of the
17 conspiracy, even though the person does not have full knowledge of all the details of
18 the conspiracy. Furthermore, one who willfully joins an existing conspiracy is as
19 responsible for it as the originators. On the other hand, one who has no knowledge of
20 a conspiracy, but happens to act in a way which furthers some object or purpose of the
21 conspiracy, does not thereby become a conspirator. Similarly, a person does not
22 become a conspirator merely by associating with one or more persons who are
23 conspirators, nor merely by knowing that a conspiracy exists.

24 An overt act does not itself have to be unlawful. A lawful act may be an element
25 of a conspiracy if it was done for the purpose of carrying out the conspiracy. The
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27

1 government is not required to prove that the defendant personally did one of the overt
2 acts.

3 [Model Instr. 11.1 approved 1/2019, *modified*;
4 *United States v. McGowan*, 746 Fed. Appx. 679, 681 fn.1 (9th Cir. 2018) (unpub.);
5 *see also United States v. Johnson*, 680 F.3d 1140, 1143–45 (9th Cir. 2012)]
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FIREARM—DEFINED

A firearm includes any weapon which will or is designed to expel a projectile
by the action of an explosive.

[18 U.S.C. § 921(a)(3)(A)]

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14.3, 4.1 AIDING AND ABETTING

DEALING IN FIREARMS WITHOUT A LICENSE

Defendants TILOTTA and ANTON are charged in Count 2 of the indictment with aiding and abetting dealing firearms without a license, in violation of Sections 922(a)(1)(A) and 2 of Title 18 of the United States Code.

To prove a defendant guilty of dealing in firearms without a license by aiding and abetting, the government must prove each of the following elements beyond a reasonable doubt:

First, Morad Marco Garmo committed the crime of dealing in firearms without a license;

Second, the defendant aided, counseled, commanded, induced or procured Garmo with respect to at least one element of engaging in the business of dealing in firearms without a license;

Third, the defendant acted with the intent to facilitate dealing in firearms without a license; and

Fourth, the defendant acted before the crime was completed.

To be guilty of aiding and abetting a crime, it is not enough that the defendant merely associated with the person committing the crime, or unknowingly or unintentionally did things that were helpful to that person, or was present at the scene of the crime. The evidence must show beyond a reasonable doubt that the defendant acted with the knowledge and intention of helping that person deal in firearms without a license.

A defendant acts with the intent to facilitate the crime when the defendant actively participates in a criminal venture with advance knowledge of the crime.

1 In turn, the elements of the crime of dealing in firearms without a license are:

2 First, Morad Marco Garmo was willfully engaged in the business of dealing in
3 firearms beginning no later than October 21, 2015 and continuing up to and including
4 February 13, 2019; and

5 Second, Garmo did not then have a license as a firearms dealer.

6
7 The government must prove beyond a reasonable doubt that Morad Marco
8 Garmo engaged in a greater degree of activity than the occasional sale of a hobbyist or
9 collector, and that Garmo devoted time, attention and labor to selling firearms as a
10 trade or business with the intent of making profits through the repeated purchase and
11 sale of firearms. A person who makes occasional sales, exchanges, or purchases of
12 firearms for the enhancement of a personal collection or for a hobby, or who sells all
13 or part of his personal collection of firearms, is not engaged in the business of dealing
14 in firearms.

15 For a person to engage in the business of dealing in firearms, it is not necessary
16 to prove an actual sale of firearms. Nor is it necessary to prove that dealing in firearms
17 was the person's primary business.

18 The government need not prove profits if the person was engaged in the regular
19 and repetitive purchase and disposition of firearms for criminal purposes.

20 Willfully, as used in this statute, requires proof that Morad Marco Garmo knew
21 that his conduct was unlawful, but does not require proof that Garmo knew of the
22 federal licensing requirement.

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24 [Model Instr. 14.3 approved 5/2020, *modified*;
25 Model Instr. 4.1 approved 9/2019, *modified*;
26 *United States v. King*, 735 F.3d 1098, 1106 (9th Cir. 2013);
27 *Bryan v. United States*, 524 U.S. 184, 198–99 (1998);
United States v. Nadirashvili, 655 F.3d 114, 119 (2nd Cir. 2011);

18 U.S.C. § 921(a)(21)(C);
18 U.S.C. § 921(a)(22)]

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14.9 UNLAWFUL SALE OF FIREARMS

Defendant TILOTTA is charged in Count 7 of the indictment with unlawfully selling firearms, in violation of Section 922(b)(2) of Title 18 of the United States Code. In order for Defendant TILOTTA to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant was licensed as a firearms dealer;

Second, the defendant willfully sold or delivered three firearms, to wit, a Daniel Defense AR-15 style 5.56 mm rifle bearing serial number DDM4107377, a Smith & Wesson Shield 9mm handgun bearing serial number HNH6175, and a Glock 27 .40 caliber pistol bearing serial number RLK240, to Vikas Bajaj; and

Third, the defendant knew the location of the sale was in violation of California law.

Under California law, a firearms licensee may only conduct business at the building designated in the licensee's license, or certain gun shows or special events designated by California law, such as auctions, raffles, or similar events.

Willfully, as used in this context, requires that the defendant act with knowledge that his conduct is unlawful, but not that the defendant be aware of the specific provision that he is charged with violating.

In addition to the elements above, before you may find Defendant TILOTTA guilty on this count, you must unanimously agree that he sold or delivered at least one of the listed firearms, with all of you agreeing on at least one specific firearm.

[Model Instr. 14.9 approved 5/2020, *modified*;
Cal. Penal Code §§ 26805, 27905;
United States v. Ogles, 406 F.3d 586, 590 (9th Cir. 2005);
Bryan v. United States, 524 U.S. 184, 198–99 (1998)]

OBSTRUCTION OF JUSTICE

Defendant ANTON is charged in Count 8 of the indictment with attempting to obstruct justice, in violation of Section 1512(b)(3) of Title 18 of the United States Code. The elements of obstruction of justice are:

First, the defendant attempted to corruptly persuade another person;

Second, the defendant acted knowingly;

Third, the defendant acted with the intent to hinder, delay or prevent the communication of information to a law enforcement officer of the United States;

Fourth, such information related to the commission or possible commission of a federal offense; and

Fifth, the defendant did something that was a substantial step toward committing the crime and that strongly corroborated defendant's intent to commit the crime.

For purposes of obstruction of justice, acting "corruptly" means acting with consciousness of wrongdoing.

The government need not prove that the defendant knew that the law enforcement officer was an officer of the United States.

Mere preparation is not a substantial step toward committing the crime. To constitute a substantial step, a defendant's act or actions must unequivocally demonstrate that the crime will take place unless interrupted by independent circumstances.

Jurors do not need to agree unanimously as to which particular act or actions constituted a substantial step toward the commission of a crime.

[7th Cir. Model Instr. for 18 U.S.C. § 1512(b)(3), 2020 ed., *modified*;
Model Instr. 4.4 approved 4/2019, *modified*;
United States v. Lonich, 23 F.4th 881, 906 (9th Cir. 2022);
United States v. Matthews, 505 F.3d 698 (7th Cir. 2007);

18 U.S.C. § 1512(g)(2)]

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4.8 KNOWINGLY—DEFINED

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. 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.

[Model Instr. 4.8 approved 3/2018]

1 February 21, 2022

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4 /s/ Nicholas W. Pilchak
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