

Jeremy Warren  
WARREN & BURSTEIN  
State Bar No. 177900  
501 West Broadway, Suite 240  
(619) 234-4433  
[jw@wabulaw.com](mailto:jw@wabulaw.com)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Case No.: 19cr4768-GPC
	)	
Plaintiff,	)	
	)	Response to government's proposed
v.	)	verdict form
	)	
GIOVANNI TILOTTA,	)	August 29, 2022
	)	
Defendant.	)	
_____	)	

The government submitted a proposed verdict form (Doc. 302). Mr. Tilotta provides some context and his position:

The parties met and conferred repeatedly in an effort to jointly file a proposed verdict form. There were multiple drafts. There was an impasse, however, regarding the unanimity special verdict for Count 7.

**A) The proposed special verdict is over-inclusive.**

Count 7 charges a violation of 18 U.S.C. § 922(b)(2), criminalizing a federal firearm licensee's violation of state or local laws relating to the sale or delivery of firearms:

(b) It shall be unlawful for any ... licensed dealer to sell or deliver –

(2) any firearm to any person in any State where the purchase or

1 possession by such person of such firearm would be in violation of  
2 any State law or any published ordinance applicable at the place  
3 of sale, delivery or other disposition, unless the licensee knows or  
4 has reasonable cause to believe that the purchase or possession  
5 would not be in violation of such State law or such published  
6 ordinance.

7 18 U.S.C. § 922(b)(2).

8 As to the state or local law violation, the indictment alleges Mr. Tilotta “sold,  
9 delivered, and transferred three firearms” at a sheriff’s substation, “a location  
10 prohibited by California Penal Code section 26805(d).” Doc. 152 at 17 (indictment,  
11 cleaned up).

12  
13 Section 2685(d) states, “The firearm may be *delivered* to the purchaser [or]  
14 transferee [ ] at one of the following places: (1) the building designated in the license,  
15 (2) the places specified in subdivision (b) or (c) [gun shows], (3) the place of residence  
16 of, the fixed place of business of, or on private property owned or lawfully possessed  
17 by, the purchaser [or] transferee....” (Emphasis added.).

18  
19  
20 The language of PC 2685(d) proscribes deliveries, not sales or transfers of  
21 firearms at certain locations. Thus, the government’s proposed special verdict form  
22 is overly-inclusive – it asks the jury to identify which of the three firearms were  
23 “sold, delivered, or transferred.” The Court should strike “sold” and “or transferred”  
24 from the Count 7 special verdict.  
25  
26  
27  
28

**B) Section 922(b)(2) jury instructions**

Beyond that, section 922(b)(2) requires the “purchase or possession” – not the sale itself – be in violation of a law or ordinance “applicable at the place of sale [or] delivery.” While there may be a proscription against an FFL selling at a location apart from his business, that is not the real issue. The question must focus on the *purchaser’s* ability to possess or purchase a firearm *at a particular location*. For example, if there was a prohibition against possessing a firearm within a grocery store, then a sale or delivery at a supermarket would violate the statute. Or, if an FFL sold an off-roster gun to a civilian in California, while that would not violate 922(g) assuming the civilian is not a prohibited person under federal law, it would be a violation of 922(b)(2) since that possession or purchase would violate California’s safe-gun law.

Here, we have no such prohibitions. There is no particular regulation about the recipient purchasing or possessing a firearm at a sheriff’s substation, and Mr. Bajaj was not a prohibited person. The jury needs an instruction that only permits conviction if the government proves, consistent with 922(b)(2), that Mr. Bajaj could not purchase or possess these particular firearms at that particular location.

Mr. Tilotta will supplement his proposed instructions consistent with this argument.

Respectfully submitted,

Dated: August 26, 2022

s/ Jeremy Warren  
Jeremy Warren  
Attorney for Mr. Tilotta