



Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 7A

MEETING DATE: May 18, 2022

SUBJECT: Staff Recommendation on Felony Forfeiture Enforcement for Ryan McGowan

SUBMITTED FOR: ___ Consent X Deliberation and Action ___ Receive and File

RECOMMENDATION

Based on the factual evidence obtained and presented in this Felony Forfeiture matter regarding Ryan McGowan (hereinafter "Member"), staff recommends that the Retirement Board:

- (1) Find that member was convicted of a felony for conduct arising out of or in the performance of his official duties as a Sacramento County Sheriff's Deputy;
- (2) Find that the felony for which Member was convicted was first committed on or about February 2008;
- (3) Find that the "forfeiture date" pursuant to Government Code section 7522.72 is June 11, 2015;
- (4) Exercise and enforce the felony forfeiture statutes against Member's retirement account to be made effective April 1, 2022.

BACKGROUND

Member is a 41-year-old former **Deputy Sheriff**, who previously worked for the Sheriff's Department and accrued **3.9 years of service in Safety Tier 2** in the Sacramento County Employees' Retirement System (SCERS). **Member began his employment with the Sheriff's Department on July 22, 2007 and was terminated on August 24, 2012.**

With less than five (5) years of service with SCERS, Member was not vested, thus not eligible for a defined benefit retirement allowance from SCERS. Consequently, the resulting impact to the Member's retirement account is a return of member-paid contributions less interest pursuant to the Felony Forfeiture statutes.

In reviewing this matter, staff followed the due process procedures outlined in the SCERS Felony Forfeiture Policy (Policy). The Policy directs staff to conduct an investigation and analysis when

a SCERS member has been convicted of a felony arising out of or in the performance of the member's official job, then present a recommendation concerning forfeiture to the Board of Retirement (Board) at a Special Board Meeting. Staff reviewed various records and reports including various trial transcripts from Member's state court trial (various dates in 2014); the Indictment filed with the United States District Court, Eastern District of California on May 31, 2012); the Government's Trial Brief submitted in connect with Member's federal court trial (filed September 22, 2014); the federal Judgment and Commitment (filed July 6, 2016); and the Government's Sentencing Memorandum submitted in connection with Member's federal trial (filed June 23, 2016).

SCERS also requested Nossaman LLP perform an analysis regarding Member's felony conviction to determine whether the conviction was work-related and fell within the scope of the felony forfeiture statutes set forth in Government Code sections 7522.72 or 7522.74. Nossaman's comprehensive legal analysis, along with all supporting documents and evidence, is attached to this memo. Member was provided the required notice under the Policy that this recommendation will be presented to the Board.

On March 30, 2022, this felony forfeiture matter was presented to the Board for deliberation and action. It was noted during this meeting that staff had made several unsuccessful attempts to reach Member to update his address with SCERS. During this meeting the Board removed this item from the agenda, asked staff to make one more attempt to reach Member, and deferred the determination and final Board action to a future meeting. Following this meeting, on March 30, 2022, staff sent by certified mail a Notice of Felony Forfeiture (Notice) to an updated address that was identified by the Sacramento County Department of Revenue Recovery and a third party address search vendor as the most current address for Member. On April 4, 2022, staff received confirmation via return receipt by the United States Postal Service return that the Notice was successfully delivered.

SUMMARY FACTUAL BACKGROUND

A. State Court Conviction

Member was charged with and convicted of two state felony charges: (1) unlawful transfer of a large-capacity magazine in violation of Penal Code section 12020(A)(2); and (2) possession of an assault weapon in violation of Penal Code section 12280(b).

The case against Member went to trial in July 2014. On August 6, 2014, the jury returned a guilty verdict with respect to both of the charges. Specifically, the jury found Member guilty of unlawfully transferring a large-capacity magazine to an undercover agent on or about July 15, 2011. The jury also found Member guilty of unlawful possession of an assault weapon, which was discovered during a search of Member's residence on November 3, 2011.

B. Federal Court Conviction

On May 31, 2012, the United States District Court for the Eastern District of California filed an indictment against Member charging him with: (1) Engaging in the Business of Dealing in Firearms Without a License; and (2) Conspiracy to Make a False Statement with Respect to Firearm Records.

California and federal law prohibit members of the public from purchasing certain firearms known as “off-roster” or “non-roster” firearms, or “unsafe handguns.” Peace officers in California are exempt from these laws and therefore can purchase guns that the general public cannot. There is another exception to the prohibition of firearm purchases that allows private party transfers of off-roster firearms, meaning that once an off-roster firearm is owned by a private party, it can be sold to another private party.

According to the May 31, 2012, federal indictment, from on or about February 2008, continuing through at least November 2011, Member used his peace officer status as a County Sheriff's Deputy to buy dozens of weapons that the general public would not have been able to purchase. Member then took advantage of the private party transfer exemption to sell these firearms to others, without the required license, thereby violating Title 18, United States Code, section 922(a)(1)(A). Because off-roster firearms are difficult to obtain in California due to purchase restrictions, Member was able to resell the guns at an inflated price to make a profit.

The federal indictment also alleged that Member violated 18 U.S.C. section 371, Conspiracy to Make a False Statement with Respect to Firearm Records, by falsely representing on a Firearms Transaction Record (ATF Form 4473) that he was the actual buyer of a handgun, when he was not the actual buyer. Records reflect that on or about July 1, 2009, Member and a co-defendant engaged in the illegal purchase and transfer of an “off-roster” handgun, which included Member filling out an ATF Form 4473 falsely indicating that Member was the original buy of the handgun.

The federal case against Member went to trial on June 2, 2015. On June 11, 2015, the jury returned with a unanimous verdict, finding Member guilty of both federal charges (i.e., Engaging in the Business of Dealing in Firearms Without a License in violation of 18 U.S.C. section 922(a)(1)(A) and Conspiracy to Make a False Statement with Respect to Firearm Records in violation of 18 U.S.C. section 371.) The Court entered Judgment on June 30, 2016, sentencing Member to eighteen months in prison and supervised release for a period of twelve months following imprisonment.

LEGAL FRAMEWORK

The felony forfeiture statutes are set forth in Government Code sections 7522.72 and 7522.74. Section 7522.72 applies to public employees first employed before January 1, 2013, while section 7522.74 applies to public employees first employed after January 1, 2013.

Because Member began his employment with the County before January 1, 2013, section 7522.72 applies. As relevant here, subdivision (b) of that section provides, in part:

(b)(1) If a public employee is convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of or in the performance of his or her official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member to the extent provided in subdivision (c) and shall not accrue further benefits in that public retirement system, effective on the date of the conviction.

Subdivision (c) of section 7522.72 in turn provides:

(c)(1) A member shall forfeit all the rights and benefits earned or accrued from the earliest date of the commission of any felony described in subdivision (b) to the forfeiture date, inclusive. The rights and benefits shall remain forfeited notwithstanding any reduction in sentence or expungement of the conviction following the date of the member's conviction. Rights and benefits attributable to service performed prior to the date of the first commission of the felony for which the member was convicted shall not be forfeited as a result of this section.

(c)(2) For purposes of this subdivision, "forfeiture date" means the date of the conviction.

ANALYSIS

A. Conviction Arose Out Of / In the Performance of Official Duties

To fall within the scope of Government Code section 7522.72, subdivision (b)(1), a public employee must be convicted of a felony for conduct either (i) arising out of or in the performance of his or her official duties; (ii) in pursuit of the office or appointment, or, (iii) in connection with obtaining salary, disability retirement, service retirement, or other benefits. (See Gov. Code § 7522.72, subd. (b)(1).)

As a relatively recently enacted statute, case law interpreting and applying section 7522.72 is limited. However, in one of few cases which addresses the application of the statute, the California Court of Appeal held that the public retirement board is responsible for ensuring that a member is afforded due process (i.e., notice and an opportunity to be heard by the retirement board or an administrative hearing officer) prior to implementing a forfeiture. (*Hipsher v. Los Angeles County Employees Retirement Association* (2020) 58 Cal.App.5th 671, 700.)

The court goes on to assert that the job-related nature of a felony "is evident when the conviction, on its face, necessarily stems from a public employee's performance of official duties." (Ibid.) Where the job-related nature of a felony is evident, the court concludes that "[t]he criminal proceeding leading to conviction of a crime that per se involves the public employee's official duties and which therefore, as a matter of law, subjects the employee to benefit forfeiture under section 7522.72, necessarily satisfies any due process concerns." (Id. at p. 701.)

Here, Member's federal felony conviction on June 11, 2015, for Engaging in the Business of Dealing in Firearms Without a License and Conspiracy to Make a False Statement with Respect to Firearm Records arose out of or in the performance of his official duties. The link to Mr. Member's illegal conduct and his employment as a Sacramento County Sheriff's Deputy is that Member was only able to purchase and resell off-roster firearms because of his position as a Deputy Sheriff and the peace officer exemption for purchasing off-roster weapons.

As noted above, the firearms Member purchased and resold were not on the roster of approved firearms for sale to the public in California and could only be purchased new from an FFL by a peace officer. Therefore, it was only due to his ability to take advantage of his status as a

Sacramento County Deputy Sheriff that Member was able to engage in the unlawful activity of purchasing and reselling off roster firearms.

Because Member's federal felony convictions arose out of conduct that he could only have done as a peace officer, i.e., a Sacramento County Deputy Sheriff, his conduct meets the statutory definition of "conduct arising out of" the performance of his official duties in subdivision (b)(1) of section 7522.72 of the California Government Code and therefore requires the forfeiture of all rights and benefits Member earned or accrued from the earliest date of the commission of any such felony (i.e., February 2008) to the date of his conviction (i.e., June 11, 2015).

As noted above, Member was also convicted at an earlier date, August 6, 2014, of two felony weapons related charges in the Sacramento County Superior Court (i.e., unlawful transfer of a large-capacity magazine in violation of Penal Code section 12020(A)(2); and possession of an assault weapon in violation of Penal Code section 12280(b)). These convictions also subject Member to felony forfeiture and his forfeiture should be from the earliest commission of his first felonious act, until his final felony conviction.

There is an even stronger connection between Member's state court conviction for the unlawful transfer of a large-capacity magazine and his employment as a Sacramento County Sheriff's Office Deputy. This conviction also arose out of or in the performance of Member's official duties as a Sacramento County Sheriff's Office Deputy, i.e., is job-related, and results in the forfeiture of rights and benefits earned or accrued from the earliest date of Member's commission of this felony (i.e., on or about July 15, 2011) to the date of his conviction (i.e., August 6, 2014).

CONCLUSION

Staff consulted with Nossaman in drafting this memorandum. Based on the factual information contained in the investigatory and court records obtained relating to Member's felony conviction, Staff has determined that Member's conviction falls within the scope of the felony forfeiture statutes set forth in Government Code sections 7522.72 and 7522.74 and that Member is subject to felony forfeiture from the date of his earliest commission of a felonious act resulting in conviction, Engaging in the Business of Dealing in Firearms Without a License, which Member first committed on or about February 2008, for which he was convicted in federal court on June 11, 2015.

Because Member did not have enough service credit to be "vested" and eligible for a lifetime retirement benefit from SCERS, staff has determined that he is only eligible for a return of contributions, less interest, in accordance with the Felony Forfeiture statutes. Therefore, Member is due a refund of member-paid contributions in the amount of \$18,993.93. Because there was no evidence of a specific date in February 2008 for the earliest date of the commission of his crimes, staff is refunding contributions from March 1, 2008 through his termination date.

ATTACHMENTS

- Board Order
- Legal Memorandum by Nossaman LLP, with Supporting Exhibits

Prepared by:

/S/

Mario Sierras
Chief Benefits Officer

Reviewed by:

/S/

Eric Stern
Chief Executive Officer



Retirement Board Order

Sacramento County Employees' Retirement System

Before the Board of Retirement
May 18, 2022

AGENDA ITEM:

**Staff Recommendation on Felony Forfeiture Enforcement
for Ryan McGowan**

THE BOARD OF RETIREMENT hereby accepts the recommendation of staff to exercise and enforce the felony forfeiture statutes against Ryan McGowan, a former Deputy Sheriff who previously worked for the Sacramento County Sheriff's Department, as follows:

- (1) Member was convicted of a felony for conduct arising out of or in the performance of his official duties as a Sacramento County Sheriff's Deputy;
- (2) The felony for which Member was convicted was first committed on or about February 2008;
- (3) The "forfeiture date" pursuant to Government Code section 7522.72 is June 11, 2015;
- (4) Exercise and enforce the felony forfeiture statutes against Member's retirement account to be made effective April 1, 2022.

I HEREBY CERTIFY that the above order was passed and adopted on May 18, 2022 by the following vote of the Board of Retirement, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:



Retirement Board Order

Sacramento County Employees' Retirement System

ALTERNATES (Present but not voting):

Richard B. Fowler II
Board President

Eric Stern
Chief Executive Officer and
Board Secretary



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Refer To File # 290949-0029

March 16, 2022

Sacramento County Board of Retirement
980 9th Street, Suite 1900
Sacramento, CA 95815

Re: SCERS' Felony Forfeiture Determination re Ryan McGowan

Dear Members of the Board:

The Sacramento County Employees' Retirement System's ("SCERS") staff submits this letter brief in support of its determination that SCERS member, Ryan McGowan, is subject to felony forfeiture. Specifically, staff has determined that: (1) Mr. McGowan was convicted of multiple felonies for conduct arising out of or in the performance of his official duties as a Sacramento County Sheriff's Deputy; (2) the felonies for which Mr. McGowan was convicted were first committed on or about February 2008; and (3) the "forfeiture date" pursuant to Government Code section 7522.72 is June 11, 2015. As a consequence, staff recommends that Mr. McGowan's contributions be refunded to him in the amount of \$18,993.93 because Mr. McGowan never became vested and thus is not eligible for future retirement benefits.

I. FACTUAL BACKGROUND

Mr. McGowan began his employment with the County of Sacramento Sheriff's Office as a Deputy Sheriff on July 22, 2007. His employment was terminated on August 24, 2012, due to the criminal matters discussed in this letter brief. Mr. McGowan accrued 3.9 years of service during his employment as a Deputy Sheriff, thus he was not vested and is not eligible for lifetime retirement benefits.

The following factual summary is based on information contained in the July 29, 30, and 31, 2014, and August 6, 2014, trial transcripts from Mr. McGowan's state court trial, (the relevant portions of which are attached hereto as Exhibits A, B, C, and D, respectively); the federal Indictment of Mr. McGowan, filed with the United States District Court, Eastern District of California on May 31, 2012 (Exhibit E); the Government's Trial Brief submitted in connection with Mr. McGowan's federal court trial, filed September 22, 2014 (Exhibit F); the Minutes for the final day of Mr. McGowan's federal trial, filed June 11, 2015 (Exhibit G); the federal Judgment and Commitment, filed July 6, 2016 (Exhibit H); and the Government's Sentencing Memorandum submitted in connection with Mr. McGowan's federal trial, filed June 23, 2016 (Exhibit I).

SCERS also relies on the following articles: *State Exemptions for Authorized Peace Officers*, State of California Department of Justice, <https://oag.ca.gov/firearms/exemptpo> (Exhibit J); *Law enforcement officers may be illegally selling guns, ATF says*, LOS ANGELES TIMES (April 13, 2017), <https://www.latimes.com/local/lanow/la-me-ln-illegal-gun-sales->

[20170412-story.html](#) (Exhibit L); *Former Sacramento County Sheriff's Deputy Sentenced to 18 Months in Prison for Unlawful Sale of Firearms*, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (June 30, 2016), <https://www.atf.gov/news/pr/former-sacramento-county-sheriffs-deputy-sentenced-18-months-prison-unlawful-sale-firearms> (Exhibit O); *Jury Returns Guilty Verdicts for Former Sacramento County Sheriff's Deputy and Federal Firearms Licensee in Firearm Straw-Buyer Scheme*, UNITED STATES DEPARTMENT OF JUSTICE (June 11, 2015), <https://www.justice.gov/usao-edca/pr/jury-returns-guilty-verdicts-former-sacramento-county-sheriff-s-deputy-and-federal> (Exhibit P).

Finally, SCERS relies on the following statutes in its analysis: California Penal Code section 32000(b)(4) (Exhibit K.); California Penal Code section 28050 (Exhibit M); and California Penal Code section 32110(a) (Exhibit N).

(i) State Court Conviction

Mr. McGowan was charged with and convicted of two state felony charges: (1) unlawful transfer of a large-capacity magazine in violation of Penal Code section 12020(A)(2); and (2) possession of an assault weapon in violation of Penal Code section 12280(b).

The case against Mr. McGowan went to trial in July 2014. On August 6, 2014, the jury returned a guilty verdict with respect to both of the charges. Specifically, the jury found Mr. McGowan guilty of unlawfully transferring a large-capacity magazine to an undercover agent on or about July 15, 2011. (See Exhibit D [Trial Transcripts], p. 372:4-10) The jury also found Mr. McGowan guilty of unlawful possession of an assault weapon — an Izhmash model Saiaga 12-gauge shotgun — which was discovered during a search of Mr. McGowan's residence on November 3, 2011. (See Exhibit D [Trial Transcript], p. 373:7-12.)

During the trial, three witnesses testified as to their understanding of the laws relating to the possession of firearms by law enforcement officers. Greg Halstead, a police officer with the City of Sacramento, testified that “[i]n order for a gun to be sold to the general public, it has to be on what we call the roster of lists; and if it is not, then it is not available for purchase unless you are a police officer.” (See Exhibit B [Trial Transcript], at p. 264:2-9.) When the district attorney asked Mr. Halstead to confirm his understanding of the state's laws on the possession of firearms, Mr. Halstead reiterated that to purchase a new, non-roster firearm brought into California, an individual must be a police officer or *peace* officer. (See Exhibit B [Trial Transcript], at p. 264:10-17.) Mr. Halstead further testified that a law enforcement officer who purchases a non-roster firearm can subsequently sell the firearm to the general public at a later date, subject to certain restrictions. (See Exhibit B [Trial Transcript], at pp. 264:23-28; 275:2-11.)

Steve Harding, a Sergeant with the Sacramento County Sheriff's Office, also testified during Mr. McGowan's trial. Mr. Harding identified himself as the person in the County Sheriff's Office responsible for authorizing other Deputy Sheriffs to purchase and possess assault weapons in the performance of their duties. (See Exhibit B [Trial Transcript], at p. 231:8-12.) Mr. Harding confirmed that Deputy Sheriffs are required to go through training and receive education if they are interested in accessing or possessing an assault weapon during the course of their job duties. (See Exhibit B [Trial Transcript], at pp. 231:15-232:8.) Mr. Harding acknowledged that Mr. McGowan did request authorization to possess one assault weapon, the LWRC international, and that Mr. McGowan took the required course on assault weapons. (See Exhibit B [Trial Transcript], at p. 234:7-17.) Mr. Harding testified that Mr. McGowan did *not*, however, request authorization to purchase the Saiaga 12-gauge shotgun. (See Exhibit B [Trial Transcript], p. 233:10-28.) Although Mr. McGowan never requested permission to possess the

Saiaga 12-gauge shotgun, the weapon was recovered during a search of Mr. McGowan's residence on November 3, 2011. (See Exhibit A [Trial Transcript], p. 73:4-22.)

Special Agent Blake Graham, with the California Department of Justice, Bureau of Firearms, testified as to his understanding of the laws on the possession of large-capacity magazines since 2000. Specifically, Mr. Graham testified that an individual must be a peace officer to lawfully acquire a large-capacity magazine. (See Exhibit B [Trial Transcript], at pp. 152:8-153:19.) Mr. Graham also testified that a peace officer can assemble a large-capacity magazine, noting "there is an exception of peace officers and the manufacturing of them during the course and scope of their duties." (See Exhibit B [Trial Transcript], at p. 180:18-23.) With respect to the charge of transferring a large-capacity magazine to an undercover agent, Mr. McGowan himself testified that, as a police officer, he was allowed to assemble large-capacity magazines and that he inadvertently failed to disassemble the magazine prior to selling the weapon to another person. (See Exhibit C [Trial Transcript], at pp. 359:3-360:21.)

Notwithstanding Mr. McGowan's efforts to characterize his selling of an assembled large-capacity magazine as a lapse in judgment, the jury found Mr. McGowan guilty of unlawfully transferring a large-capacity magazine. (See Exhibit D [Trial Transcript], at p. 373:4-10.) The jury also found Mr. McGowan guilty of possession of an assault weapon for his unauthorized possession of the Saiaga 12-gauge shotgun. (See Exhibit D [Trial Transcript], at p. 373:7-12.)

(ii) Federal Court Conviction

On May 31, 2012, the United States District Court for the Eastern District of California filed an Indictment against Mr. McGowan charging him with: (1) Engaging in the Business of Dealing in Firearms Without a License; and (2) Conspiracy to Make a False Statement with Respect to Firearm Records. (See Exhibit E [Indictment], at p. 3.)

California and federal law prohibit members of the public from purchasing certain firearms known as "off-roster" or "non-roster" firearms, or "unsafe handguns." (See Exhibit K [Cal Penal Code § 32000(c)(1)] (prohibiting the sale of unsafe handguns to the general public).) As the various witnesses in Mr. McGowan's state court trial indicated, peace officers in California are exempt from these laws and therefore can purchase guns that the general public cannot. (See Exhibit J [*State Exemptions for Authorized Peace Officers*, State of California Department of Justice, <https://oag.ca.gov/firearms/exemptpo>]; see also, Exhibit K [Cal. Penal Code § 32000(b)(4)].) There is another exception to the prohibition of firearm purchases (to which Mr. Halstead referred during his testimony at Mr. McGowan's state court trial) that allows private party transfers of off-roster firearms, meaning that once an off-roster firearm is owned by a private party, it can be sold to another private party. (See Exhibit M [Cal Penal Code § 28050] and Exhibit N [Cal. Penal Code § 32110(a)].)

According to the May 31, 2012, federal Indictment, from on or about February 2008, continuing through at least November 2011, Mr. McGowan used his peace officer status as a County Deputy Sheriff to buy dozens of weapons that the general public would not have been able to purchase. (See Exhibit E [Indictment], at pp. 3-4.) Mr. McGowan then took advantage of the private party transfer exemption to sell these firearms to others, without the required license, thereby violating Title 18, United States Code, section 922(a)(1)(A). (*Id.*) Because off-roster firearms are difficult to obtain in California due to purchase restrictions, Mr. McGowan was able to resell the guns at an inflated price to make a profit.

The federal Indictment also alleged that Mr. McGowan violated 18 U.S.C. section 371, Conspiracy to Make a False Statement with Respect to Firearm Records, by falsely representing on a Firearms Transaction Record (ATF Form 4473) that he was the actual buyer of a handgun, when he was not the actual buyer. (See Exhibit E [Indictment], at pp. 3-4.) Specifically, on or about July 1, 2009, co-defendant, Robert Snellings, purchased a handgun as a Federal Firearms Licensee ("FFL"). (*Id.*) The next day, Mr. McGowan bought the same handgun and filled out an ATF Form 4473 falsely indicating that he was the original buyer of the gun. (*Id.*) The gun was not on the roster of approved handguns for sale to the public in California and could only be purchased new from an FFL by a peace officer. (*Id.*) Accordingly, the link to the offense and Mr. McGowan's County employment is that Mr. McGowan was only able to purchase the gun because he was a Sacramento County Deputy Sheriff. On July 13, 2009, eleven days after the purchase, Mr. McGowan transferred the gun back to co-defendant Robert Snellings as a private person in a private party transfer. (*Id.*) On July 27, 2009, Robert Snellings sold the gun to a private person in another private party transfer. (*Id.* at p. 5.)

The federal case against Mr. McGowan went to trial on June 2, 2015, about a year after the state's case against Mr. McGowan was tried. On June 11, 2015, the jury returned with a unanimous verdict, finding Mr. McGowan guilty of both federal charges (i.e., Engaging in the Business of Dealing in Firearms Without a License in violation of 18 U.S.C. section 922(a)(1)(A) and Conspiracy to Make a False Statement with Respect to Firearm Records in violation of 18 U.S.C. section 371.) (See Exhibit G [Minutes from final day of federal trial].)

The Court entered Judgment on June 30, 2016, sentencing Mr. McGowan to eighteen months in prison and supervised release for a period of twelve months following imprisonment. (See Exhibit H [Judgment and Commitment].)

II. MR. MCGOWAN IS SUBJECT TO FELONY FOREFEITURE

The felony forfeiture statutes are set forth in Government Code sections 7522.72 and 7522.74. Section 7522.72 applies to public employees first employed, elected, or appointed before January 1, 2013. Section 7522.74 applies to public employees first employed, elected, or appointed after January 1, 2013.

Because Mr. McGowan began his employment with the County before January 1, 2013, section 7522.72 applies. As relevant here, subdivision (b) of that section provides, in part:

(b)(1) If a public employee is convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of or in the performance of his or her official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member to the extent provided in subdivision (c) and shall not accrue further benefits in that public retirement system, effective on the date of the conviction.

Subdivision (c) of section 7522.72 in turn provides:

(c)(1) A member shall forfeit all the rights and benefits earned or accrued from the earliest date of the commission of any felony described in subdivision (b) to the forfeiture date, inclusive. The rights and benefits shall remain forfeited notwithstanding any reduction in sentence or expungement of the conviction

following the date of the member's conviction. Rights and benefits attributable to service performed prior to the date of the first commission of the felony for which the member was convicted shall not be forfeited as a result of this section.

* * *

(c)(3) For purposes of this subdivision, "forfeiture date" means the date of the conviction.

Therefore, to fall within the scope of Government Code section 7522.72, subdivision (b)(1), a public employee must be convicted of a felony for conduct either (i) arising out of or in the performance of his or her official duties; (ii) in pursuit of the office or appointment, or, (iii) in connection with obtaining salary, disability retirement, service retirement, or other benefits. (See Gov. Code § 7522.72, subd. (b)(1).)

Mr. McGowan's federal felony conviction on June 11, 2015, for Engaging in the Business of Dealing in Firearms Without a License and Conspiracy to Make a False Statement with Respect to Firearm Records, arose out of or in the performance of his official duties. As noted above, the handgun Mr. McGowan purchased was not on the roster of approved handguns for sale to the public in California and could only be purchased new from an FFL by a peace officer. The link to Mr. McGowan's illegal conduct and his employment as a Sacramento County Deputy Sheriff is that Mr. McGowan was only able to purchase and resell off-roster firearms because of his position as a Deputy Sheriff and the peace officer exemption for purchasing off-roster weapons. (See Exhibit K [California Penal Code § 32000(b)(4) (permitting the sale and purchase of handguns by sworn members of certain agencies identified in the statute, including police departments and sheriff's officials)].) Absent this exemption, Mr. McGowan would have been prevented from acquiring off roster firearms in the same way that other members of the public, who do not carry badges, cannot obtain such firearms.¹

The Government's Trial Brief addressed the way in which Mr. McGowan used his position as a Sacramento County Deputy Sheriff to carry out his crimes, noting, "... McGowan saw an opportunity to profit from the sale of off-roster firearms by exploiting the scarcity of off-roster guns available to the general public. As a Deputy Sheriff, Mr. McGowan purchased off-roster handguns at the standard sale price. Mr. McGowan then resold the guns at an inflated price on the private party market in California because the off-roster firearms could not be purchased directly by the general public." (See Exhibit F [Government's Trial Brief], at pp.2-3.)

The Government's Sentencing Memorandum reiterated these sentiments and again highlighted the connection between Mr. McGowan's crimes and his position as a Sacramento County Deputy Sheriff:

The intent of California laws enacted to enable police officers access to firearms restricted to the general public was for the purpose of providing officers with firearms to protect themselves in their very dangerous line of work. Laws restricting off-roster firearms to the general public, but permitted to be purchased by law

¹ Mr. McGowan appears to have been one of many law enforcement officers taking advantage of the peace officer exemption. The year following Mr. McGowan's conviction, a memorandum distributed by the then head of the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives in Los Angeles, Eric Harden, addressed an "emerging problem" resulting from law enforcement officers purchasing multiple off roster firearms and reselling those firearms to non-law enforcement entities for a profit, without the required Federal Firearms License. (See Exhibit L [April 13, 2017, L.A. Times article].)

enforcement officers, are intended to give officers every advantage possible in protecting their lives, as well as the lives of the public. It was not intended for officers to line their pockets by selling off-roster firearms at inflated profit.

[Mr. McGowan] exploited the fact that he was a law enforcement officer in order to purchase off-roster firearms - available only to sworn peace officers - as a means of enriching himself by selling highly desirable and marketable firearms for a substantial profit. He exploited the fact that as a law enforcement officer he was able to purchase more than one gun per 30 days to increase his inventory in order to engage in the business of dealing in firearms without a federal license.

(See Exhibit I [Government's Sentencing Memorandum], at p. 3.)

ATF Special Agent in Charge, Jill A. Snyder, agreed, stating: "Ryan McGowan used his position as a law enforcement officer to purchase firearms and sell them illegally. In doing so, he violated federal law and public trust." (See Exhibit O [June 30, 2016, Bureau of Alcohol, Tobacco, Firearms, and Explosives statement re conviction].) United States Attorney, Benjamin Wagner, shared this sentiment at the time of Mr. McGowan's federal court conviction, stating, "[w]hen law enforcement officers misuse their badges to funnel dangerous weapons to the highest bidder, they compromise the safety of the public. By putting personal profit ahead of public safety, they undermine the very essence of their duty." (See Exhibit P [U.S. Dept. of Justice statement re conviction].)

Because Mr. McGowan's federal felony convictions arose out of conduct that he could only have done as a peace officer, i.e., a Sacramento County Deputy Sheriff, his conduct meets the statutory definition of "conduct arising out of" the performance of his official duties in subdivision (b)(1) of section 7522.72 of the California Government Code and therefore requires the forfeiture of all rights and benefits Mr. McGowan earned or accrued from the earliest date of the commission of any such felony (i.e., February 2008) to the date of his conviction (i.e., June 11, 2015).

As noted above, Mr. McGowan was also convicted at an earlier date, August 6, 2014, of two felony weapons related charges in the Sacramento County Superior Court (i.e., unlawful transfer of a large-capacity magazine in violation of Penal Code section 12020(A)(2); and possession of an assault weapon in violation of Penal Code section 12280(b)). These convictions also subject Mr. McGowan to felony forfeiture and his forfeiture should be from the earliest commission of his first felonious act, until his final felony conviction.

Again, there is a connection between Mr. McGowan's status as a Sacramento County Deputy Sheriff and his conviction for unlawful possession of an assault weapon, the Saiaga 12-gauge shotgun. Mr. McGowan utilized his Sacramento County Sheriff's Office badge to acquire the shotgun. Mr. McGowan stated during his trial that purchasing guns became a "hobby" of his and he may argue that his conduct was unrelated to his County employment. (See Exhibit B [Trial Transcript], at pp. 281:25-282:6.)

Notwithstanding this contention, Mr. McGowan estimated that prior to becoming a Deputy Sheriff of the Sacramento County Sheriff's Office, he only owned one gun. (See Exhibit B [Trial Testimony], at p. 280:19-23.) Accordingly, it was not until Mr. McGowan became a Sacramento County Deputy Sheriff, with the ability to purchase weapons not otherwise available to the public, that he began purchasing a substantial number of firearms, including the Saiaga 12-gauge shotgun. Mr. McGowan also testified that his former co-worker, Sacramento County Deputy

Sheriff, Thomas Lu, shared his interest in weapons, conversed with him about weapons, sold several weapons to him, and on at least one occasion gave him a new magazine lock. (See Exhibit B [Trial Transcript], at p. 284:21-25; see also, Exhibit C [Trial Transcript], at p. 342:15-26.) Sergeant Harding also confirmed that Mr. McGowan took the course on assault weapons required of police officers (see Exhibit B [Trial Transcript], at p. 234:7-17), but did not request authorization to purchase the Saiaga 12-gauge shotgun. (See Exhibit B [Trial Transcript], at p. 233:10-28.) Therefore, absent Mr. McGowan's access to the training and weapons available to him as a Sacramento County Deputy Sheriff, he would not have acquired the Saiaga 12-gauge shotgun.

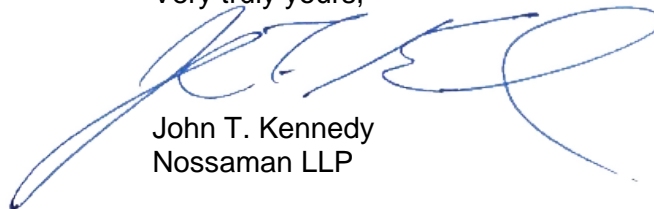
There is an even stronger connection between Mr. McGowan's state court conviction for the unlawful transfer of a large-capacity magazine and his employment as a Sacramento County Deputy Sheriff. This conviction also arose out of or in the performance of Mr. McGowan's official duties as a Sacramento County Deputy Sheriff, i.e., is job-related, and results in the forfeiture of rights and benefits earned or accrued from the earliest date of Mr. McGowan's commission of this felony (i.e., on or about July 15, 2011) to the date of his conviction (i.e., August 6, 2014). Notably, Special Agent Graham testified at Mr. McGowan's trial that an individual must be a peace officer to lawfully acquire a large-capacity magazine and further testified that only a peace officer can assemble a large-capacity magazine. (See Exhibit B [Trial Transcript], at pp. 152:8-153:19.) In fact, Mr. McGowan himself acknowledged that the only reason he was able to maintain the assembled large-capacity magazine (which he then sold without first disassembling, in violation of Penal Code section 12020(A)(2)) was because of his status as a police officer, i.e., a Sacramento County Deputy Sheriff. (See Exhibit C [Trial Transcript], at pp. 359:3-360:21.)

III. CONCLUSION

In light of the foregoing, staff has determined that Mr. McGowan is subject to felony forfeiture from the date of his earliest commission of a felonious act resulting in a conviction, Engaging in the Business of Dealing in Firearms Without a License, which Mr. McGowan first committed on or about February 2008, and for which he was convicted in federal court on June 11, 2015.

Because Mr. McGowan did not have enough service credits to be "vested," staff has determined that he is due a return of his contributions in the amount of \$18,993.93, which are the member-paid contributions from March 1, 2008, through his employment termination date of August 24, 2012. Because there was no evidence of a specific date in February 2008, for the earliest date of the commission of the crime, staff is refunding contributions from March 1, 2008, forward.

Very truly yours,



John T. Kennedy
Nossaman LLP

JK:jb6

Enclosures: Exhibits A to P

cc: Ryan McGowan – w/enc.
Mario Sierras, Chief Benefits Officer, SCERS – w/enc.

Exhibit A

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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

---o0o---

THE PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
Plaintiff,)	No. 12F03814
)	
vs.)	Dept. 21
)	
RYAN JAMES MCGOWAN,)	REPORTER'S TRANSCRIPT OF
)	PROCEEDINGS
Defendant.)	
)	
_____)	

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TUESDAY, JULY 29, 2014

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The above-entitled matter came on regularly at the date above set forth before the HON. STEVE WHITE, Judge of the Superior Court of the State of California, County of Sacramento.

Reported by:
CHERYL R. REDLICH, CSR No. 4362

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APPEARANCES OF COUNSEL

---oOo---

For the Plaintiff:

ANN MARIE SCHUBERT, District Attorney
for the County of Sacramento
By: TAN THINH, DEPUTY DISTRICT ATTORNEY,
Deputy District Attorney

For Defendant RYAN JAMES MCGOWAN:

STEVEN M. GARRETT, Public Defender
for the County of Sacramento
By: ROBERT A. WOODARD, Assistant Public Defender,
Assistant Public Defender

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--oOo--

1 you would go and observe it in the state that it was
2 found?

3 A Correct.

4 Q I would like to focus your attention for a
5 motion on the Saiaga shotgun. Let me get the exhibit
6 number.

7 People's Exhibit 25. You had a chance to look
8 at that today in court.

9 Is that the same -- does it appear to be the
10 same as when you saw it that day prior to removing it at
11 all?

12 A It appears to be.

13 Q When you found that shotgun -- I am assuming
14 you found it yourself?

15 A I -- the initial finding or the actual taking
16 into custody?

17 Q Let's start with the initial finding?

18 A The initial finding, I did not find it
19 initially inside the safe.

20 Q Someone then, I guess, told you *Come over. I*
21 *think I found something?*

22 A Correct. Yes.

23 Q When you arrived to look at it in the safe, had
24 it been adjusted in any fashion that you are aware?

25 A I believe no.

26 Q Just as though it was found by you then?

27 A Correct.

28 Q When you found the firearm, did you take a

Certificate of Certified Shorthand Reporter

STATE OF CALIFORNIA)
)
) ss.
)
 COUNTY OF SACRAMENTO)

I, CHERYL R. REDLICH, hereby certify that I am
 Certified Shorthand Reporter, and that at the times and
 places shown, I recorded verbatim in shorthand writing
 the proceedings in the following described action
 completely and correctly, to the best
 of my ability:

Court: **SUPERIOR COURT OF CALIFORNIA,
 COUNTY OF SACRAMENTO
 DEPARTMENT 21
 HON. STEVE WHITE**

Case: **THE PEOPLE OF THE STATE OF CALIFORNIA
 VS. RYAN JAMES MCGOWAN, Defendant**

Case No: **12F03814**

Date(s): **TUESDAY, JULY 29, 2014
 WEDNESDAY, JULY 30, 2014
 THURSDAY, JULY 31, 2014
 WEDNESDAY, AUGUST 6, 2014**

I further certify that my said notes have been
 transcribed into typewriting, and that the foregoing
PAGES 1 to 380, inclusive, constitute an accurate and
 complete transcript of all of my shorthand writing for
 the dates and matter specified.

I further certify that I have complied with CCP
 237(a)(2) in that all personal juror identifying
 information have been redacted, if applicable.

Dated: October 6, 2021

Cheryl R. Redlich, CSR No. 4362, RPR, CRR
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Exhibit "

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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

---o0o---

THE PEOPLE OF THE STATE OF CALIFORNIA,)	
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Plaintiff,)	No. 12F03814
)	Dept. 21
vs.)	
)	
RYAN JAMES MCGOWAN,)	REPORTER'S TRANSCRIPT OF
)	PROCEEDINGS
Defendant.)	
)	
_____)	

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WEDNESDAY, JULY 30, 2014
MORNING SESSION

---o0o---

The above-entitled matter came on regularly at the date above set forth before the HON. STEVE WHITE, Judge of the Superior Court of the State of California, County of Sacramento.

Reported by:
CHERYL R. REDLICH, CSR No. 4362

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APPEARANCES OF COUNSEL

---oOo---

WEDNESDAY, JULY 30, 2014 - MORNING SESSION

For the Plaintiff:

ANN MARIE SCHUBERT, District Attorney
for the County of Sacramento
By: TAN THINH, DEPUTY DISTRICT ATTORNEY,
Deputy District Attorney

For Defendant RYAN JAMES MCGOWAN:

STEVEN M. GARRETT, Public Defender
for the County of Sacramento
By: ROBERT A. WOODARD, Assistant Public Defender,
Assistant Public Defender

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I N D E X
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1 is what's still kind of floating around out there.

2 Q And to your knowledge, would a repair be,
3 potentially, the entire magazine but in separate pieces
4 in one bag, something like that?

5 A That's pretty accurate, yes.

6 Q Back in 2011, the stores were allowed to do
7 that. You weren't prosecuting them for that?

8 A Okay. So repair kits are -- the intent of them
9 is to repair a lawfully possessed magazine that you
10 would have owned prior to 2000. The magazine laws in
11 California changed dramatically with the 1999
12 legislation.

13 After that point, starting January 1st, 2000,
14 to lawfully acquire a large-capacity magazine, you had
15 to have been a peace officer, basically, and you
16 couldn't buy anything larger than a 10-round magazine.

17 You would have to show your credentials and the
18 store would basically take a photo copy of your ID and
19 you could buy what you needed for your purposes if you
20 are law enforcement.

21 If you are civilian, basically you could keep
22 what you had as far as the magazines go. And there was
23 no inherent breaking of the law, if you will, with the
24 possession by a person that's not prohibited from having
25 guns.

26 Q Okay. And so for clarification -- I know
27 that's a lot of language there.

28 A Yeah.

1 Q If you are allowed to have guns, you are
2 allowed to possess a high-capacity or large-capacity
3 magazine; is that what you are saying?

4 A I am saying if you owned it prior to 2000 and
5 you had that magazine prior to 2000, you could keep --
6 keep ahold of it. There was no issue with you breaking
7 the law. As long as you didn't become prohibited from
8 having firearms, you could keep that.

9 Q When you say "prior to 2000," are you referring
10 to if you had possession of those large-capacity
11 magazines you could keep them; but if you acquired them
12 afterwards, you could not keep them?

13 A If you acquired a large-capacity magazine after
14 2000 -- there aren't too many circumstances where I
15 would think it would be a lawful acquisition unless you
16 are a peace officer or gun store owner that had a permit
17 issued by the Department of Justice, because we issue
18 permits to stores that ask for them so that they can
19 sell to military and law enforcement.

20 Q What if you buy a magazine out of state that is
21 large capacity and bring it back to this state?

22 A If we find out about it and catch you in the
23 act, we'll pull you over and arrest you.

24 Q That's my question. It is a crime buying a
25 magazine in another state that is a large-capacity
26 magazine and then bringing it across state line?

27 A Correct.

28 Q What if you take that magazine apart?

1 that appeared to be just temporarily put on there, and I
2 think the tape was used to affix that so it didn't just
3 disappear.

4 Q I want to clarify that is not the bolt.

5 The bolt and nuts are still on there?

6 A Yes. They all still appear to be on there. It
7 is sort of a cosmetic thing, and the tape was put on
8 there -- I don't know if it was ATF or whatever, but I
9 think they put it on there just to keep it attached to
10 the weapon in some way.

11 Q But when you analyzed it, the bolt was through
12 it and the nuts were on?

13 A Yes.

14 Q With regard to assembling a large- or
15 high-capacity magazine, you indicated the assembly of it
16 would be a crime; is that accurate?

17 A Yes.

18 Q Okay. In the case in a situation where a
19 person is a peace officer, they can assemble a
20 high-capacity magazine; is that accurate?

21 A Yes, sir. There is an exception of peace
22 officers and the manufacturing of them during the course
23 and scope of their duties.

24 Q Now there not been a lot of talk today about
25 kits. You have used the term "repair kit." As I was
26 reviewing the law a few moments ago, the term that's
27 actually used in 2014 is actually "conversion kit."

28 Do you know that term?

1 maintenance of the weapons. Anything related with
2 weapons and ammunition I handle for the department.

3 Q How long have you had that position as the
4 range master?

5 A Approximately seven and a half years.

6 Q So dating back to?

7 A February 2007.

8 Q As part of your duties as a range master, are
9 you the point person in the department to authorize
10 other sheriff's deputies to purchase and possess assault
11 weapons in the performance of their duties?

12 A Yes.

13 Q When a sheriff deputy is on duty or is working,
14 do they typically carry and possess an assault weapon?

15 A There is training that they have to go through
16 prior to being able to use it as a duty weapon, and
17 that's voluntary. If somebody chooses to go through our
18 rifle program, they can elect to do that.

19 Q When a sheriff deputy begins their position as
20 a sheriff deputy and working, are they typically
21 assigned an assault weapon from the very beginning?

22 A No.

23 Q You said if a deputy is interested in accessing
24 or possessing an assault weapon during the course of
25 their job duties, they have education?

26 A Correct.

27 Q In addition to the education and completion of
28 the education, is there anything else that they need to

1 do?

2 A They have to maintain their qualifications and
3 attend updated training regarding the weapon.

4 Q Now, if they complete all of those things, is
5 there anybody who is in charge of authorizing the deputy
6 to use an assault weapon or purchase an assault weapon
7 in the performance of their duties?

8 A Yes. That would be me.

9 Q As you said, that's part of your duties as a
10 range master?

11 A Yes.

12 Q Is there anyone else in charge of that aspect
13 of the --

14 A There's only three people that can issue
15 letters: Myself, the undersheriff, and the sheriff.

16 Q Now, let me take you -- excuse me.

17 Let me take you back to the time period of
18 November 3rd, 2011.

19 During that time period, were you working as a
20 range master at the Sacramento Sheriff's Department?

21 A Yes, I was.

22 Q You have the same job as you just previously
23 described and testified to; correct?

24 A Yes.

25 Q Are you familiar with an individual by the name
26 of Ryan McGowan?

27 A Yes.

28 Q Do you know Ryan McGowan?

1 A Yes.

2 Q Do you know what Ryan McGowan looks like?

3 A Yes, I do.

4 Q Do you see him in court today?

5 A Yes. He is sitting there in the white
6 button-down shirt.

7 THE COURT: Identifying the defendant, Mr. Ryan
8 McGowan.

9 MR. THINH: Thank you.

10 Q (By MR. THINH): In 2011, did Mr. McGowan come
11 and ask you or request to receive authorization to
12 purchase and possess two weapons described as an Izhmash
13 model Saiga 12, 12-guage shotgun serial number H, as in
14 house, 08449812 and an FN Herstal, H-e-r-s-t-a-l, model
15 rifle PS90 5.7 times 28 caliber, serial number FN
16 038168?

17 Did Mr. McGowan ever contact you to receive any
18 authorization to purchase and possess these weapons in
19 the performance of his duties as a sheriff's deputy?

20 A No.

21 Q I guess I should ask, back in November 2011 --
22 excuse me, prior to November 3rd, 2011, did you know
23 Mr. McGowan to be a sheriff's deputy with your
24 department?

25 A Yes.

26 Q Did you ever give Mr. McGowan any authorization
27 to purchase or possess these particular assault weapons?

28 A No.

1 MR. THINH: Thank you.

2 No further questions.

3 THE COURT: Mr. Woodard.

4 **CROSS-EXAMINATION**

5 **By ROBERT A. WOODARD, Assistant Public Defender, counsel**
6 **for the defendant:**

7 Q Thank you. Are you aware Mr. McGowan had taken
8 the course in the assault weapons?

9 A Yes.

10 Q Did he ask for permission for an assault weapon
11 that wasn't mentioned here today?

12 A Yes.

13 Q And did he get permission for that assault
14 weapon?

15 A Yes, he did.

16 Q Was that an LWRC International?

17 A Yes.

18 MR. WOODARD: That's all I have.

19 THE COURT: Anything further, Mr. Think?

20 MR. THINH: No, your Honor.

21 THE COURT: Thank you, Sergeant Harding. You
22 may step down.

23 **(The witness exits the courtroom.)**

24 THE COURT: Mr. Think.

25 MR. THINH: People call Sara Lewis.

26 **(The witness enters the courtroom.)**

27 THE CLERK: Do you solemnly state that the
28 testimony you are about to give in the case now pending

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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

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THE PEOPLE OF THE STATE OF CALIFORNIA,)	
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Plaintiff,)	No. 12F03814
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RYAN JAMES MCGOWAN,)	REPORTER'S TRANSCRIPT OF
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WEDNESDAY, JULY 30, 2014
AFTERNOON SESSION

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The above-entitled matter came on regularly at the date above set forth before the HON. STEVE WHITE, Judge of the Superior Court of the State of California, County of Sacramento.

Reported by:
CHERYL R. REDLICH, CSR No. 4362

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APPEARANCES OF COUNSEL

---oOo---

For the Plaintiff:

ANN MARIE SCHUBERT, District Attorney
for the County of Sacramento
By: TAN THINH, DEPUTY DISTRICT ATTORNEY,
Deputy District Attorney

For Defendant RYAN JAMES MCGOWAN:

STEVEN M. GARRETT, Public Defender
for the County of Sacramento
By: ROBERT A. WOODARD, Assistant Public Defender,
Assistant Public Defender

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WEDNESDAY, JULY 30, 2014 - AFTERNOON SESSION

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1 there's certain safety standards in place.

2 In order for a gun to be sold to the general
3 public, it has to be on what we call the roster of
4 lists; and if it is not, then it is not available for
5 purchase unless you are a police officer.

6 Q So, therefore, the nonroster firearms are
7 obviously those kinds that are not on the roster list
8 for the general public?

9 A That's correct.

10 Q You stated at the very end there that you have
11 to be a police officer or peace officer; is that
12 correct?

13 A Yeah. To buy one new that has been brought in
14 the state, you have to be a peace officer.

15 Q And that is to buy a gun that is a nonroster
16 gun?

17 A That's correct.

18 THE COURT: In terms of terminology, Detective,
19 you said "DOJ"; that's Department of Justice. You said
20 "DROS"; that's Dealer Record of Sale?

21 THE WITNESS: Correct.

22 THE COURT: Go a head.

23 Q (By MR. THINH): If a police officer, or any
24 law enforcement officer, if a law enforcement officer
25 purchased a nonroster firearm, then could they then turn
26 around and sell it to the general public at a later
27 time?

28 A Yes.

1 through an FFL.

2 Q And so the gun store itself can only sell new
3 guns to law enforcement?

4 A Are we speaking only off-roster guns?

5 Q Off-roster.

6 A Yes.

7 Q And then later on, those guns can be
8 transferred to anybody multiple times.

9 There is no law against that?

10 A Well, there is a law how many times you can
11 sell a gun in a year, which is five.

12 Q So every year you can sell the same gun, that
13 specific gun can only be sold five times?

14 A One person is allowed to make five firearms
15 transactions, sales per year.

16 Q What about the actual guns itself?

17 Is there a limitation on how many times someone
18 can transfer it along the line?

19 A No, sir.

20 Q In your experience, lot of people who are
21 police officers, I assume, have these off-roster guns.
22 They bought them; right?

23 A Yes.

24 Q There is nothing wrong with that?

25 MR. THINH: Objection. Relevance.

26 THE COURT: Overruled.

27 THE WITNESS: Is it illegal for the
28 non-civilian to purchase the off-roster?

1 through the department.

2 Q So earlier you heard the sergeant testify this
3 was a class that had to be taken to get an assault
4 weapon.

5 Is this the class he was referring to?

6 A That is the class.

7 Q Did you complete that class?

8 A I did.

9 Q In 2011 -- you heard the statements and the
10 recordings and such.

11 My question for you is: In that range of time,
12 do you know about how many firearms you had possessed or
13 owned at that time?

14 A I don't know an exact number, but at the time
15 of the November? Approximately, I want to say, 25 guns.

16 Q And I imagine -- you tell me if I am wrong --
17 you didn't buy all 25 at one time?

18 A No. Over the course of several years.

19 Q Did you have any guns prior to becoming a law
20 enforcement officer?

21 A Yes.

22 Q How many guns did you own then?

23 A I believe just one.

24 Q Did you take any firearms training for that
25 gun?

26 A Yes. I had to take a general safety course. I
27 used to work for security.

28 Q So prior to being law enforcement with the

1 Sacramento sheriff you worked security?

2 A Yes. Armored Car.

3 Q And was that also an armed position, meaning
4 you wore a firearm?

5 A That's correct.

6 Q How long did you do that for?

7 A Approximately a year and a half.

8 Q When you became a law enforcement officer with
9 the Sacramento Sheriffs, did they provide you with any
10 guns to begin your career?

11 A Yes. Semiautomatic pistol.

12 Q Is that something you have to buy and they
13 reimburse you for or you pay for yourself?

14 A It is just something they basically loan to
15 you.

16 Q Do they loan you any other weapons?

17 A No.

18 Q At some point it appears as though you bought
19 more weapons. Do you remember when you first began
20 buying additional weapons to the duty roster weapons you
21 had?

22 A I don't know the year or the exact date, but
23 once I was settled in my facilities and I met my
24 co-worker, Tom Lu, he sold me some AR-15 rifles.

25 Q Now when it comes to guns, you are law
26 enforcement -- you were a law enforcement officer, so I
27 can see the relation to guns there.

28 Was that the only reasons you were buying guns?

1 A I hadn't actually experienced these guns
2 that -- before I didn't know about them. Once I
3 experienced them, I enjoyed shooting them. It kind of
4 grew from there.

5 Q Did it become a hobby or something like this?

6 A Definitely. Yeah. That's what I consider it.

7 Q When you -- I said "a hobby"; you said "hobby."
8 When you say "a hobby," what do you mean by a
9 hobby?

10 A Something you do in your spare time for fun
11 with friends.

12 Q And how did you begin this hobby?

13 A By "began" do you mean --

14 Q What inspired you to have this hobby?

15 A Well, once I shot -- I had never shot a rifle
16 before; I just had a pistol. So once I actually shot
17 the rifle and going through the academy, just learning
18 more about guns and, you know, knowing that I know how
19 to handle them, be safe with them, going out to the
20 ranges, it just kind of grew from there.

21 You want to try different guns, different
22 calibers. That's basically it.

23 Q So when you bought these guns, like you said,
24 different calibers, things like that, what was your
25 intention when you bought them?

26 A To shoot them and have fun with them and then
27 if I didn't like them get rid of 'em.

28 Q Did you modify your guns in any fashion?

1 co-workers. Sometimes I would try to look it up in the
2 Penal Code.

3 Q In your estimation, were you attempting to make
4 all of your guns legal?

5 A Absolutely.

6 Q Did you ever attempt to make your guns illegal?

7 A Never.

8 Q Did you ever attempt to make your guns an
9 assault rifle illegally?

10 A Never.

11 Q Do you know -- back when you began buying guns,
12 did you buy several in the very beginning or did you
13 space them out?

14 How did that happen?

15 A After the first purchase, which was for the
16 security, I honestly didn't have the money to buy guns.
17 Then I went straight from there to the Sheriff's
18 Department, so all of a sudden my income was --
19 basically, I had spare money, so I just started buying
20 guns.

21 And buying the first, I think, three rifles off
22 of Lu, it kind of grew from there. We both had
23 interests. He told me, *I got this gun. You should try*
24 *it out.* And we would go to the range, shoot it. If I
25 liked it, then I would go buy one.

26 Q I don't know this to be true, let me ask you.

27 I assume you can't take these random guns you
28 have at home and take them on duty with you?

Certificate of Certified Shorthand Reporter

STATE OF CALIFORNIA)
)
) ss.
)
COUNTY OF SACRAMENTO)

I, CHERYL R. REDLICH, hereby certify that I am
Certified Shorthand Reporter, and that at the times and
places shown, I recorded verbatim in shorthand writing
the proceedings in the following described action
completely and correctly, to the best
of my ability:

Court: SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
DEPARTMENT 21
HON. STEVE WHITE
Case: THE PEOPLE OF THE STATE OF CALIFORNIA
VS. RYAN JAMES MCGOWAN, Defendant
Case No: 12F03814
Date(s): TUESDAY, JULY 29, 2014
WEDNESDAY, JULY 30, 2014
THURSDAY, JULY 31, 2014
WEDNESDAY, AUGUST 6, 2014

I further certify that my said notes have been
transcribed into typewriting, and that the foregoing
PAGES 1 to 380, inclusive, constitute an accurate and
complete transcript of all of my shorthand writing for
the dates and matter specified.

I further certify that I have complied with CCP
237(a)(2) in that all personal juror identifying
information have been redacted, if applicable.

Dated: October 6, 2021

Cheryl R. Redlich, CSR No. 4362, RPR, CRR
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Exhibit #

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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

---o0o---

THE PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
Plaintiff,)	No. 12F03814
)	
vs.)	Dept. 21
)	
RYAN JAMES MCGOWAN,)	REPORTER'S TRANSCRIPT OF
)	PROCEEDINGS
Defendant.)	
)	
_____)	

---o0o---

THURSDAY, JULY 31, 2014

---o0o---

The above-entitled matter came on regularly at
the date above set forth before the HON. STEVE WHITE,
Judge of the Superior Court of the State of California,
County of Sacramento.

Reported by:
CHERYL R. REDLICH, CSR No. 4362

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APPEARANCES OF COUNSEL

---oOo---

For the Plaintiff:

ANN MARIE SCHUBERT, District Attorney
for the County of Sacramento
By: TAN THINH, DEPUTY DISTRICT ATTORNEY,
Deputy District Attorney

For Defendant RYAN JAMES MCGOWAN:

STEVEN M. GARRETT, Public Defender
for the County of Sacramento
By: ROBERT A. WOODARD, Assistant Public Defender,
Assistant Public Defender

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THURSDAY, JULY 31, 2014 329

Proceedings in the presence of the jury:

RYAN MCGOWAN - Resumed 330

Cross-Examination Resumed By MR. THINH

Redirect Examination By MR. WOODARD 355

Recross-Examination By MR. THINH 363

Redirect Examination By MR. WOODARD 365

Defense rests 367

--oOo--

1 able to just secure the gun so that nobody could get to
2 it; right?

3 A That's generally why I put them in there.

4 Q But you waited around for about a month. Well,
5 I guess you didn't wait around for a month, but it
6 wasn't until a month later that the detectives actually
7 found this gun inside of your safe; correct?

8 A That's correct.

9 Q And during that time you were in violation of
10 the law for having this particular gun without a
11 magazine lock; isn't that right?

12 A I didn't think so at the time.

13 Q That was your interpretation; correct?

14 A That's correct.

15 Q The new magazine lock that you obtained, did
16 you purchase that from --

17 A I got that from Lu, Tom Lu, my partner. It was
18 a Raddlock.

19 Q Tom Lu is a co-worker of yours?

20 A Former co-worker, a deputy.

21 Q Former sheriff deputy?

22 A That's correct.

23 Q Did you buy it or did he just give it to you?

24 A He gave it to me.

25 Q So he didn't charge you any money for it?

26 A No.

27 Q Do you remember telling Detective Higgins and
28 Detective Halstead at the Police Department:

1 tested?

2 A That's correct.

3 Q As a police officer, which you were in 2011,
4 are you allowed to assemble large-capacity magazines?

5 A Yes.

6 Q So when Mr. Think asked you, *Did you assemble*
7 *it?* You answered, *Yes.*

8 But that wasn't against the law; is that
9 correct?

10 A That's correct.

11 Q Your goal then was to disassembled it so you
12 could then transfer it?

13 A Yes.

14 Q Now we all know, the jury, we all heard it, we
15 saw it, you didn't unassembled one of them.

16 Was that your intention?

17 Did you intend to give him a large-capacity
18 magazine assembled?

19 MR. THINK: Objection. Relevance.

20 THE COURT: Counsel, want to approach.

21 (Counsel approach the bench and a discussion is
22 held off the record.)

23 THE COURT: Sustained.

24 Q (By MR. WOODARD): Did you willfully give him
25 that large-capacity magazine intact?

26 A No.

27 Q Would you term it as an accident?

28 A Yes.

1 Q Let me restate that. Let me hear you say what
2 you want to say.

3 How would you describe why you gave him that
4 large-capacity magazine intact, if you can?

5 A Being that I don't actually remember, my memory
6 of it is from the video, seeing that there was three
7 magazines, one was left intact --

8 MR. THINH: I object as speculation.

9 THE COURT: This is the situation, Mr. McGowan.
10 You can testify as to your best recollection. What you
11 can't do is speculate about what happened.

12 Does that make sense to you.

13 THE WITNESS: Yes, your Honor.

14 THE COURT: If you want to frame your answer in
15 terms of your best recollection of what happened, that's
16 admissible. If you are doing something that amounts to
17 a guess, that's not admissible.

18 THE WITNESS: I understand.

19 THE COURT: Okay.

20 THE WITNESS: I don't have memory of what
21 happened, so I don't know why one was left assembled.

22 Q (By MR. WOODARD): You sold over I think 20
23 guns prior to this incident; is that accurate?

24 A That's accurate.

25 Q You told the police during your interview your
26 practice is to disassemble the magazine?

27 A Every time.

28 Q It is clear one time you didn't do that.

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Certificate of Certified Shorthand Reporter

STATE OF CALIFORNIA)
)
) ss.
)
COUNTY OF SACRAMENTO)

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completely and correctly, to the best
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Court: **SUPERIOR COURT OF CALIFORNIA,
 COUNTY OF SACRAMENTO
 DEPARTMENT 21
 HON. STEVE WHITE**

Case: **THE PEOPLE OF THE STATE OF CALIFORNIA
 VS. RYAN JAMES MCGOWAN, Defendant**

Case No: **12F03814**

Date(s): **TUESDAY, JULY 29, 2014
 WEDNESDAY, JULY 30, 2014
 THURSDAY, JULY 31, 2014
 WEDNESDAY, AUGUST 6, 2014**

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I further certify that I have complied with CCP
237(a)(2) in that all personal juror identifying
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Dated: October 6, 2021

Cheryl R. Redlich, CSR No. 4362, RPR, CRR
--oOo--

Exhibit D

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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

---o0o---

THE PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
Plaintiff,)	No. 12F03814
)	
vs.)	Dept. 21
)	
RYAN JAMES MCGOWAN,)	REPORTER'S TRANSCRIPT OF
)	PROCEEDINGS
Defendant.)	
)	
)	
_____)	

---o0o---

WEDNESDAY, AUGUST 6, 2014

---o0o---

The above-entitled matter came on regularly at the date above set forth before the HON. STEVE WHITE, Judge of the Superior Court of the State of California, County of Sacramento.

Reported by:
CHERYL R. REDLICH, CSR No. 4362

APPEARANCES OF COUNSEL

---oOo---

For the Plaintiff:

ANN MARIE SCHUBERT, District Attorney
for the County of Sacramento

By: TAN THINH, Deputy District Attorney

For Defendant RYAN JAMES MCGOWAN:

STEVEN M. GARRETT, Public Defender
for the County of Sacramento

By: STEPHEN J. NELSON, Assistant Public Defender

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I N D E X

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Verdict	372
Certificate of Certified Shorthand Reporter	380

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1 **WEDNESDAY, AUGUST 6, 2014**

2 MORNING SESSION

3 --oOo--

4 In the matter of the People of the State of
5 California versus RYAN JAMES MCGOWAN, Defendant, Case
6 Number 12F03814, came on regularly this day before
7 Honorable STEVE WHITE, Judge of the Superior Court of
8 California, for the County of Sacramento, Department 21.

9 The People were represented by TAN THINH,
10 Deputy District Attorney.

11 The Defendant, RYAN JAMES MCGOWAN, was present
12 and represented by ROBERT A. WOODARD, Assistant Public
13 Defender.

14 The following proceedings were had, to wit:

15 --oOo--

16 THE BAILIFF: Please come to order. Court is
17 in session.

18 THE COURT: The jurors are all present.

19 Ms. [REDACTED], has the jury reached verdicts?

20 JUROR SEVEN: Yes, we have.

21 THE COURT: Would you give the verdicts to
22 Deputy Baldwin, please.

23 (Court perusing verdicts.)

24 THE COURT: Madam Clerk, please read the
25 verdicts.

26 THE CLERK: Yes, your Honor.

27 (As read:) Superior Court of California,
28 County of Sacramento, the People of the State of

1 California plaintiff versus Ryan James McGowan,
2 defendant, Case Number 12F03814, Department 21,
3 verdict, Count 1.

4 We, the jury, in the above entitled the
5 cause, find the defendant, Ryan James McGowan,
6 guilty of the crime of violation of section
7 12020(a)(2) of the Penal Code of the state of
8 California, unlawfully give a large-capacity
9 magazine to Agent Tehran Palmer on or about
10 July 15th, 2011.

11 Dated August 6, 2014, signed
12 Foreperson/Juror Number Seven.

13 (End of reading.)

14 THE COURT: Ladies and gentlemen of the jury,
15 is that your true and correct verdict, so say you all?

16 JURORS: Yes.

17 THE COURT: So say they all.

18 THE CLERK: Verdict Count 2.

19 (As read:)

20 We, the jury in the above-entitled cause,
21 find the defendant, Ryan James McGowan, not
22 guilty of the crime of violation of section
23 12020(a)(2) of the Penal Code of the state of
24 California, unlawfully give a large-capacity
25 magazine to Agent Tehran Palmer on or about
26 August 4th, 2011, dated August 6, 2014.

27 Signed Foreperson/Juror Number Seven.

28 (End of reading.)

1 THE COURT: Ladies and gentlemen of the jury,
2 is that your true and correct verdict so say you all?

3 JURORS: Yes.

4 THE COURT: So say they all.

5 THE CLERK: Verdict Count 3.

6 (As read:)

7 We, the jury in if above-entitled cause,
8 find the defendant, Ryan James McGowan, guilty
9 of the crime of violation of section 12280(b)
10 of the Penal Code of the state of California,
11 possession of assault weapon, to wit, an
12 Izhmash model Saiaga 12 gauge shotgun.

13 Dated August 6, 2014.

14 Signed Foreperson/Juror Number Seven.

15 (End of reading.)

16 THE COURT: Ladies and gentlemen of the jury,
17 is this your true and correct verdict so say you all?

18 JURORS: Yes.

19 THE COURT: So say they all.

20 THE CLERK: Verdict Count 4.

21 (As read:)

22 We, the jury in the above-entitled cause,
23 find the defendant, Ryan James McGowan, not
24 guilty of the crime of violation of section
25 12280(b) of the Penal Code of the state of
26 California, possession of assault weapon, to
27 wit, an FN Herstal PS 90 rifle.

28 Dated August 6, 2014.

Certificate of Certified Shorthand Reporter

STATE OF CALIFORNIA)
)
) ss.
)
 COUNTY OF SACRAMENTO)

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 COUNTY OF SACRAMENTO
 DEPARTMENT 21
 HON. STEVE WHITE**

Case: **THE PEOPLE OF THE STATE OF CALIFORNIA
 VS. RYAN JAMES MCGOWAN, Defendant**

Case No: **12F03814**

Date(s): **TUESDAY, JULY 29, 2014
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Dated: October 6, 2021

Cheryl R. Redlich, CSR No. 4362, RPR, CRR
 --oOo--

Exhibit E

1 BENJAMIN B. WAGNER
United States Attorney
2 WILLIAM S. WONG
MICHAEL D. ANDERSON
3 Assistant U.S. Attorneys
501 I Street, Suite 10-100
4 Sacramento, CA 95814
Telephone: (916) 554-2700

FILED

MAY 31 2012

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [Signature]
DEPUTY CLERK

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 RYAN MCGOWAN,
14 ROBERT SNELLINGS,
15 ULYSSES SIMPSON GRANT
EARLY, IV, and
16 THOMAS LU,

17 Defendants.

Case No. **212 - CR - 0207 LKK**

VIOLATIONS: 18 U.S.C. §
922(a)(1)(A) - Engaging in the
Business of Dealing in Firearms
Without a License (2 counts); 18
U.S.C. § 371 - Conspiracy to
Make a False Statement With
Respect to Firearm Records
(5 Counts); 18 U.S.C. §
924(d)(1) and 28 U.S.C. §
2461(c) - Criminal Forfeiture

18
19 I N D I C T M E N T

20 The Grand Jury charges: T H A T

21 At all times relevant to this Indictment:

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

26 2. A Federal Firearms Licensee (FFL) is an individual or
27 entity, who after submitting an application and undergoing an
28 investigation by ATF, is then granted a license to sell certain

1 firearms, and other controlled items. Federal firearms laws
2 require anyone who is a firearms dealer to obtain a federal
3 firearms license. Private persons can sell firearms without a
4 license, provided they are not engaged in the business of selling
5 firearms, such as the occasional sale of a portion of a personal
6 firearms collection.

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

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

26 //

27 //

28 //

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

4 The Grand Jury charges: T H A T

5 RYAN McGOWAN,

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

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

18 The Grand Jury further charges: T H A T

19 RYAN McGOWAN, and
20 ROBERT SNELLINGS,

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

Overt Acts

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

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

10 2. The very next day, on or about July 2, 2009, defendant
11 RYAN MCGOWAN purchased the same Sturm, Ruger & Co., model LCP,
12 .380 caliber handgun, serial number 37182507, from Snellings'
13 Firearms. This handgun is not on the roster of approved handguns
14 for sale to the public in California and can only be purchased
15 new from an FFL by a peace officer. Defendant RYAN MCGOWAN was
16 able to purchase this firearm due to his peace officer status.

17 3. During the purchase of this firearm, on or about July
18 2, 2009, defendant RYAN MCGOWAN filled out ATF Form 4473.
19 Question 12a on ATF Form 4473, asks: "Are you the actual buyer
20 of this firearm(s) listed on the form?" On the form, defendant
21 RYAN MCGOWAN answered "yes" to question 12a. If defendant RYAN
22 MCGOWAN did not answer "yes", the sale would have been prohibited
23 by law.

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

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

6 All in violation of Title 18, United States Code, Section
7 371.

8 COUNT THREE: [18 U.S.C. § 371 - Conspiracy to Make a False
9 Statement With Respect to Firearm Records]

10 The Grand Jury further charges: T H A T

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

23 Overt Acts

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

26 1. On June 17, 2010, Sacramento Police Officer C.L. started
27 the Dealer's Record of Sale (DROS) process for two Sturm, Ruger &
28 Co., model LCP, .380 caliber handguns with serial numbers

1 37437161 and 37437405. This transaction was completed by
2 defendant ROBERT SNELLINGS as an FFL for Snellings' Firearms.
3 These firearms were "off roster" firearms, not on the approved
4 list of handguns for sale in California, and could only be
5 purchased new from an FFL by a peace officer. At the time C.L.
6 filled out ATF Form 4473, he and defendant ROBERT SNELLINGS knew
7 that B.G. was the actual buyer and not C.L.

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

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

15 All in violation of Title 18, United States Code, Section
16 371.

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

19 The Grand Jury further charges: T H A T

20 ROBERT SNELLINGS,
21 defendant herein, beginning on or about August 12, 2010, and
22 continuing through on or about September 13, 2010, in the County
23 of Sacramento, State and Eastern District of California, and
24 elsewhere, did conspire with other persons known and unknown to
25 the Grand Jury, to knowingly make a false statement and
26 representation with respect to information required to be kept
27 under federal law by an FFL, specifically representing on Form
28 4473 that unindicted coconspirator C.L. was the actual buyer of a

1 Carl Walther, model PK 380, .380 caliber handgun, serial number
2 PK038993, when he was not the actual buyer, in violation of Title
3 18, United States Code, Section 924(a)(1)(A).

4 Overt Acts

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

7 1. On or about August 12, 2010, Sacramento Police Officer
8 C.L. started the DROS process for a semiautomatic, Carl Walther,
9 model PK380, ".38 caliber" handgun, serial number PK038993.

10 Defendant ROBERT SNELLINGS was listed as the FFL that completed
11 the paperwork for this firearm. The entry of the caliber on
12 August 12, 2010 as ".38" is not correct. This handgun is not on
13 the roster of approved handguns for sale to the public in
14 California and can only be purchased new from an FFL by a peace
15 officer.

16 2. On September 13, 2010, approximately 32 days later,
17 C.L. private party transferred the same firearm to defendant
18 ROBERT SNELLINGS as a private person to complete the "straw
19 purchase" transaction. The firearm was transferred to defendant
20 ROBERT SNELLINGS, using defendant ROBERT SNELLINGS' business as
21 the FFL to conduct the paperwork.

22 All in violation of Title 18, United States Code, Section
23 371.

24 COUNT FIVE: [18 U.S.C. § 371 - Conspiracy to Make a False
25 Statement with Respect to Firearm Records]

26 The Grand Jury further charges: T H A T

27 ROBERT SNELLINGS,

28 defendant herein, beginning on or about July 9, 2009, and

1 continuing through on or about August 4, 2009, in the County of
2 Sacramento, State and Eastern District of California, and
3 elsewhere, did conspire with other persons known and unknown to
4 the Grand Jury, to knowingly make a false statement and
5 representation with respect to information required to be kept
6 under federal law by an FFL, specifically representing on Form
7 4473 that unindicted coconspirator C.K. was the actual buyer of a
8 Carl Walther, Model PPS, .40 caliber handgun, serial number
9 AD3719, when he was not the actual buyer, in violation of Title
10 18, United States Code, Section 924(a)(1)(A).

11 Overt Acts

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

14 1. On or about July 9, 2009, Roseville Police Officer C.K.
15 started the DROS process for the purchase of a Carl Walther,
16 model PPS, .40 caliber handgun, serial number AD3719. This
17 handgun is not on the roster of approved handguns for sale to the
18 public in California and can only be purchased new from an FFL by
19 a peace officer. Defendant ROBERT SNELLINGS was the FFL that
20 completed the ATF Form 4473 paperwork. C.K. listed himself as
21 the actual buyer of the handgun, when in fact the actual buyer of
22 the handgun was defendant ROBERT SNELLINGS.

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

27 All in violation of Title 18, United States Code, Section
28 371.

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

2 The Grand Jury further charges: T H A T

3
4 ROBERT SNELLINGS, and
ULYSSES SIMPSON GRANT EARLY, IV,
5 defendants herein, beginning on or about April 29, 2010, and
6 continuing through on or about May 27, 2010, in the County of
7 Sacramento, State and Eastern District of California, and
8 elsewhere, did conspire with each other, and other persons known
9 and unknown to the Grand Jury, to knowingly make a false
10 statement and representation with respect to information required
11 to be kept under federal law by an FFL, specifically representing
12 on Form 4473 that unindicted co-conspirator C.K. was the actual
13 buyer of a Sturm, Ruger & Co., model LCP, .380 caliber handgun,
14 serial number 37300127, when he was not the actual buyer, in
15 violation of Title 18, United States Code, Section 924(a)(1)(A).

16 Overt Acts

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

19 1. On or about April 29, 2010, Roseville Police Officer
20 C.K. started the DROS process to purchase a Sturm, Ruger & Co.,
21 model LCP, .380 caliber handgun, serial number 37300127, from
22 Snellings' Firearms. This handgun is not on the roster of
23 approved handguns for sale to the public in California and can
24 only be purchased new from an FFL by a peace officer. Unindicted
25 co-conspirator C.K. was able to purchase this firearm due to his
26 peace officer status.

27 2. During the purchase of this firearm, C.K. filled out
28 ATF Form 4473. Question 12a asks: "Are you the actual buyer of

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

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

13 All in violation of Title 18, United States Code, Section
14 371.

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

17 The Grand Jury further charges: T H A T

18 THOMAS LU,

19 defendant herein, on or about March 2008, and continuing through
20 at least November 2011, in the County of Sacramento, State and
21 Eastern District of California, and elsewhere, not having
22 received a license to engage in the business of dealing in
23 firearms as required by Title 18, United States Code, Section
24 923, did engage in the business of dealing in firearms and, in
25 the course of such business, received firearms that had been
26 shipped and transported in interstate and foreign commerce, in
27 violation of Title 18, United States Code, Section 922(a)(1)(A).

28 ///

1 FORFEITURE ALLEGATION: [18 U.S.C. § 924(d)(1) and 28 U.S.C. §
2 2461(c) - Criminal Forfeiture]

3 1. Upon conviction of one or more of the offenses alleged
4 in Counts One through Seven of this Indictment, defendants RYAN
5 MCGOWAN, ROBERT SNELLINGS, ULYSSES SIMPSON GRANT EARLY, IV, and
6 THOMAS LU shall forfeit to the United States pursuant to
7 18 U.S.C. § 924(d)(1) and 28 U.S.C. § 2461(c), any firearms and
8 ammunition involved in or used in the knowing or willful
9 commission of the offenses.

10 2. If any property subject to forfeiture, as a result of
11 the offenses alleged in Counts One through Seven of this
12 Indictment, for which defendants are convicted:

- 13 a. cannot be located upon the exercise of due diligence;
14 b. has been transferred or sold to, or deposited with, a
15 third party;
16 c. has been placed beyond the jurisdiction of the Court;
17 d. has been substantially diminished in value; or
18 e. has been commingled with other property which cannot
19 be divided without difficulty;

20 it is the intent of the United States, pursuant to 28 U.S.C. §
21 2461(c), incorporated by 21 U.S.C. § 853(p), to seek forfeiture
22 of any other property of said defendants, up to the value of the
23 property subject to forfeiture.

24 A TRUE BILL.

25
26 15/
FOREPERSON

27 Benjamin Wagner
28 BENJAMIN B. WAGNER
United States Attorney

UNITED STATES DISTRICT COURT

Eastern District of California

Criminal Division

THE UNITED STATES OF AMERICA

vs.

RYAN MCGOWAN, ROBERT SNELLINGS,
ULYSSES SIMPSON GRANT EARLY, IV,
and THOMAS LU,

INDICTMENT

VIOLATION(S): 18 U.S.C. § 922(a)(1)(A) - Engaging in the Business of Dealing in Firearms Without a License (2 Counts); 18 U.S.C. § 371 - Conspiracy to Make a False Statement With Respect to Firearm Records (5 Counts); 18 U.S.C. § 924(d)(1) and 28 U.S.C. § 2461(c) - Criminal Forfeiture

A true bill,

15/

Foreman.

Filed in open court this 31 day

of may, A.D. 20 12


Clerk.

Bail, \$ _____

Summons to issue as to Defendant McGowan, Early and Lu

GPO 863 525

As to Defendant Snellings → NO BAIL WARRANT



2:12 - CR - 0207 LKK

PENALTY SLIP

Penalties on COUNT ONE for the following defendant:

RYAN McGOWAN

VIOLATION: 18 U.S.C. § 922(a)(1)(A) - Engaging in the Business of Dealing in Firearms Without a License

PENALTY: Not more than 10 years imprisonment
Not more than a \$250,000.00 fine, or both
At least 3 years of supervised release

Penalties on COUNT TWO for the following defendants:

**RYAN McGOWAN, and
ROBERT SNELLINGS**

VIOLATION: 18 U.S.C. § 371 - Conspiracy to Make a False Statement with Respect to Firearm Records

PENALTY: Not more than 5 years imprisonment
Not more than a \$ 250,000.00 fine, or both
At least 3 years of supervised release

Penalties on COUNT THREE for the following defendant:

ROBERT SNELLINGS

VIOLATION: 18 U.S.C. § 371 - Conspiracy to Make a False Statement with Respect to Firearm Records

PENALTY: Not more than 5 years to life imprisonment
Not more than a \$250,000.00 fine, or both
At least 3 years of supervised release

Penalties on COUNT FOUR for the following defendant:

ROBERT SNELLINGS

VIOLATION: 18 U.S.C. § 371 - Conspiracy to Make a False Statement with Respect to Firearm Records

PENALTY: Not more than 5 years to life imprisonment
Not more than a \$250,000.00 fine, or both
At least 3 years of supervised release

Penalties on COUNT FIVE for the following defendant:

ROBERT SNELLINGS

VIOLATION: 18 U.S.C. § 371 - Conspiracy to Make a False Statement with Respect to Firearm Records

PENALTY: Not more than 5 years to life imprisonment
Not more than a \$ 250,000.00 fine, or both
At least 3 years of supervised release

Penalties on COUNT SIX for the following defendants:

ROBERT SNELLINGS

ULYSSES SIMPSON GRANT EARLY, IV

VIOLATION: 18 U.S.C. § 371 - Conspiracy to Make a False Statement with Respect to Firearm Records

PENALTY: Not more than 5 years to life imprisonment
Not more than a \$ 250,000.00 fine, or both
At least 3 years of supervised release

Penalties on COUNT SEVEN for the following defendant:

THOMAS LU

VIOLATION: 18 U.S.C. § 922(a)(1)(A) - Engaging in the Business of Dealing in Firearms Without a License

PENALTY: Not more than 10 years to life imprisonment
Not more than a \$250,000.00 fine, or both
At least 3 years of supervised release

FORFEITURE

ALLEGATION: 18 U.S.C. § 924(d)(1) and 28 U.S.C. § 2461(c) - Criminal Forfeiture

PENALTY: As Stated in the Indictment

ASSESSMENT: \$100.00 special assessment for each count

Exhibit 7

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 7

8 IN THE UNITED STATES DISTRICT COURT
 9 EASTERN DISTRICT OF CALIFORNIA
 10

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

CASE NO. 2:12-CR-207-TLN
 GOVERNMENT’S TRIAL BRIEF
 DATE: September 29, 2014
 TIME: 9:30 A.M.
 COURT: Hon. Troy L. Nunley

16
 17 **I. INTRODUCTION**

18 The United States respectfully submits this Trial Brief for the assistance of the Court. It sets
 19 forth a summary of the facts, a discussion of the elements of the charged offenses, and an overview of
 20 anticipated issues at trial. This matter is set for trial on September 29, 2014, as to defendants McGowan,
 21 Snellings and Early. Trial is expected to last approximately three weeks.

22 **II. THE INDICTMENT**

23 The Indictment charges McGowan in Count One with engaging in the business of dealing in
 24 firearms without a license, in violation of 18 U.S.C. § 922(a)(1)(A). It also charges McGowan,
 25 Snellings and Early with five counts of conspiracy to make a false statement with respect to firearms
 26 records, in violation of 18 U.S.C. § 924(a)(1)(A), as follows:

27 Count Two: McGowan and Snellings;

28 Count Three: Snellings;

1 Count Four: Snellings;

2 Count Five: Snellings; and

3 Count Six: Snellings and Early.

4 **III. FACTS**

5 **A. Federal Firearms Licensees**

6 In California, handguns are subject to both state and federal regulation. Under federal law, only
7 a Federal Firearms Licensee (“FFL”) may engage in the business of selling firearms. New firearms and
8 firearms being imported into the state of California must be sold through a licensed FFL.

9 Private individuals may also buy and sell firearms through occasional sales from their personal
10 collections, but they may not do so as a business. When private individuals buy and sell firearms, they
11 are required to transfer the firearm using an FFL. The FFL ensures that the legally required state and
12 federal paperwork is completed and holds the gun until the ten-day waiting period for a background
13 investigation is over and the buyer is then permitted to take possession.

14 **B. Off-Roster Firearms**

15 California maintains a roster of approved handguns. These handguns have passed a number of
16 statutorily required tests and inspections including drop tests. Generally, in order to purchase a handgun
17 from a Federal Firearms Licensee (“FFL”) the firearm cannot be “off-roster.” There is an exception in
18 the law that permits certain sworn peace officers to purchase off-roster firearms from an FFL.

19 There is another exception in the law that permits private party transfers of off-roster firearms.
20 That means once an off-roster firearm is owned by a private party (not an FFL), it can be sold to another
21 private party. As a result, an officer can buy an off-roster firearm from an FFL and then, if he or she
22 later wishes to sell it, he or she may sell it to a non-officer. Likewise, that buyer could also private party
23 transfer the firearm to another non-officer.

24 Because off-roster firearms are difficult to get in California due to these restrictions, prices for
25 desirable off-roster handguns on the secondary private party transfer market often exceed the price of
26 the guns when purchased new in the state of California.

27 **C. McGowan’s Unlicensed Firearms Business—Sale of Off-Roster Firearms (Count 1)**

28 In 2008, McGowan saw an opportunity to profit from the sale of off-roster firearms by exploiting

1 the scarcity of off-roster guns available to the general public. As a Sherriff's Deputy, McGowan
2 purchased off-roster handguns at the standard sales price. McGowan then resold the guns at an inflated
3 price on the private party market in California because the off-roster firearms could not be purchased
4 directly by the general public.

5 McGowan engaged in this type of business; he began purchasing and then reselling off-roster
6 handguns. From 2008 to 2011, McGowan purchased forty-one handguns and sold twenty-five of them
7 prior to a federal search warrant being executed at his residence. Most of the guns (thirty-three) were
8 purchased through Snellings Firearms, which was owned by co-defendant Snellings. Nineteen of the
9 handguns were resold by McGowan within a year of purchase, five of them within four weeks of
10 purchase.

11 To sell the guns, McGowan would generally advertise online at www.CalGuns.net, a social
12 media website, using the screen names "SacDep" and "dldeguz." Once McGowan located a buyer,
13 McGowan would meet the buyer, sell the gun and complete the necessary paperwork with an FFL. In
14 three instances, in July, August and September 2011, McGowan was contacted by agents acting in an
15 undercover capacity through the CalGuns website. In each of those contacts, agents posed as buyers
16 interested in the off-roster firearms McGowan was selling. Each time, McGowan met an undercover
17 agent outside of an FFL and exchanged the gun and the money before heading inside to complete the
18 paperwork necessary to complete the transfer. During one of those transactions, McGowan sold the
19 buyer an assembled high capacity magazine in violation of state law.

20 During the charged period, McGowan would also purchase multiple guns on the same day and he
21 made multiple purchases of the same type of handgun in a relatively short period. For example, between
22 April 2010 and August 2011, McGowan bought five .50 caliber Desert Eagle handguns. McGowan sold
23 four of the .50 caliber Desert Eagles and had the fifth posted for sale on CalGuns when agents executed
24 federal search warrants and seized the gun from McGowan's home. In another example, McGowan
25 bought two Intratec, model AB-10 handguns from Snellings' Firearms in May and July 2009 and then
26 sold them to two different buyers on August 28, 2010.

27 In recorded statements, McGowan told investigators, among other things, that he was able to buy
28 firearms that other people were not. He stated that the Desert Eagle was the safest firearm to buy in

1 order to make money and he described how much money he made from various transactions.

2 **D. False Statements with Respect to Firearms Records (Counts 2-6)**

3 Counts Two through Six of the Indictment have to do with conspiracies to make false statements
4 on the ATF Form 4473 in order to circumvent the restrictions on purchasing off-roster firearms. In
5 essence, the conspirators falsely stated that a police officer was the actual purchaser when buying the
6 off-roster handgun when the actual purchaser was intended to be a non-officer who was not permitted to
7 buy the off-roster handgun. Therefore, the police officer was acting as a straw purchaser who then
8 transferred the handgun to the real purchaser within a short period of time.

9 Specifically, when purchasing a firearm from an FFL, a buyer must complete a Form 4473,
10 which is a document that the FFL is required to keep by law. Question 12.a. on the Form 4473 asks “are
11 you the actual buyer of this firearm(s) listed on the form?” The question goes on to explain that “you
12 are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not
13 the actual buyer, the dealer cannot transfer the firearm(s) to you.” In each of the charged counts below,
14 the defendant(s) conspired for the peace officer filling out the Form 4473 to falsely state that he was the
15 buyer of the gun when he actually buying the gun for another person.

16 **1. Count Two—McGowan and Snellings**

17 McGowan made a straw purchase of an off-roster handgun on behalf of Snellings so Snellings
18 could then sell it to a non-law enforcement officer. The transfers occurred in stages, all within one
19 month. First, on July 1, 2009, Snellings bought a Sturm, Ruger & Co. LCP .380 caliber, serial number
20 37182507, on behalf of Snellings’ Firearms from River City Gun Exchange in an FFL to FFL
21 exchange.¹ The next day, McGowan bought the gun from Snellings, filling out a Form 4473 stating that
22 McGowan was the actual buyer. By state law, McGowan could not pick the gun up for ten days.²

23 Exactly one day after the ten day wait expired, McGowan private party transferred the gun to
24 Snellings as a private person in a private party transfer (McGowan was private party transferring the

25 ¹ This is different than Snellings buying the gun personally. Although the FFL could own an off-
26 roster firearm for sale to a qualified purchaser, Snellings as an individual was subject to the same
requirements as an ordinary citizen and could not personally buy the gun.

27 ² Peace officers can get an exemption from the ten-day wait requirement, but only if they have an
28 authorization letter from their department to present to the FFL. None of the transactions in this case
were done with an exemption from the ten-day wait period.

1 gun, which meant it could now be purchased by a non-peace officer like Snellings). By state law,
2 Snellings was obliged to wait ten days before he could personally possess the gun. After the wait
3 period, Snellings owned the gun personally rather than as an FFL. Finally, four days after Snellings's
4 ten day wait expired, Snellings sold the gun to William Perparos in a private party transfer.

5 **2. Count Three—Snellings**

6 Snellings arranged for Sacramento Police Officer Christopher Lenert to make a straw purchase
7 on behalf of Brent Gentilcore using Snellings as the FFL to complete the transaction. On June 17, 2010,
8 Lenert began the purchase of two Sturm, Ruger & Co., model LCP, .380 caliber, handguns. Nineteen
9 days later (only nine days after the ten day waiting period expired), Lenert private party transferred one
10 of the LCP's to Gentilcore.

11 The government expects that Lenert will testify that Gentilcore was the true buyer of the firearm
12 and that Gentilcore paid Snellings directly for the gun and never paid Lenert. Likewise, Lenert never
13 paid Snellings because Lenert was not the actual buyer of the gun. When arranging the sale, Snellings
14 told Lenert that if he was ever questioned about this purchase Lenert should claim that Lenert bought the
15 gun for his wife who did not like it, so Lenert then decided to sell it to Gentilcore.

16 **3. Count Four—Snellings**

17 On August 12, 2010, the DROS process was started for Lenert to buy an off-roster Carl Walther,
18 model PK380, “.38 caliber” handgun using Snellings as the FFL. In reality, the handgun was a .380
19 caliber handgun and Carl Walther does not sell a .38 caliber PK380. Thirty-two days later (only twenty-
20 two days after the ten-day wait expired), Lenert private party transferred the gun to Snellings as a private
21 person. This transfer was also done using Snellings as the FFL.

22 **4. Count Five—Snellings**

23 On July 9, 2009, the DROS process was started for Roseville police officer Christopher
24 Kjellberg to buy an off-roster .40 caliber Carl Walther, model PPS handgun, serial number AD3719.
25 Snellings was the FFL who conducted the transfer. Twenty-six days later on August 4, 2009, Kjellberg
26 private party transferred a “.10” caliber Carl Walther, model PPS handgun, serial number AD3719, to
27 Snellings as a private person. Snellings as an FFL conducted the transfer.

28 During this same period of time, Snellings applied for a concealed weapons permit from the

1 Sacramento County Sherriff's Department. In order to get the concealed weapons permit, Snellings
2 submitted an application in person and signed it under the penalty of perjury in the presence of a witness
3 on July 16, 2009. On that application, Snellings listed the .40 caliber Carl Walther, model PPS handgun,
4 serial number AD3719, as a weapon he would be carrying. The timing is important because first day
5 that Kjellberg could pick up the gun was July 19, 2009 (due to the ten-day waiting period), which means
6 that Snellings listed this weapon as his own three days before Kjellberg got it and more than two weeks
7 before Snellings ostensibly bought it from him.

8 The government expects that Kjellberg will testify that Snellings asked him to make a straw
9 purchase on Snellings behalf. Kjellberg never purchased or paid for the firearm because it was always
10 intended for Snellings. Further, Kjellberg knew that a straw purchase was illegal, but agreed to
11 participate anyway.

12 5. **Count Six—Snellings and Early**

13 In approximately April 2010, Early began messaging Kjellberg about a gun (an "LCP") that
14 arrived at Snellings's business. Early encouraged Kjellberg to buy the gun for Early and stated that he
15 would cover all of the costs. In later messages, Early follows up regarding the transaction and expresses
16 reluctance to put this type of communication in writing.

17 On April 29, 2010, Kjellberg started the DROS process to purchase an off-roster Strum, Ruger &
18 Co., model LCP, .380 caliber handgun. Snellings was the FFL conducting the transaction. Twenty-
19 eight days later, Kjellberg private party transferred the gun to Early again using Snellings as the FFL.

20 The government anticipates that Kjellberg will testify that he entered into a conspiracy with
21 Snellings and Early to make a straw purchase for Early.

22 **IV. EVIDENCE³**

23 **A. California Department of Justice Employees and Records**

24 The government expects to call witnesses from the California Department of Justice to explain
25 the DROS, AFS, and handgun roster. In particular, the government will call Blake Graham who will
26

27 ³ The following is a summary of some of the witnesses the government intends to call. The
28 government reserves the right not to call all of these witnesses and to call additional witnesses as
needed.

1 explain the handgun roster, how guns are placed on the roster (including the testing that takes place),
2 and who is permitted to purchase off-roster firearms and under what circumstances.

3 Gilbert Mac, who supervises the DOJ unit performing background checks on handgun
4 purchasers, will explain that a DROS is a form filled out on a dedicated DOJ terminal by an FFL or his
5 employees at the time of a handgun purchase. The information on the DROS form is transmitted
6 electronically to DOJ where it is stored in the CFIS system and the background check is conducted.
7 Once an individual passes a background check, the information on the DROS form is uploaded to the
8 AFS system. This witness will be able to explain the codes used on the DROS records.

9 Gilbert "Mitch" Matsumoto is a California DOJ employee who is a custodian of records for the
10 AFS system. He will authenticate AFS records and explain the meaning of various codes and entries on
11 the records.

12 **B. Cooperating Co-Defendants, Co-Conspirators and Peace Officers**

13 Thomas Lu is a former Sherriff's deputy who has pleaded guilty and is cooperating with the
14 United States in hopes of a reduced sentence. He was a friend and coworker of McGowan who will
15 testify regarding McGowan's firearms business, as well as regarding interactions with Snellings.

16 Tait Christopher Kjellberg and Christopher Lenert are former police officers who lost their jobs
17 due to their involvement with McGowan, Lu, Snellings and Early. They will testify regarding handgun
18 transactions that are the subject of these charges.

19 Another Sherriff's deputy will testify that he loaned his Calguns screen name to McGowan who
20 used it, along with his own screen name, to sell firearms.

21 **C. Firearms Dealers and Buyers**

22 The parties are attempting to reach stipulations to minimize the number of buyers and sellers
23 who must be called as witnesses. If the stipulations are reached, the government anticipates that it will
24 only have to call a small number of buyers and FFLs.

25 **D. Defendant's Statements**

26 Each of the defendants' has made one or more recorded statements to law enforcement in the
27 course of interviews. In addition, undercover recordings were made of McGowan in the course of three
28 undercover handgun purchases. The government is preparing clips of these statements to be played for

1 the jury after they are introduced by stipulation or qualified witness.

2 **E. Search Warrant Evidence**

3 On November 3, 2011, search warrants were conducted at McGowan's house in Elk Grove and
4 at two locations containing Snellings's FFL and business records. During the search of McGowan's
5 house, agents found numerous off-roster firearms. During the search for Snellings's records, agents
6 found Form 4473s, DROS forms and other documents related to firearms transactions. The government
7 will introduce this evidence through agents who participated in the searches and/or through stipulation.

8 **F. Other Custodians and Foundational Witnesses**

9 The government anticipates introducing records from a variety of sources, including Calguns
10 online postings, text messages recovered from phones and CCW permits. At this time, the government
11 is attempting to get stipulations from the parties to minimize the number of witnesses and the length of
12 the testimony of the witnesses who are called.

13 **V. SUBSTANTIVE LAW**

14 **A. Elements of the Offenses**

15 **1. Count One: Engaging in the Business of Dealing in Firearms without a License**

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

18 Second, the defendant did not then have a license as a firearms dealer; and

19 Third, the firearms had travelled in interstate commerce.

20 See Manual of Model Criminal Jury Instructions § 8.53 (9th Cir. 2010 ed.) (modified); 18 U.S.C. §
21 922(a)(1)(A).

22 According to the comments to the pattern jury instructions, to show that the defendant engaged
23 in the business of dealing in firearms, the government must prove beyond a reasonable doubt that the
24 defendant engaged in a greater degree of activity than the occasional sale of a hobbyist or collector, and
25 that the defendant devoted time, attention and labor to selling firearms as a trade or business with the
26 intent of making profits through the repeated purchase and sale of firearms. See *United States v. King*,
27 735 F.3d 1098, 1106 (9th Cir.2013) (citing Instruction 8.53). For a person to engage in the business of
28

1 dealing in firearms, it is not necessary to prove an actual sale of firearms. *Id.* at 1107 n.8.

2 Willfully, as used in this statute, requires proof that the defendant knew that his or her conduct
3 was unlawful, but does not require proof that the defendant knew of the federal licensing requirement.
4 *Bryan v. United States*, 524 U.S. 184, 198-99 (1998).

5 **2. Counts Two Through Six: Conspiracy to Make a False Statement With
6 Respect to Firearms Records**

7 The elements of conspiracy in violation of 18 U.S.C. § 371 are as follows:

8 First, beginning on or about [date], and ending on or about [date], there was an agreement
9 between two or more persons to commit at least one crime as charged in the indictment; [and]

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

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

15 *See* Manual of Model Criminal Jury Instructions § 8.20 (9th Cir. 2010 ed.).

16 The elements of the substantive offense of 18 U.S.C. 924(a)(1)(A) are as follows:

17 First, the defendant knowingly made a false statement;

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

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

21 *See* 18 U.S.C. 924(a)(1)(A).

22 A Form 4473 and its question that asks who is the “actual buyer” of a firearm is information that
23 the law requires a Federal Firearms Licensee to keep. *United States v. Johnson*, 680 F3d 1140 (9th Cir
24 2012).

25 **VI. EVIDENTIARY AND OTHER ISSUES**

26 **A. Firearms in Court**

27 The government’s exhibits include firearms. The guns will be brought to court only when
28 necessary and will be secured in a manner acceptable to the U.S. Marshal’s Service. They will not be

1 left in the courtroom or sent into deliberations with the jury and will remain in the custody of Special
2 Agent Sara Lewis. Agent Lewis will also coordinate with the U.S. Marshal's Service prior to bringing
3 the guns to court. Finally, the government will not seek to introduce ammunition or use it as a
4 demonstrative exhibit. Ammunition will not be brought into the courtroom.

5 **B. Proper Rehabilitation of Cooperating Defendants is Not Vouching.**

6 Thomas Lu has pleaded guilty and is likely hoping to benefit from his testimony. The United
7 States may introduce this in its direct examination, as a party may impeach its own witness. Fed. R.
8 Evid. 607. If the defendant uses the co-defendant plea agreements to challenge their credibility, the
9 United States may introduce the documents themselves, including any "truthful testimony" provision, so
10 long as the United States does not "imply a guaranty of [their] truthfulness, refer to extra record facts, or
11 reflect a personal opinion." *United States v. Necochea*, 986 F.2d 1273, 1278-79 (9th Cir. 1993); *United*
12 *States v. Monroe*, 943 F.2d 1007, 1013-14 (9th Cir. 1991).

13 The Ninth Circuit has held that once a cooperating witness had been impeached with his plea
14 bargain, it was permissible for the prosecutor to refer to the truthful testimony provision and, without
15 referring to extra-record facts or saying the witness was telling the truth, ask this question: "Isn't it true,
16 sir, that the United States will not tolerate any deception from you?" *United States v. Dorsey*, 677 F.3d
17 944, 953 (9th Cir. 2012).

18 **C. Jencks Act Material**

19 In this case, the United States has made extensive pre-trial disclosure of reports prepared by
20 agents of witness interviews. As such, the United States believes it has fully complied with its
21 obligations under the Jencks Act, which requires the United States to provide the defense with copies of
22 any statements made by the witness relating to the subject of his or her testimony after the completion of
23 the direct examination. 18 U.S.C. § 3500.

24 Further, although defense counsel is certainly entitled to ask witnesses about statements made in
25 agent reports, the Court should not allow counsel to publish the contents of the agent's reports, or
26 otherwise suggest that the interview summaries contained in the reports are statements of the witnesses.
27 Under the Jencks Act, a "statement" is defined as "a written statement made by said witness and signed
28 or otherwise adopted and approved by him;" a recording or transcription that is "a substantially verbatim

1 recital of an oral statement made by said witness and recorded contemporaneously;” or a statement made
2 by a witness to the grand jury. 18 U.S.C. § 3500(e). In *Palermo v. United States*, 360 U.S. 343, 352
3 (1959), the Supreme Court held that “only those statements which could properly be called the witness’
4 own words” had to be produced under the Jencks Act. “[S]ummaries of an oral statement which
5 evidence substantial selection of material,” or “statements which contain [an] agent’s interpretations or
6 impressions” need not be produced. *Id.* at 352-53. Accordingly, unless a witness reviews and approves
7 or otherwise adopts the interview summary—which was not the practice in this investigation—the
8 interview summaries are not statements of the witness under subsection (e)(1) of the Jencks Act.
9 Moreover, because the interview summaries are written after interviews are completed and reflect the
10 thought process and interpretations of the agent, they do not constitute a contemporary and substantially
11 verbatim recital of the witness’s statement under subsection (e)(2).

12 In this case, the defense should be precluded from introducing as an exhibit the contents of the
13 interview summaries to impeach witnesses on the basis of any alleged inconsistent statements because
14 the interview summaries are not the statements of the witnesses themselves. Similarly, a party should
15 not be allowed to publish the contents of the interview summaries to the jury, or otherwise suggest to the
16 jury that the interview summary is a statement of the witness.

17 **D. Issues Related to Closing Arguments**

18 The Defendants may call witnesses and the United States may comment on their failure to do so.
19 “A prosecutor's comment on a defendant’s failure to call a witness does not shift the burden of proof,
20 and is therefore permissible, so long as the prosecutor does not violate the defendant’s Fifth Amendment
21 rights by commenting on the defendant’s failure to testify.” *United States v. Cabrera*, 201 F.3d 1243,
22 1249 (9th Cir. 2000) (citing cases). If a defendant does testify, a prosecutor may characterize the
23 defendant’s testimony as false. *Id.* at 1250.

24 ///

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1 **E. Out-of-Order Testimony**

2 The United States anticipates calling multiple witnesses, and it is possible that evidence will be
3 presented out of order. The prosecution will make every effort to present the evidence to the jury in an
4 understandable sequence.

5
6 Dated: September 22, 2014

BENJAMIN B. WAGNER
United States Attorney

8 /s/ William S. Wong
9 WILLIAM S. WONG
10 MICHAEL D. ANDERSON
11 Assistant United States Attorneys
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Exhibit 8

**United States District Court
Eastern District of California**

Before the Honorable Troy L. Nunley

MINUTES

UNITED STATES OF AMERICA,

Plaintiff,

v.

RYAN McGOWAN and
ROBERT SNELLINGS,

Defendants.

Case#: 2:12-cr-00207-TLN

Date: June 11, 2015

Deputy Clerk: Michele Krueger

Ct. Reporter: Kathy Swinhart

For the Government

William Wong and Michael Anderson

For the Defendants

Chris Cosca for Ryan McGowan

Patrick Hanly for Robert Snellings

Proceedings: Jury Trial (Day 9) – Jury Deliberations and Verdict

9:00 Jury began deliberations.

9:40 The Court reconvened with counsel and the parties present, and outside the presence of the jury regarding Defendants' previous objection to a statement made during the Government's rebuttal argument.

10:00 The jury was excused for an extended break, while the Court researched the issue of Defendants' objection. Court in recess.

1:05 Court resumed with counsel and the parties present, and outside the presence of the jury regarding the Court's ruling on Defendants' objection to a statement made during the Government's rebuttal argument. The Government also stated for the record that Government Exhibits 20B3, 20B5, 20B6, and 20B7 were previously admitted, but not used during trial, so the exhibits were withdrawn and not admitted.

1:33 Jury present, and the Court instructed the jury on the issue of the Government's statement.

1:36 Jury returned to deliberate.

2:05 The Court received a jury note indicating that the jury had reached a verdict.

2:30 The Court reconvened with all parties and jury present. The jury returned with a unanimous verdict, finding Defendant Ryan McGowan Guilty on Counts 1 and 2 of the Indictment, and Defendant Robert Snellings Guilty on Counts 2, 3, 4, 5 and 6 of the Indictment.

2:38 The Court thanked and excused the jury.

2:40 **Judgment and Sentencing was set for August 27, 2015 at 9:30 a.m.** The Defendants shall remain out of custody on previously imposed conditions.

2:42 Court adjourned.

Exhibit H

UNITED STATES DISTRICT COURT
Eastern District of California

UNITED STATES OF AMERICA

v.

RYAN MCGOWAN**JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed On or After November 1, 1987)

Case Number: **2:12CR00207-01**

Defendant's Attorney: Christopher Cosca, Appointed

THE DEFENDANT:

- pleaded guilty to count(s) ____ .
 pleaded nolo contendere to count(s) ____ which was accepted by the court.
 was found guilty on counts 1 and 2 after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense (s):

Title & Section	Nature Of Offense	Date Offense Concluded	Count Number
18 U.S.C. § 922(a)(1)(A)	Engaging in the Business of Dealing in Firearms without a License (Class C Felony)	11/2011	1
18 U.S.C. 371§	Conspiracy to Make a False Statement with Respect to Firearm Records (Class D Felony)	7/27/2009	2

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) ____ and is discharged as to such count(s).
 Count (s) ____ dismissed on the motion of the United States.
 Indictment is to be dismissed by District Court on motion of the United States.
 Appeal rights given. Appeal rights waived.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution or fine, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

6/30/2016

Date of Imposition of Judgment



Signature of Judicial Officer

Troy L. Nunley, United States District Judge

Name & Title of Judicial Officer

7/6/2016

Date

DEFENDANT:RYAN MCGOWAN
CASE NUMBER:2:12CR00207-01

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 18 months on Count 1, and 18 months on Count 2, to be served concurrently, for a Total Term of 18 months.

- No TSR: Defendant shall cooperate in the collection of DNA.
- The court makes the following recommendations to the Bureau of Prisons:
The defendant is to remain out of custody pending appeal.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district
 - at ___ on ___.
 - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - before ___ on ___.
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Officer.
 If no such institution has been designated, to the United States Marshal for this district.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States Marshal

By Deputy United States Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
12 months on each of Counts 1 and 2, to run concurrently, for a Total Term of 12 months.

The defendant must report to the probation office in the district to which the defendant is released within seventy-two hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two (2) periodic drug tests thereafter, not to exceed four (4) drug tests per month.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- The defendant shall cooperate in the collection of DNA as directed by the probation officer.
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.), as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of qualifying offense.
- The defendant shall participate in an approved program for domestic violence.

If this judgment imposes a fine or a restitution obligation, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without permission of the court or probation officer;
2. the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities;
5. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons;
6. the defendant shall notify the probation officer ten days prior to any change in residence or employment;
7. the defendant shall refrain from excessive use of alcohol;
8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere, and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall submit to the search of his person, property, home, and vehicle by a United States probation officer, or any other authorized person under the immediate and personal supervision of the probation officer, based upon reasonable suspicion, without a search warrant. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
2. The defendant shall provide the probation officer with access to any requested financial information.

DEFENDANT: RYAN MCGOWAN
CASE NUMBER: 2:12CR00207-01

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$200.00	\$7,000.00	\$N/A

- The determination of restitution is deferred until ____ . An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
Totals	\$ _____	\$ _____	

- Restitution amount ordered pursuant to plea agreement \$ _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 - The interest requirement is waived for the fine restitution
 - The interest requirement for the fine restitution is modified as follows:
- If incarcerated, payment of the fine is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.
- If incarcerated, payment of the restitution is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A. Lump sum payment of \$ ___ due immediately, balance due
 - Not later than ___, or
 - in accordance C, D, E, or F below; or
- B. Payment to begin immediately (may be combined with C, D, or F below); or
- C. Payment in equal ___ (e.g. weekly, monthly, quarterly) installments of \$ ___ over a period of ___ (e.g. months or years), to commence ___ (e.g. 30 or 60 days) after the date of this judgment; or
- D. Payment in equal ___ (e.g. weekly, monthly, quarterly) installments of \$ ___ over a period of ___ (e.g. months or years), to commence ___ (e.g. 30 or 60 days) after release from imprisonment to a term of supervision; or
- E. Payment during the term of supervised release/probation will commence within ___ (e.g. 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendants ability to pay at that time; or
- F. Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate:

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Exhibit I

1 PHILLIP A. TALBERT
Acting United States Attorney
2 WILLIAM S. WONG
MICHAEL D. ANDERSON
3 Assistant United States Attorneys
501 I Street, Suite 10-100
4 Sacramento, CA 95814
Telephone: (916) 554-2700
5 Facsimile: (916) 554-2900

6
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,
14
Defendant,

CASE NO. 2:12-CR-0207 TLN
**GOVERNMENT'S SENTENCING
MEMORANDUM FOR
DEFENDANT RYAN MCGOWAN**

DATE: JUNE 30, 2016
TIME: 9:30 A.M.
COURT: HON. TROY L. NUNLEY

15
16
17
18 The United States of America, through its counsels of record, Phillip A. Talbert, Acting
19 United States Attorney for the Eastern District of California, and William S. Wong and Michael
20 D. Anderson, Assistant United States Attorneys, hereby submits the Government's Sentencing
21 Memorandum.

22 This Sentencing Memorandum sets forth the Government's sentencing recommendation
23 as to defendant Ryan McGowan. Furthermore, it addresses some of the issues raised by the
24 Defendant's Sentencing Memorandum filed on April 21, 2016. (Doc. 380).

25 **GUIDELINES CALCULATION**

26 The Government submits that the base offense level for Count 1 pursuant to U.S.S.G.
27 section 2K2.1 (a)(7) is level 12. Pursuant to section 2K 2.1 (b)(C), a 6 level increase is added
28

1 because there were more than 25 guns involved in the offense-for an adjusted offense level of 18.
2 Government's Exhibit 1-A-1, a chart stipulated and received in evidence, supports a finding that
3 the defendant sold at least 27 firearms and had available for sale an additional 17 firearms listed
4 on the chart. The jury's verdict finding defendant guilty of Count 1 supports a finding that more
5 than 25 firearms were sold by the defendant acting as a dealer in firearms without a federal
6 firearms license.

7 The defendant, a sworn peace officer with the Sacramento County Sheriff's Department,
8 violated and abused his position of trust (see Government's Response to McGowan's Formal
9 Objections to the PSR-Doc. 378) pursuant to U.S.S.G. section 3B1.3 which mandates a two-level
10 increase. Count 2 is grouped with Count 1 for guideline calculation purposes because Count 2
11 embodies conduct that is treated as a specific offense characteristic in Count 1 under U.S.S.G.
12 section 3D1.2 (c). Therefore, the total adjusted offense level is 20.

13 The defendant is a Criminal History Category I as a result of his conviction in the state
14 court for possessing an assault weapon. The total adjusted range is 33-41 months in custody.
15 The Government recommends a mid-level sentence of 37 months in custody.

16 **SECTION 3553(A) FACTORS**

17 The sentencing factors under 18 U.S.C. section 3553 (a) requires the Court to consider,
18 among other factors, the need for the sentence imposed to: 1) reflect the seriousness of the
19 offense and promote respect for the law, and to provide just punishment for the offense; and 2) to
20 afford adequate deterrence to criminal conduct.

21 Defendant McGowan seeks a probationary sentence with no jail time claiming that he is
22 not a danger or threat to anyone and that further punishment--that includes imprisonment--is not
23 necessary. In his request to the Court to not impose any jail sentence, the defendant proffers that
24 an employment opportunity awaits him with State Farm Insurance only if his sentence does not
25 include the imposition of custody. The Government strongly disagrees. As this Court knows,
26 law enforcement officers must set a positive public example of professionalism and public
27 service. Recent media and public scrutiny of alleged law enforcement misconduct of police
28 action has sullied the reputation and public trust which our law enforcement agencies must have

1 to effectively serve and protect the community. The defendant's flagrant abuse of his position of
2 trust as a police officer by violating the very laws that he had sworn to uphold only serves to
3 diminish the respect and erode the trust of the public. To impose a probationary sentence
4 without the imposition of a sufficient jail sentence would be tantamount to a "slap on the wrist"
5 and will not serve to promote respect for law, provide just punishment for the offense, and afford
6 adequate deterrence to criminal conduct by other law enforcement officers. These sentencing
7 factors under section 3553(a) are paramount considerations in light of the offense characteristics
8 and the fact that the defendant holds a position of public trust. A "no jail" sentence would raise
9 the ire of the community and their belief that the defendant received an unfair and unjust
10 sentence based on the fact that he is a law enforcement officer.

11 The intent of California laws enacted to enable police officers access to firearms
12 restricted to the general public was for the purpose of providing officers with firearms to protect
13 themselves in their very dangerous line of work. Laws restricting off-roster firearms to the
14 general public, but permitted to be purchased by law enforcement officers, is intended to give
15 officers every advantage possible in protecting their lives, as well as the lives of the public. It
16 was not intended for officers to line their pockets by selling off-roster firearms at inflated profit.

17 **OTHER CRIMINAL ACTS COMMITTED BY DEFENDANT**

18 Aside from committing the offenses of conviction, the defendant committed other
19 numerous offenses involving state and federal violations. He possessed an assault weapon for
20 which he was convicted by jury trial in State court. He possessed steroids in violation of law.
21 He reassembled a large capacity magazine and sold it to an undercover agent in violation of state
22 law. He exploited the fact that he was a law enforcement officer in order to purchase off-roster
23 firearms-- available only to sworn peace officers--as a means of enriching himself by selling
24 highly desirable and marketable firearms for a substantial profit. He exploited the fact that as a
25 law enforcement officer he was able to purchase more than one gun per 30 days to increase his
26 inventory in order to engage in the business of dealing in firearms without a federal license. He
27 violated both federal and state laws by certifying as true his claim that he was the actual buyer of
28

1 firearm on both federal and state firearm transaction forms when he fully knew that the actual
2 buyer was someone else.

3 **GOVERNMENT’S RECOMMENDATION**

4 The defendant’s criminal conduct occurred over the course of approximately 3 years as
5 shown by the evidence at trial. The defendant can hardly argue that his criminal conduct was a
6 one-time occurrence or that this was a case of aberrant behavior. The sophistication and
7 concealment of his criminal activity is supported by the evidence adduced at trial. The
8 defendant’s criminal activity over the course of several years merits a sentence at the middle of
9 the sentencing guideline level range. Accordingly, pursuant to the sentencing factors under
10 section 3553 (a) previously stated, the government respectfully urges the court to sentence the
11 defendant to a 37 month term of imprisonment.

12
13
14 Dated: June 23, 2016

PHILLIP A. TALBERT
Acting United States Attorney

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16
17

WILLIAM S. WONG
Assistant United States Attorney

Exhibit J

**ROB BONTA***Attorney General* Search[Translate Website](#) | [Traducir Sitio Web](#)

State Exemptions for Authorized Peace Officers

Non-Roster Handguns (Unsafe Handguns)

The following agencies may purchase non-roster firearms for use in the discharge of their official duties (Pen. Code, § 32000, subd. (b)(4)):

- Department of Justice
- A police department
- A sheriff's official
- A marshal's office
- The Department of Corrections and Rehabilitation
- The Department of the California Highway Patrol
- Any district attorney's office
- Any federal law enforcement agency
- The military or naval forces of this state or of the United States

Penal Code section 32000 does not prohibit the sale to, or purchase by, sworn members of the above agencies of a handgun.

Additionally, any of the following entities or sworn members of these entities who have satisfactorily completed the firearms portion of a training course prescribed by the Commission on Peace Officer Standards and Training pursuant to Penal Code section 832 may purchase non-roster handguns (Pen. Code, § 32000, subd. (b)(6)):

- The Department of Parks and Recreation
- The Department of Alcoholic Beverage Control
- The Division of Investigation of the Department of Consumer Affairs
- The Department of Motor Vehicles
- The Fraud Division of the Department of Insurance
- The State Department of State Hospitals
- The Department of Fish and Wildlife
- The State Department of Developmental Services
- The Department of Forestry and Fire Protection
- A county probation department
- The Los Angeles World Airports, as defined in Penal Code section 830.15
- A K-12 public school district for use by a school police officer, as described in Penal Code section 830.32
- A municipal water district for use by a park ranger, as described in Penal Code section 830.34
- A county for use by a welfare fraud investigator or inspector, as described in Penal Code section 830.35
- A county for use by the coroner or deputy coroner, as described in Penal Code section 830.35
- The Supreme Court and the courts of appeal for use by marshals of the Supreme Court and bailiffs of the courts of appeal, and coordinators of security for the judicial branch, as described in Penal Code section 830.36
- A fire department or fire protection agency of a county, city, city and county, or the state for use by either of the following:

- A member of an arson-investigating unit, regularly paid and employed in that capacity pursuant to Penal Code section 830.37
- A member other than a member of an arson-investigation unit, regularly paid and employed in that capacity pursuant to Penal Code section 830.37
- The University of California Police Department, or the California State University Police Departments, as described in Penal Code section 830.2
- A California Community College police department, as described in Penal Code section 830.32

Individuals who have obtained a non-roster firearm under any of the exemptions listed in Penal Code section 32000, subdivision (b), paragraph (6) may not sell or transfer the non-roster firearm to an individual who is not exempt from the requirements of Penal Code section 32000.

A person licensed pursuant to Penal Code sections 26700 to 26915, inclusive, shall not process the sale or transfer of an unsafe handgun between a person who has obtained an unsafe handgun pursuant to an exemption specified in Penal Code section 32000, subdivision (b), paragraph (6) and a person who is not exempt from the requirements of Penal Code section 32000 (Pen. Code, § 32000, subd. (c)(1)).

Large Capacity Magazines

A sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is authorized to carry a firearm in the course and scope of that officer's duties may borrow, purchase, receive, or import into this state a large-capacity magazine (Pen. Code, § 32405.)

10 Day Waiting Period Exemption

The waiting period described in Penal Code section 26815 does not apply to the sale, delivery, or transfer of firearms made to any person who satisfies both of the following requirements:

- The person is properly identified as a full-time paid peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.
- The officer's employer has authorized the officer to carry firearms while in the performance of duties (Pen. Code, § 26950, subds. (a)(1) and (2).)

Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a peace officer who is authorized to carry firearms while in the performance of duties, and authorizing the purchase or transfer (Pen. Code, § 26950, subd. (b)(1).)

Exhibit K


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PENAL CODE - PEN

PART 6. CONTROL OF DEADLY WEAPONS [16000 - 34370] (Part 6 added by Stats. 2010, Ch. 711, Sec. 6.)

TITLE 4. FIREARMS [23500 - 34370] (Title 4 added by Stats. 2010, Ch. 711, Sec. 6.)

DIVISION 10. SPECIAL RULES RELATING TO PARTICULAR TYPES OF FIREARMS OR FIREARM EQUIPMENT [30210 - 33690] (Division 10 added by Stats. 2010, Ch. 711, Sec. 6.)

CHAPTER 4. Handguns and Firearm Safety [31500 - 32110] (Heading of Chapter 4 amended by Stats. 2013, Ch. 761, Sec. 12.)

ARTICLE 5. Rules Governing Unsafe Handguns [32000 - 32030] (Article 5 added by Stats. 2010, Ch. 711, Sec. 6.)

32000. (a) (1) A person in this state who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends an unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year.

(2) The failure to report to the Department of Justice in accordance with the provisions of paragraph (2) of subdivision (f) the sale or transfer of an unsafe handgun obtained pursuant to paragraph (4), (6), or (7) of subdivision (b) may be subject to a civil penalty not to exceed ten thousand dollars (\$10,000).

(3) In addition to any criminal penalty provided in paragraph (1), the unlawful sale or transfer of an unsafe handgun obtained pursuant to paragraph (4), (6), or (7) of subdivision (b) may be subject to a civil penalty not to exceed ten thousand dollars (\$10,000).

(b) This section shall not apply to any of the following:

(1) The manufacture in this state, or importation into this state, of a prototype handgun when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the Department of Justice pursuant to Section 32010 to conduct an independent test to determine whether that handgun is prohibited by Sections 31900 to 32110, inclusive, and, if not, allowing the department to add the firearm to the roster of handguns that may be sold in this state pursuant to Section 32015.

(2) The importation or lending of a handgun by employees or authorized agents of entities determining whether the weapon is prohibited by this section.

(3) Firearms listed as curios or relics, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations.

(4) The sale or purchase of a handgun, if the handgun is sold to, or purchased by, the Department of Justice, a police department, a sheriff's official, a marshal's office, the Department of Corrections and Rehabilitation, the Department of the California Highway Patrol, any district attorney's office, any federal law enforcement agency, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. This section does not prohibit the sale to, or purchase by, sworn members of these agencies of a handgun.

(5) The sale, purchase, or delivery of a handgun, if the sale, purchase, or delivery of the handgun is made pursuant to subdivision (d) of Section 10334 of the Public Contract Code.

(6) Subject to the limitations set forth in subdivision (c), the sale or purchase of a handgun for use as a service weapon, if the handgun is sold to, or purchased by, any of the following entities for use by, or sold to or purchased by, sworn members of these entities who have satisfactorily completed the POST basic course or, before January 1, 2021, have satisfactorily completed the firearms portion of a training course prescribed by the Commission on Peace Officer Standards and Training (POST) pursuant to Section 832, and who, as a condition of carrying that handgun, complete a live-fire qualification prescribed by their employing entity at least once every six months:

(A) The Department of Parks and Recreation.

- (B) The Department of Alcoholic Beverage Control.
- (C) The Division of Investigation of the Department of Consumer Affairs.
- (D) The Department of Motor Vehicles.
- (E) The Fraud Division of the Department of Insurance.
- (F) The State Department of State Hospitals.
- (G) The Department of Fish and Wildlife.
- (H) The State Department of Developmental Services.
- (I) The Department of Forestry and Fire Protection.
- (J) A county probation department.
- (K) The Los Angeles World Airports, as defined in Section 830.15.
- (L) A K-12 public school district for use by a school police officer, as described in Section 830.32.
- (M) A municipal water district for use by a park ranger, as described in Section 830.34.
- (N) A county for use by a welfare fraud investigator or inspector, as described in Section 830.35.
- (O) A county for use by the coroner or the deputy coroner, as described in Section 830.35.
- (P) The Supreme Court and the courts of appeal for use by marshals of the Supreme Court and bailiffs of the courts of appeal, and coordinators of security for the judicial branch, as described in Section 830.36.
- (Q) A fire department or fire protection agency of a county, city, city and county, district, or the state for use by either of the following:
 - (i) A member of an arson-investigating unit, regularly paid and employed in that capacity pursuant to Section 830.37.
 - (ii) A member other than a member of an arson-investigating unit, regularly paid and employed in that capacity pursuant to Section 830.37.
- (R) The University of California Police Department, or the California State University Police Departments, as described in Section 830.2.
- (S) A California Community College police department, as described in Section 830.32.
- (T) A harbor or port district or other entity employing peace officers described in subdivision (b) of Section 830.33, the San Diego Unified Port District Harbor Police, and the Harbor Department of the City of Los Angeles.
- (U) A local agency employing park rangers described in subdivision (b) of Section 830.31.
- (V) The Department of Cannabis Control.
- (7) (A) Subject to the limitations set forth in subdivision (c), the sale or purchase of a handgun, if the handgun is sold to, or purchased by, any of the following entities for use as a service weapon by the sworn members of these entities who have satisfactorily completed the POST basic course or, before January 1, 2021, have satisfactorily completed the firearms portion of a training course prescribed by the POST pursuant to Section 832, and who, as a condition of carrying that handgun, complete a live-fire qualification prescribed by their employing entity at least once every six months:
 - (i) The California Horse Racing Board.
 - (ii) The State Department of Health Care Services.
 - (iii) The State Department of Public Health.
 - (iv) The State Department of Social Services.
 - (v) The Department of Toxic Substances Control.
 - (vi) The Office of Statewide Health Planning and Development.
 - (vii) The Public Employees' Retirement System.
 - (viii) The Department of Housing and Community Development.
 - (ix) Investigators of the Department of Business Oversight.
 - (x) The Law Enforcement Branch of the Office of Emergency Services.
 - (xi) The California State Lottery.
 - (xii) The Franchise Tax Board.

(B) This paragraph does not authorize the sale to, or purchase by, sworn members of the entities specified in subparagraph (A) in a personal capacity.

(c) (1) Notwithstanding Section 26825, a person licensed pursuant to Sections 26700 to 26915, inclusive, shall not process the sale or transfer of an unsafe handgun between a person who has obtained an unsafe handgun pursuant to an exemption specified in paragraph (6) or (7) of subdivision (b) and a person who is not exempt from the requirements of this section.

(2) (A) A person who obtains or has use of an unsafe handgun pursuant to paragraph (6) or (7) of subdivision (b) shall, when leaving the handgun in an unattended vehicle, lock the handgun in the vehicle's trunk, lock the handgun in a locked container and place the container out of plain view, or lock the handgun in a locked container that is permanently affixed to the vehicle's interior and not in plain view.

(B) A violation of subparagraph (A) is an infraction punishable by a fine not exceeding one thousand dollars (\$1,000).

(C) For purposes of this paragraph, the following definitions shall apply:

(i) "Vehicle" has the same meaning as defined in Section 670 of the Vehicle Code.

(ii) A vehicle is "unattended" when a person who is lawfully carrying or transporting a handgun in the vehicle is not within close proximity to the vehicle to reasonably prevent unauthorized access to the vehicle or its contents.

(iii) "Locked container" has the same meaning as defined in Section 16850.

(D) Subparagraph (A) does not apply to a peace officer during circumstances requiring immediate aid or action that are within the course of their official duties.

(E) This paragraph does not supersede any local ordinance that regulates the storage of handguns in unattended vehicles if the ordinance was in effect before January 1, 2017.

(d) Violations of subdivision (a) are cumulative with respect to each handgun and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by this section and other provisions of law shall not be punished under more than one provision, but the penalty to be imposed shall be determined as set forth in Section 654.

(e) (1) The Department of Justice shall maintain a database of unsafe handguns obtained pursuant to paragraph (4), (6), or (7) of subdivision (b). This requirement shall apply retroactively to include information in the department's possession. The department may satisfy this requirement by maintaining this information in any existing firearm database that reasonably facilitates compliance with this subdivision.

(2) A person or entity that is in possession of an unsafe handgun obtained pursuant to paragraph (4), (6), or (7) of subdivision (b), shall notify the department of any sale or transfer of that handgun within 72 hours of the sale or transfer in a manner and format prescribed by the department. This requirement shall be deemed satisfied if the sale or transfer is processed through a licensed firearms dealer pursuant to Section 27545. A sale or transfer accomplished through an exception to Section 27545 is not exempt from this reporting requirement.

(3) By no later than March 1, 2021, the department shall provide a notification to persons or entities possessing an unsafe handgun pursuant to paragraph (4), (6), or (7) of subdivision (b) regarding the prohibitions on the sale or transfer of that handgun contained in this section. Thereafter, the department shall, upon notification of sale or transfer, provide the same notification to the purchaser or transferee of any unsafe handgun sold or transferred pursuant to those provisions.

(Amended by Stats. 2021, Ch. 70, Sec. 109. (AB 141) Effective July 12, 2021.)

Exhibit L

CALIFORNIA

Law enforcement officers may be illegally selling guns, ATF says



The memo focused on the purchase and resale of “off-roster” firearms.

One sale involved a buyer who converted two guns to assault weapons and later got into a six-hour standoff with a SWAT team. He was sentenced in June to 18 months in prison. (Sign up for our free video newsletter here <http://bit.ly/2n6VKPR>)

BY GREG MORAN, LYNSAY WINKLEY

APRIL 13, 2017 3 AM PT



Reporting from San Diego — The head of the ATF’s office in Los Angeles has sent a memo to Southern California police chiefs and sheriffs saying the agency has found law enforcement officers buying and reselling guns in what could be a violation of federal firearms laws.

The memo from Eric Harden, the federal Bureau of Alcohol, Tobacco, Firearms and Explosives’ Los Angeles Field Division special agent in charge, describes the finding as an “emerging problem” and expresses concern about “the growing trend of law enforcement officials engaging in the business of unlicensed firearms dealing.”

He did not say how many officers the agency has found purchasing and reselling weapons, but the memo — dated March 31 — says some officers had bought more than 100 firearms. Some of the guns have been recovered at crime scenes.

But Harden wrote that the goal is “to educate, not investigate, to ensure law enforcement officials comply with federal law in order to avoid unnecessary public embarrassment to themselves and your department/agency.”



His memo focuses on the purchase and resale of “off roster” firearms. Those are guns that are not on an approved list of weapons that can be sold to the public.

The California law establishing the roster has an exemption that allows sworn peace officers to purchase such weapons, and an additional one that allows officers to resell the guns under certain conditions. But if officers are buying and reselling weapons for profit as a business, they need a federal firearms license, or FFL.

The lack of a license is the conduct that ATF has uncovered and is the subject of the memo.

That amounts to a violation of federal law, the memo said. In addition, if a gun is bought with the intent to sell it or on behalf of someone else and that was not disclosed on federal transaction records — known as a “straw purchase” — that also breaks federal law for lying on a federal firearms form.

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Selling without a license can carry a maximum sentence of five years in prison. Lying on the federal form carries a maximum 10-year penalty.

It is unclear when the ATF discovered the problems, or what specifically prompted the memo.

Ginger Colbrun, spokeswoman for the ATF Los Angeles office, said the agency noticed that some firearms recovered at crime scenes were found to have been purchased within the past three years.

That “time to crime” measure developed by the ATF shows the time frame from when a gun is sold by a licensed dealer to when it is recovered by police during a criminal investigation. The national average is 10 years. A shorter time period can indicate the gun was the product of a straw purchase — bought in order to be sold quickly.

After spotting the trend in routine trace reports, the agency looked closer, Colbrun said. “After further investigation, ATF noticed some law enforcement officers had been making significant purchases of firearms,” she said.

She declined to be more specific, saying there were ongoing investigations.

Colbrun said the memo, addressed to “Dear Law Enforcement Partner,” didn’t indicate that officers who might be breaking federal gun laws were getting special treatment.

“There is no extra consideration,” she said. “We believe the most effective way to stop the behavior is to educate law enforcement in what the laws are and aren’t.”

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The California Police Chiefs Assn., which represents chiefs and sheriffs across the state, emailed the memo to its members this week. It was then forwarded to local agencies.

Federal prosecutions of state law enforcement officers for selling off-roster weapons are rare. The most recent occurred in Sacramento County, when former Sheriff’s Deputy

Ryan McGowan was found guilty in June 2015 of selling guns illegally and falsifying federal records to do it.

Prosecutors said he sold 25 guns at an inflated price between 2008 and 2011. McGowan also worked with a licensed gun shop to further circumvent federal law.

One sale involved a buyer who converted two guns to assault weapons and later got into a six-hour standoff with a SWAT team. He was sentenced in June to 18 months in prison.

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Moran and Winkley write for the San Diego Union-Tribune

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PART 6. CONTROL OF DEADLY WEAPONS [16000 - 34370] (Part 6 added by Stats. 2010, Ch. 711, Sec. 6.)

TITLE 4. FIREARMS [23500 - 34370] (Title 4 added by Stats. 2010, Ch. 711, Sec. 6.)

DIVISION 6. SALE, LEASE, OR TRANSFER OF FIREARMS [26500 - 28490] (Division 6 added by Stats. 2010, Ch. 711, Sec. 6.)

CHAPTER 5. Procedure For a Private Party Firearms Transaction [28050 - 28070] (Chapter 5 added by Stats. 2010, Ch. 711, Sec. 6.)

- 28050.** (a) A person shall complete any sale, loan, or transfer of a firearm through a person licensed pursuant to Sections 26700 to 26915, inclusive, in accordance with this chapter in order to comply with Section 27545.
- (b) The seller or transferor or the person loaning the firearm shall deliver the firearm to the dealer who shall retain possession of that firearm.
- (c) The dealer shall then deliver the firearm to the purchaser or transferee or the person being loaned the firearm, if it is not prohibited, in accordance with Section 27540.
- (d) If the dealer cannot legally deliver the firearm to the purchaser or transferee or the person being loaned the firearm, the dealer shall forthwith, without waiting for the conclusion of the waiting period described in Sections 26815 and 27540, return the firearm to the transferor or seller or the person loaning the firearm. The dealer shall not return the firearm to the seller or transferor or the person loaning the firearm when to do so would constitute a violation of Section 27500, 27505, 27515, 27520, 27525, 27530, or 27535.
- (e) Until July 1, 2024, if the dealer cannot legally return the firearm to the transferor or seller or the person loaning the firearm, then the dealer shall forthwith deliver the firearm to the sheriff of the county or the chief of police or other head of a municipal police department of any city or city and county, who shall then dispose of the firearm in the manner provided by Sections 18005 and 34000.
- (f) If Commencing July 1, 2024, if the dealer cannot legally return the firearm to the seller, transferor, or person loaning the firearm, then the following procedure shall apply:
- (1) The seller, transferor, or person loaning the firearm may request, and the dealer shall grant, that the dealer retain possession of the firearm for a period of up to 45 days so that the transferor or seller or the person loaning the firearm may designate a person to take possession of that firearm in accordance with Section 27540. This 45-day period shall be in addition to the waiting period described in Sections 26815 and 27540, and any time necessary to process a transaction.
 - (2) If, before the end of the 45-day period, the seller, transferor, or person loaning the firearm designates a person to receive the firearm and that person completes an application to purchase, the dealer shall process the transaction in accordance with the provisions of Section 27540.
 - (3) If the seller, transferor, or person loaning the firearm, does not request that the firearm be held by the dealer pursuant to this subdivision, or the firearm cannot be delivered to the designated person, the dealer, shall forthwith deliver the firearm to the sheriff of the county or the chief of police or other head of a municipal police department of any city or city and county, where the dealership is located, who shall then dispose of the firearm in the manner provided by Sections 18000, 18005, and 34000.
- (g) (1) If a dealer retains possession of a firearm pursuant to subdivision (f), the dealer shall within 72 hours after retaining possession of the firearm, notify the Department of Justice in a manner and format prescribed by the department.

(2) If a dealer delivers possession a firearm to a law enforcement agency pursuant to subdivision (e) or (f), the dealer shall notify the Department of Justice within 72 hours after the delivery of the firearm in a manner and format prescribed by the department.

(Amended by Stats. 2021, Ch. 250, Sec. 13. (SB 715) Effective January 1, 2022.)

Exhibit N


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PART 6. CONTROL OF DEADLY WEAPONS [16000 - 34370] (Part 6 added by Stats. 2010, Ch. 711, Sec. 6.)

TITLE 4. FIREARMS [23500 - 34370] (Title 4 added by Stats. 2010, Ch. 711, Sec. 6.)

DIVISION 10. SPECIAL RULES RELATING TO PARTICULAR TYPES OF FIREARMS OR FIREARM EQUIPMENT [30210 - 33690] (Division 10 added by Stats. 2010, Ch. 711, Sec. 6.)

CHAPTER 4. Handguns and Firearm Safety [31500 - 32110] (Heading of Chapter 4 amended by Stats. 2013, Ch. 761, Sec. 12.)

ARTICLE 6. Exceptions to Rules Governing Unsafe Handguns [32100 - 32110] (Article 6 added by Stats. 2010, Ch. 711, Sec. 6.)

32110. Article 4 (commencing with Section 31900) and Article 5 (commencing with Section 32000) shall not apply to any of the following:

- (a) The sale, loan, or transfer of any firearm pursuant to Chapter 5 (commencing with Section 28050) of Division 6 in order to comply with Section 27545.
- (b) The sale, loan, or transfer of any firearm that is exempt from the provisions of Section 27545 pursuant to any applicable exemption contained in Article 2 (commencing with Section 27600) or Article 6 (commencing with Section 27850) of Chapter 4 of Division 6, if the sale, loan, or transfer complies with the requirements of that applicable exemption to Section 27545.
- (c) The sale, loan, or transfer of any firearm as described in paragraph (3) of subdivision (b) of Section 32000.
- (d) The delivery of a pistol, revolver, or other firearm capable of being concealed upon the person to a person licensed pursuant to Sections 26700 to 26915, inclusive, for the purposes of the service or repair of that firearm.
- (e) The return of a pistol, revolver, or other firearm capable of being concealed upon the person by a person licensed pursuant to Sections 26700 to 26915, inclusive, to its owner where that firearm was initially delivered in the circumstances set forth in subdivision (a), (d), (f), or (i).
- (f) The delivery of a pistol, revolver, or other firearm capable of being concealed upon the person to a person licensed pursuant to Sections 26700 to 26915, inclusive, for the purpose of a consignment sale or as collateral for a pawnbroker loan.
- (g) The sale, loan, or transfer of any pistol, revolver, or other firearm capable of being concealed upon the person listed as a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations.
- (h) The sale, loan, or transfer of any semiautomatic pistol that is to be used solely as a prop during the course of a motion picture, television, or video production by an authorized participant therein in the course of making that production or event or by an authorized employee or agent of the entity producing that production or event.
- (i) The delivery of a pistol, revolver, or other firearm capable of being concealed upon the person to a person licensed pursuant to Sections 26700 to 26915, inclusive, where the firearm is being loaned by the licensee to a consultant-evaluator.
- (j) The delivery of a pistol, revolver, or other firearm capable of being concealed upon the person by a person licensed pursuant to Sections 26700 to 26915, inclusive, where the firearm is being loaned by the licensee to a consultant-evaluator.
- (k) The return of a pistol, revolver, or other firearm capable of being concealed upon the person to a person licensed pursuant to Sections 26700 to 26915, inclusive, where it was initially delivered pursuant to subdivision (j).

(Added by Stats. 2010, Ch. 711, Sec. 6. (SB 1080) Effective January 1, 2011. Operative January 1, 2012, by Sec. 10 of Ch. 711.)

Exhibit O



Department of Justice

U.S. Attorney's Office
Eastern District of California

For Immediate Release

Thursday, June 30, 2016

Phillip A. Talbert, United States Attorney

Contact: Lauren Horwood

916-554-2706

www.justice.gov/usao-edca

Former Sacramento County Sheriff's Deputy Sentenced to 18 Months in Prison for Unlawful Sale of Firearms

SACRAMENTO, Calif. — Ryan McGowan, 34, of Elk Grove, was sentenced today by United States District Judge Troy L. Nunley to 18 months in prison and a \$7,000 fine for dealing firearms without a license and for conspiracy to make a false statement on a firearms record, Acting United States Attorney Phillip A. Talbert announced.

Former Sacramento County sheriff's deputy McGowan and his co-defendant Robert Snellings were convicted last year following a jury trial. Snellings, 64, of Rancho Murieta, a former federal firearms licensee, was sentenced last week to one year in prison.

Under state law, California has an approved roster of firearms that may be sold to the public. A federal firearms licensee is required to make sure any handgun sold is on the approved roster. There is an exemption, however, for peace officers to purchase certain firearms known as "off-roster" firearms. Peace officers who own off-roster firearms may sell them in a private sale, so long as it is brokered by a federal firearms licensee. They may not, however, use these private sales to conduct a business whose principal objective is livelihood and profit through the repetitive purchase and resale of firearms.

According to evidence produced at trial, McGowan used his position as a deputy sheriff to purchase off-roster guns at retail price and then because the firearms could not be purchased directly by the general public, resold them at an inflated price on the private market in California. From 2008 to 2011, McGowan purchased 41 handguns and sold 25 of them within a year after purchase. Thirty-three of the guns were purchased through Snellings Firearms, which was owned by co-defendant Snellings. Some of those weapons were then transferred back to Snellings personally, thereby allowing Snellings to own the weapons himself or sell them to the public.

Both defendants were found guilty of conspiracies to make false statements in federal firearms records. In order to circumvent the restrictions on purchasing off-roster firearms, they falsely stated on ATF forms that a police officer was the actual purchaser when the actual purchaser of the off roster handgun was intended to be a non-officer who was not permitted to buy the gun. Therefore, McGowan and other police officers were acting as a straw purchasers who then transferred the handguns to the real purchasers within a short period of time.

ATF Special Agent in Charge Jill A. Snyder stated: "Ryan McGowan used his position as a law enforcement officer to purchase firearms and sell them illegally. In doing so, he violated federal law and public trust."

This case was the product of an investigation by the Bureau of Alcohol, Tobacco, Firearms and Explosives with the active involvement of the Sacramento Sheriff's Office and the Sacramento Police Department. The

Roseville Police Department and other law enforcement agencies assisted. Assistant United States Attorneys William S. Wong and Michael D. Anderson prosecuted the case.

####

San Francisco Field Division

Exhibit P



THE UNITED STATES ATTORNEY'S OFFICE
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Department of Justice
U.S. Attorney's Office
Eastern District of California

FOR IMMEDIATE RELEASE

Thursday, June 11, 2015

Jury Returns Guilty Verdicts for Former Sacramento County Sheriff's Deputy and Federal Firearms Licensee in Firearm Straw-Buyer Scheme

SACRAMENTO, Calif. — After a nine-day trial, a federal jury returned guilty verdicts for two defendants in a firearm straw-buyer scheme involving firearms that are not on California's roster of approved handguns, United States Attorney Benjamin B. Wagner announced.

Former Sacramento County Sheriff's Deputy Ryan McGowan, 33, of Elk Grove, was found guilty of one count of engaging in the business of dealing in firearms without a license and one count of conspiracy to make a false statement in federal firearms records. Federal Firearms Licensee Robert Snellings, 63, of Rancho Murieta, was found guilty of five counts of conspiracy to make false statements in federal firearms records.

Under state law, California has an approved roster of firearms that may be sold to the public. A Federal Firearms Licensee is required to make sure any handgun sold is on the approved roster. There is an exemption, however, for peace officers to purchase certain firearms known as "off-roster" firearms. Peace officers who own off-roster firearms may sell them in a private sale, as long as it is brokered by a Federal Firearms Licensee. They may not, however, use these private sales to conduct a business whose principal objective is livelihood and profit through the repetitive purchase and resale of firearms.

Because off-roster firearms cannot be purchased directly by the general public, they command high prices. According to evidence produced at trial, McGowan used his position as a sheriff's deputy to purchase off-roster guns at the retail price, and then he resold them at an inflated price on the private market in California. From 2008 to 2011, McGowan purchased 41 handguns, many of them high-caliber guns, and sold 25 of them within a year after purchase. Thirty-three of the guns were purchased through Snellings Firearms, which was owned by co-defendant Snellings. Some of those weapons were then transferred back to Snellings personally, thereby allowing Snellings to own the weapons himself or sell them to the public.

"When law enforcement officers misuse their badges to funnel dangerous weapons to the highest bidder, they compromise the safety of the public. By putting personal profit ahead of public safety, they undermine the very essence of their duty," said U.S. Attorney Wagner. "I want to specifically thank the Sacramento Sheriff's Office, the Sacramento Police Department, the Sacramento County District Attorney's Office, and other regional law enforcement agencies for their partnership in the course of this investigation."

Both defendants were found guilty of conspiracies to make false statements in federal firearms records. In order to circumvent the restrictions on purchasing off-roster firearms, they falsely stated on the ATF Form 4473 that a police officer was the actual purchaser when buying the off-roster handgun when the actual purchaser was intended to be a non-officer who was not permitted to buy the off-roster handgun. Therefore, McGowan and other police officers were acting as a straw purchasers who then transferred the handguns to the real purchasers within a short period of time.

“The individuals who unlawfully sell firearms and falsify official firearm transaction records are in violation of the federal firearms laws and should be held accountable,” stated Acting Special Agent in Charge Eric D. Harden. “One of ATF’s top priorities is to aggressively investigate those suspects who are illegally trafficking in firearms that may ultimately end up as crime guns.”

After pleading guilty on August 28, 2012, to one count engaging in the business of dealing in firearms without a license, co-defendant Thomas Lu, 42, of Elk Grove, is scheduled for sentencing on July 9, 2015. According to court documents, Lu was a Sacramento County Sheriff’s deputy who obtained 27 off-roster firearms and sold 23 of them, 18 of which were sold within one year.

This case is the product of an investigation by the Bureau of Alcohol, Tobacco, Firearms and Explosives with the active involvement of the Sacramento Sheriff’s Office and the Sacramento Police Department. The Roseville Police Department and other law enforcement agencies assisted. Assistant United States Attorneys William S. Wong and Michael D. Anderson are prosecuting the case.

The defendants are scheduled to be sentenced on August 27, 2015. The maximum statutory penalty for each of the conspiracy charges is five years in prison, a \$250,000 fine, and a term of supervised release. The maximum penalty for the charge of engaging in the business of dealing firearms without a license is 10 years in prison, a \$250,000 fine, and a term of supervised release. The actual sentences will be determined at the discretion of the court after consideration of any applicable statutory factors and the Federal Sentencing Guidelines, which take into account a number of variables.

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Updated June 11, 2015



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