No. 23-5369

IN THE SUPREME COURT OF THE UNITED STATES

DALLAS TERRELL SMITH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the requirement that a misrepresentation be "material to the lawfulness of the sale or other disposition of [the] firearm," in a prosecution for violating 18 U.S.C. 922(a)(6) by making false statements to a firearms dealer, must be submitted to the jury.

2. Whether the evidence was sufficient to show that the false address that petitioner listed on a Bureau of Alcohol, Tobacco, Firearms and Explosives form was "material to the lawfulness of the sale or other disposition of [the] firearm" under 18 U.S.C. 922(a)(6).

RELATED PROCEEDINGS

United States District Court (S.D. Fla):

United States v. Smith, No. 21-cr-20079 (Jan. 5, 2023)

United States Court of Appeals (11th Cir.):

United States v. Smith, No. 23-10172 (Aug. 2, 2023)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A6) is unreported but is available at 2023 WL 4929961.

JURISDICTION

The judgment of the court of appeals was entered on August 2, 2023. The petition for a writ of certiorari was filed on August 14, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Florida, petitioner was convicted on

one count of making a false or fictitious statement in connection with the acquisition of a firearm, in violation of 18 U.S.C. 922(a)(6), and one count of dealing in firearms without a license, in violation of 18 U.S.C. 922(a)(1)(A). Pet. App. A2, A7. The court sentenced him to 12 months and one day of imprisonment, to be followed by three years of supervised release. Id. at A8-A9. The court of appeals affirmed. Id. at A1-A6.

1. During an ongoing investigation into gun violence in South Florida, law enforcement officers identified petitioner as a potential straw purchaser of firearms. Presentence Investigation Report (PSR) ¶ 4. Between September 2018 and November 2020, petitioner purchased 25 firearms from licensed firearms dealers. PSR ¶¶ 5-6. In one such transaction, on June 2, 2019, petitioner purchased two Taurus G2C 9mm pistols from a licensed dealer. PSR ¶¶ 7-8; 10/11/2022 Tr. 217.

Federal law requires anyone buying a firearm from a federally licensed firearms dealer to complete Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Form 4473 to verify his identity and confirm that he can lawfully purchase the firearm. See 10/11/2022 Tr. 163-164; Gov't C.A. Br. 2; see also Abramski v. United States, 573 U.S. 169, 173-175 (2014). When filling out Form 4473, a buyer must provide his name and current address. See 10/11/2022 Tr. 169; D. Ct. Doc. 68-31, at 1 (Oct. 24, 2022). The buyer must also confirm that he is the "actual transferee or buyer" of the firearm. 10/11/2022 Tr. 169; see id. at 167. And he is required to attest

that his answers on the form are true, correct, and complete. Id. at 169.

Under 18 U.S.C. 922(a)(6), it is unlawful for someone purchasing (or attempting to purchase) a firearm or ammunition from a licensed dealer "knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive" the dealer "with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition." On the Form 4473 that petitioner filled out during the June 2, 2019, purchase, petitioner stated that his current address was 6736 Northwest 4th Avenue in Miami, Florida, and claimed that he was the actual transferee or buyer. 10/11/2022 Tr. 218. Later the same day, however, police recovered one of the pistols from another individual who was prohibited from buying a firearm. PSR ¶ 7; 10/12/2022 Tr. 122-128; 10/13/2022 Tr. 64; Gov't Br. 18. And ATF agents were unable to locate petitioner at the 4th Avenue address, ultimately discovering that he was living at a different address in Hallandale Beach, Florida. Gov't C.A. Br. 3-4.

In November 2020, petitioner agreed to speak with ATF agents and admitted that he bought and sold firearms to pay his bills. Gov't C.A. Br. 4. Petitioner further admitted that, of the 25 firearms that he had purchased from licensed firearms dealers over the past two years, he still possessed only the two most recently

purchased firearms. Ibid. Petitioner also stated that while he had previously lived at the 4th Avenue address, he had not lived there for at least five years. Ibid.

2. A federal grand jury in the Southern District of Florida charged petitioner in a second superseding indictment with three counts of making a false or fictitious statement in connection with the acquisition of a firearm, in violation of 18 U.S.C. 922(a)(6), and one count of dealing in firearms without a license, in violation of 18 U.S.C. 922(a)(1)(A). Second Superseding Indictment 1-3. As relevant here, one of the false-statement counts alleged that petitioner made two false statements on the Form 4473 that he filled out when he purchased the two Taurus pistols: (A) that he was the actual buyer of the firearms, but knew that he was not the actual buyer, and (B) that he resided at the 4th Avenue address, but knew that he did not reside there. Id. at 1-2.

At trial, an ATF agent testified that licensed firearms dealers use Form 4473 "to determine that the person that's buying [the firearm] is the actual person and not someone posing as him"; to determine whether "the individual is prohibited [from] possessing a firearm"; and to determine whether the buyer is the "actual" transferee or buyer of the firearm. 10/11/2022 Tr. 166-167. And representatives of licensed firearms dealers -- including a representative of the dealer that sold petitioner the Taurus pistols -- testified that they would not sell firearms to a buyer

who lists an address that is not his current residence, or who is not the actual transferee or buyer of the firearm. 10/12/2022 Tr. 55, 67, 81, 84.

Observing that United States v. Klais, 68 F.3d 1282 (11th Cir. 1995) (per curiam), cert. denied, 519 U.S. 829 (1996), identified the materiality of a misrepresentation to the lawfulness of a sale as a matter of law, the district court found that petitioner's false statements were material to the purchase's lawfulness, and rejected petitioner's proposal to leave that issue to the jury. 10/13/2022 Tr. 45-49, 57. The court's instructions to the jury made clear, however, that Section 922(a)(6) required the government to prove beyond a reasonable doubt that petitioner (1) "bought or tried to buy a firearm from a federally licensed firearms dealer," and (2) "knowingly made a false or fictitious statement, orally or in writing, that was intended to deceive or likely to deceive the dealer." Id. at 57.

The jury found petitioner guilty on one count of making a false or fictitious statement in connection with the acquisition of a firearm, in violation of 18 U.S.C. 922(a)(6) -- the count stemming from his June 2, 2019, purchase of the Taurus pistols -- and one count of dealing in firearms without a license, in violation of 18 U.S.C. 922(a)(1)(A). Pet. App. A7. The district court sentenced him to 12 months and one day of imprisonment, to be followed by three years of supervised release. Id. at A8-A9.

3. The court of appeals affirmed in an unpublished per curiam opinion. Pet. App. A1-A6. The court adhered to its prior determination that "whether a statement of fact is 'material to the lawfulness of the sale' of a firearm is 'purely a question of law' for the court to decide.'" Id. at A4 n.1 (quoting Klais, 68 F.3d at 1283). And it observed that petitioner's "argument that a false address is not 'material to the lawfulness of the sale' of a firearm" was likewise "contrary to binding precedent." Id. at A4. The court also observed "that a buyer's intentional misstatement of his home address is material to the lawfulness of the sale because the dealer is required by statute to record the name, age, and place of residence of the buyer -- meaning that 'the sale is illegal unless these matters are correctly recorded.'" Ibid. (quoting United States v. Gudger, 472 F.2d 566, 568 (5th Cir. 1972)); see 18 U.S.C. 922(b)(5) (prohibiting the sale of a firearm to any person "unless the licensee notes in his records * * * the name, age, and place of residence of such person").

Having found that petitioner's false statement about his address was material, the court of appeals declined to address whether the evidence was also sufficient "to prove that [petitioner] was not the 'actual transferee/buyer' of the firearms as he stated on the ATF form." Pet. App. A4. The court observed that "[o]ne false statement is enough." Ibid.

ARGUMENT

Petitioner renews his contention (Pet. 5-13) that the question of materiality in a Section 922(a)(6) prosecution must be submitted to the jury. That contention does not warrant this Court's review. Even if petitioner is correct, the jury's role in finding materiality in Section 922(a)(6) cases will generally be limited to applying specific legal instructions that inform the jury that if a particular statement was false, it was material to the lawfulness of the sale. And any division among the courts of appeals on that question is shallow. This Court has previously denied review of that issue, see Garrity v. United States, 582 U.S. 905 (2017) (No. 16-8212), and should follow the same course here.

The court of appeals also correctly rejected petitioner's contention (Pet. 14-20) that the false statement that petitioner made about his address on the Form 4473 was not material. That contention does not implicate any clear division of authority in the courts of appeals and does not warrant this Court's review. And the unpublished decision in this case would be a poor vehicle to address either question presented because it is clear beyond a reasonable doubt that the jury would have found that petitioner's false statement about his address satisfied Section 922(a)(6)'s materiality requirement, and also -- independently -- would have found that he falsely, and materially, stated that he was the "actual" buyer of the firearms.

1. a. In United States v. Gaudin, 515 U.S. 506 (1995), the Court held that, in a prosecution under 18 U.S.C. 1001, a defendant is constitutionally entitled to a jury determination of the materiality of his allegedly false statement. 515 U.S. at 509-523. The government had conceded that materiality is an element of the Section 1001 offense, which involves the making of false statements in a matter within the jurisdiction of a federal agency. Id. at 509. As the Court explained, the materiality analysis in Section 1001 cases poses a "mixed question of law and fact": the jury will need to decide what statement was made and what decision the agency was trying to make, then ask whether the statement tended to influence that decision. Id. at 512 (citation omitted). Such mixed questions, the Court determined, fall within the jury's province. Id. at 512-515. That is because, the Court explained, "[t]he Constitution gives a criminal defendant the right to have a jury determine, beyond a reasonable doubt, his guilt of every element of the crime with which he is charged." Id. at 522-523.

The courts of appeals have applied Gaudin to most federal criminal statutes requiring determinations of materiality in contexts akin to Section 1001's. See, e.g., United States v. McLaughlin, 386 F.3d 547, 552 (3d Cir. 2004) (18 U.S.C. 1623, perjury; and 29 U.S.C. 439(b), false statement in a report to the Department of Labor); United States v. DiRico, 78 F.3d 732, 735-736 (1st Cir. 1996) (26 U.S.C. 7206(1), false subscription to a

tax return); United States v. Pettigrew, 77 F.3d 1500, 1510-1511 (5th Cir. 1996) (18 U.S.C. 1006, false entries in lending institution records). In those contexts, the jury is asked to determine whether the falsehood has "a natural tendency to influence, or [is] capable of influencing, the decision of the decisionmaking body to which it was addressed." Gaudin, 515 U.S. at 509 (citation omitted).

But under 18 U.S.C. 922(a)(6), "materiality" plays a different role. The statute forbids a false or fictitious statement "with respect to any fact material to the lawfulness of the sale" of a firearm. Ibid. (emphasis added). Federal law "establishes a detailed scheme to enable the dealer to verify, at the point of sale, whether a potential buyer may lawfully own a gun." Abramski v. United States, 573 U.S. 169, 172 (2014). Certain facts -- such as a buyer's true name and place of residence -- are indispensable to that process. See id. at 171-173 (describing requirements for gathering a buyer's information, conducting background checks, and maintaining records). Thus, the determination of what facts are material in this context would be heavily circumscribed by a court's instructions about what facts do and do not affect the "lawfulness" of a firearm sale. See Gaudin, 515 U.S. at 513 (emphasizing that a judge "must be permitted to instruct the jury on the law and to insist that the jury follow his instructions").

In Abramski, for example, the Court held that a defendant's false statement about the actual buyer of a firearm constitutes a material misrepresentation. 573 U.S. at 189 (concluding that "Abramski's false statement was material because had he revealed that he was purchasing the gun on [someone else's] behalf, the sale could not have proceeded under the law"). If a jury is instructed to decide materiality in a "straw purchaser" case, its decision will follow directly from the Court's definition of what statements are material to the "lawfulness" of the sale. Per Abramski, a false statement about the buyer's identity is material as a matter of law. See ibid. The same is true in the mine-run of Section 922(a)(6) cases: the jury's role in determining materiality -- even under Gaudin -- will be limited.

It may be that, under Gaudin, the jury should nevertheless make the ultimate determination of materiality in a Section 922(a)(6) case. See 515 U.S. at 511 (explaining that a jury must find a defendant "guilty of all the elements of the crime with which he is charged"). But because Section 922(a)(6) requires a highly bounded -- and uncommonly specific -- definition of materiality, the jury's role is a limited one.

b. Any disagreement in the courts of appeals on how to instruct the jury on materiality in a Section 922(a)(6) case is shallow and does not warrant this Court's review.

Shortly before this Court decided Gaudin, the Eleventh Circuit considered and rejected a defendant's contention that the

materiality requirement of Section 922(a)(6) must be submitted to the jury. United States v. Klais, 58 F.3d 640 (Tbl.), reh'g denied, 68 F.3d 1282 (1995) (per curiam), cert. denied, 519 U.S. 829 (1996). After Gaudin was decided, the defendant in Klais filed a petition for rehearing, asking the court of appeals to reconsider its ruling in light of Gaudin. See Klais, 68 F.3d at 1282-1283. The court denied rehearing on the ground that "the reasoning in Gaudin with respect to 18 U.S.C. § 1001 does not apply to 18 U.S.C. § 922(a)(6)." Klais, 68 F.3d at 1282. It emphasized the different roles of the materiality requirements in the two statutes, explaining that while Section 1001 makes it unlawful to falsify a "material fact" that could affect a government agency's decision-making, Section 922(a)(6) prohibits a false statement "with respect to any fact material to the lawfulness of [a firearm] sale." Id. at 1283 (citations omitted). The court accordingly determined that whether a fact is "material to the lawfulness of the transaction * * * is purely a question of law." Ibid. The Eleventh Circuit has since reaffirmed that determination in United States v. Ortiz, 318 F.3d 1030, 1037 n.11 (2003) (per curiam); United States v. Frazier, 605 F.3d 1271, 1279 (2010); United States v. Garrity, 664 Fed. Appx. 889, 894, 894-895 (2016) (per curiam), cert. denied, 582 U.S. 905 (2017); and petitioner's case, Pet. App. A3 n.1.

Petitioner attempts to identify a conflict in the courts of appeals by invoking (Pet. 6-12) other circuits' pattern jury

instructions. But pattern instructions are not the law and do not bind courts. See, e.g., United States v. Maury, 695 F.3d 227, 259 (3d Cir. 2012) (explaining that the Third Circuit Model Criminal Jury Instructions "are not [] binding on this, or any, court" and "cannot invalidate the decisions of this Circuit or others"), cert. denied, 568 U.S. 1231 (2013); United States v. Dohan, 508 F.3d 989, 994 (11th Cir. 2007) (per curiam) (similar), cert. denied, 553 U.S. 1034 (2008); United States v. Fourstar, 87 Fed. Appx. 62, 64-65 (9th Cir. 2004) (mem.) (similar); United States v. Buchner, 7 F.3d 1149, 1151 n.1 (5th Cir. 1993) (similar), cert. denied, 510 U.S. 1207 (1994); United States v. Burke, 781 F.2d 1234, 1239 n.2 (7th Cir. 1985) (similar).

Petitioner also cites (Pet. 6-7) decisions from courts of appeals in which the district court had instructed the jury regarding materiality for purposes of Section 922(a)(6). But those decisions either referenced nonbinding pattern instructions or simply acknowledged how the district court instructed the jury regarding materiality; they did not actually address a claim like petitioner's. See United States v. Meech, No. 21-30025, 2022 WL 136823, at *1-*2 (9th Cir.) (mem.), cert. denied, 143 S. Ct. 149 (2022); United States v. Kaspereit, 994 F.3d 1202, 1209 (10th Cir. 2021); United States v. Diaz, 989 F.3d 390, 394 (5th Cir.), cert. denied, 142 S. Ct. 368 (2021); United States v. Whitney, 524 F.3d 134, 138 (1st Cir. 2008); United States v. Rahman, 83 F.3d 89, 92 (4th Cir.), cert. denied, 519 U.S. 998 (1996). Indeed, although

petitioner identifies the Fifth Circuit's decision in Diaz as a case in which the district court's instructions tracked the pattern jury instructions, the Fifth Circuit has determined that "the question of materiality in a § 922(a)(6) case is a question of law for the court." United States v. Ortiz-Loya, 777 F.2d 973, 982 (1985).

The Ninth Circuit's decision in United States v. Moore, 109 F.3d 1456 (en banc), cert. denied, 522 U.S. 836 (1997), appears to be the sole decision in tension with the decision below. In Moore, the defendants argued that the district court's jury instructions on the materiality requirement of Section 922(a)(6) "violated the Gaudin rule." Id. at 1463. The Ninth Circuit rejected that argument. Id. at 1463-1466. Although it did not doubt that Gaudin applied to Section 922(a)(6), id. at 1463-1464, the court found that the challenged instruction did not, in fact, withhold the determination of materiality from the jury, id. at 1464-1466. That was so even though the instructions -- which related to the same issue of "straw purchasers" that this Court later decided in Abramski -- stated in part that if the jury found that the defendant had made a false statement about the purchaser's identity, the government had established a material false statement. Id. at 1463.

The tension between Moore (which petitioner does not cite) and the decision below does not warrant this Court's review. The jury in this case was informed that, "[i]f you find the statement

in this case is false, then it was material to the sale." 10/13/2022 Tr. 57. That is quite similar to the instruction in Moore. See 109 F.3d at 1463 ("If the government establishes by proof beyond a reasonable doubt that * * * [the defendant] was not [the true purchaser of the handgun], then the government has established that [the defendant] made a material false statement in connection with the purchase of the firearm.") (citation omitted). The primary difference is that the district court here also said that materiality was "a question of law for the Court." 10/13/2022 Tr. 57. That statement did not meaningfully alter the jury's function in this case, which was comparable to the jury's function in Moore, and does not provide any basis for further review of the first question presented in the petition.

2. The second question presented likewise does not warrant this Court's review.

a. The court of appeals correctly recognized that the false statement that petitioner made on the Form 4473 about his address was material. Section 922(a)(6) requires a buyer to provide truthful information to a dealer about any fact material to the lawfulness of a firearm sale. Section 922(b)(5), in turn, makes a sale unlawful unless the seller records "the buyer's 'name, age, and place of residence.'" Abramski, 573 U.S. at 172 (quoting 18 U.S.C. 922(b)(5)). Consistent with that requirement, Form 4473 asks a gun buyer to list his or her "[c]urrent" address. D. Ct. Doc. 68-31, at 1. And a representative of the licensed firearms

dealer that sold petitioner the Taurus pistols testified that the dealer would not complete a firearm sale if it knew that the buyer listed "an address that was incorrect or false" or "an address that the person did not reside at." 10/12/2022 Tr. 81, 84.

Petitioner's knowing use of an incorrect address on his Form 4473 was therefore material to the dealer's decision to sell him the firearms -- and to the lawfulness of that sale, which failed to record petitioner's accurate address, as required by Section 922(b)(5). Indeed, because petitioner did not live at the listed address, it took ATF longer to track him down, see p. 3, supra, undermining one of the "goal[s]" of Section 922's "record-keeping provisions": "to aid law enforcement in the investigation of crime." Abramski, 573 U.S. at 190.

Petitioner asserts (Pet. 19) "that a purchaser's false statement about his address is not 'always' material," but rather that materiality "depends on whether the government can present evidence of materiality through witnesses who testify regarding their reliance on a defendant's statements." But the materiality standard that petitioner advocates (Pet. 10) asks whether a false statement has a "tendency to influence" or is "capable of influencing" the decision of a decisionmaker, not whether the statement in fact did so. Gaudin, 515 U.S. at 509 (citation omitted). Petitioner does not dispute that the evidence at trial showed that the false address that he listed on Form 4473 was

capable of influencing the dealer's decision to sell him the Taurus pistols, or of affecting the lawfulness of that sale.

b. Petitioner provides no sound basis for this Court to review the second question presented. In particular, this case does not implicate a clear disagreement in the courts of appeals on whether a false statement about a buyer's address is "'always material' to the lawfulness of [a] sale" under Section 922(a)(6). Pet. 14 (emphasis omitted).

Petitioner notes (Pet. 17) that in United States v. Queen, 408 F.3d 337, 339 (2005), the Seventh Circuit recognized that "an incorrect street address on an ATF 4473 Form is material," but made clear in a subsequent decision, United States v. Bowling, 770 F.3d 1168 (2014), that Queen did not go "so far as to declare that providing a false address, in every case, is material as a matter of law," id. at 1177-1178. Petitioner contends that the decision below is at odds with Bowling because, "[i]n effect, the panel adopted the position in United States v. Garrity that a false statement about a place of residence 'is always material to the lawfulness of a firearm sale.'" Pet. 17 (quoting Garrity, 664 Fed. Appx. at 894). That contention lacks merit.

To begin with, the decision below did not rely on the court of appeals' unpublished decision in Garrity. Instead, it relied on the Fifth Circuit's decision in United States v. Gudger, 472 F.2d 566 (1972), which affirmed a defendant's conviction under Section 922(a)(6) for presenting a fictitious Florida address to

a Florida firearms dealer. Id. at 567-568; see Pet. App. A4. The court in Gudger rejected the defendant's argument that a false address "does not become material until the government first proves that the defendant is not a resident of the state in which the dealer is doing business." 472 F.2d at 567 (citation omitted). That was the same argument that the Seventh Circuit rejected in Queen: "that gun buyers may lie about a street address so long as they live within the state where the gun is sold." 408 F.3d at 339. Gudger is thus consistent with both Queen and Bowling, which reaffirmed Queen's holding that the false address in that case was material and "that it was sufficient to support an indictment irrespective of the state of residence of the buyer." Bowling, 770 F.3d at 1177.

Although the Eleventh Circuit has stated in an unpublished opinion that a buyer's "place of residence[] is always material to the lawfulness of a firearm sale," Garrity, 664 Fed. Appx. at 894, neither the court below nor any other court of appeals has clearly adopted that rule in a published opinion. The opinion in this case is itself unpublished. As a result, its statement that Gudger "explained that a buyer's intentional misstatement of his home address is material to the lawfulness of the sale because * * * 'the sale is illegal unless th[at] matter[] [is] correctly recorded'" -- which was offered only in response to petitioner's categorical "argument that a false address is not 'material to the

lawfulness of the sale' of a firearm" -- would not have any binding effect on future courts. Pet. App. 4a (citation omitted).

Any disagreement on this issue would also lack practical significance. A buyer's false statement about his or her address will typically be material. As this Court explained in Abramski, by concealing the true buyer a straw purchaser "prevent[s] the dealer from * * * recording his name, age, and residence," as required by Section 922(b)(5). 573 U.S. at 188. And by listing a fake address on Form 4473, a buyer likewise prevents the dealer from recording his correct residence, as required by law. Furthermore, this case would not implicate any possible disagreement about whether listing a fake address on Form 4472 is "always material," Pet. i, because there was clear evidence that petitioner's false statement about his address was material in this case: the dealer would not have sold him the firearms had it known that the address was false, 10/12/2022 Tr. 81, 84.

3. This case would be a poor vehicle to address the questions presented in any event.

First, even assuming that the jury should have been instructed to find materiality, any error was harmless. See Neder v. United States, 527 U.S. 1, 17 (1999) (finding that failure to instruct the jury properly on materiality was harmless because "the jury verdict would have been the same absent the error"). As discussed, a representative of the firearms dealer that sold petitioner the Taurus pistols told the jury that the dealer would not complete a

firearm sale if it knew that the buyer listed "an address that was incorrect or false" or "an address that the person did not reside at." 10/12/2022 Tr. 81, 84. That not only supports the court of appeals' rejection of petitioner's argument that his false address was not material, but also makes clear "beyond a reasonable doubt," Neder, 527 U.S. at 17, that the jury would have found materiality.

Second, the Section 922(a)(6) count involving the Taurus pistols charged petitioner with making two materially false statements in connection with that firearms purchase: (A) that he was the actual buyer of the firearms, and (B) that he currently resided at the 4th Avenue address. Second Superseding Indictment 1-2. Thus, even if petitioner's false address was not material, his conviction under Section 922(a)(6) can be affirmed on the ground that he falsely stated on Form 4473 that he was the actual transferee or buyer of the firearms. See Pet. App. A4 ("One false statement is enough."). One of the two Taurus pistols that petitioner purchased was recovered from another individual who was prohibited from purchasing a firearm within a few hours of petitioner's purchase. See Gov't C.A. Br. 3, 18. The testimony showed that petitioner "sold that firearm on June 2nd, 2019"; "had no intention of keeping the firearm"; and therefore "was not the actual buyer of the firearm." 10/13/2022 Tr. 64. And it is clear that the jury, which was instructed on both theories, must have found that.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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