



1 defendant Zheng exclusively.

2 At the conclusion of the trial, defendant Zheng moved for judgment of  
3 acquittal on Counts One and Two pursuant to Fed.R.Crim.P. 29.<sup>1</sup> Zheng  
4 argued that it had not been proved beyond a reasonable doubt that he had  
5 violated either Count One (18 U.S.C. §§ 371, 922(a)(1)(A), and 924(a)(1)(D) -  
6 Conspiracy to Deal in Firearms Without A License) or Count Two (18 U.S.C.  
7 §§ 922(a)(1)(A) and 924(a)(1)(D) - Dealing in Firearms Without A License).  
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10 The court reserved decision on the motion and indicated that this written  
11 decision would be forthcoming. Zheng's motion is granted as to the former  
12 assertion and denied as to the latter assertion.  
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14 No direct evidence was presented of a conspiracy between LIN and  
15 ZHENG to deal in firearms without a license, as charged in Count One.  
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17 Although there was some circumstantial evidence of a conspiracy, that evidence  
18 was insufficient to show beyond a reasonable doubt that LIN was anything  
19 other than a delivery man or "go-fer" acting on ZHENG'S orders. Accordingly,  
20 defendant ZHENG'S motion for acquittal on Count One is granted.  
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26 Pursuant to plaintiff's oral motion at trial, Counts Three, Four, and Five  
were dismissed by order of the court.

1 As to Count Two, defendant Zheng maintained that he was not engaged  
2 in the business of dealing in firearms within the meaning of the statute, that the  
3 sale of guns to the confidential informant was a non-commercial, one-time  
4 transaction and not a regular, repeated event, and that there was no proof that  
5 he had access to other guns he could sell.  
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8 Defendant Zheng's motion for judgment of acquittal on Count Two is  
9 denied. Title 18 U.S.C. § 922 provides in relevant part: "(a) It shall be unlawful-  
10 --(1) for any person--(A) except a licensed importer, licensed manufacturer, or  
11 licensed dealer, to engage in the business of importing, manufacturing, or  
12 dealing in firearms, or in the course of business to ship, transport, or receive any  
13 firearm in interstate or foreign commerce."  
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17 The U.S. Court of Appeals for the Ninth Circuit has endorsed the  
18 following jury instruction as the current embodiment of Ninth Circuit law:  
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20 A person engages in the business of dealing in firearms if he has  
21 guns on hand or is ready and able to procure them, in either case  
22 for the purpose of selling some or all of them to such persons as he  
23 might from time to time accept as customers. Such business need  
24 not be the defendant's primary business, nor must he make a  
25 certain profit from the business. The statute is aimed at those who  
26 hold themselves out as a source of firearms, or those who engage in  
regular and repeated buying and/or sellings of firearms, as opposed  
to an isolated or occasional transaction.

1 United States v. Breier, 813 F.2d 212, 214 n.1 (9th Cir. 1987).<sup>2</sup> Breier remains  
2 good law.  
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4 Here, pursuant to the stipulated facts, defendant Zheng conceded that he  
5 had no license to deal in firearms, that both the firearms in question had  
6 traveled in interstate commerce, that defendant Zheng knew that both the  
7 possession and sale of the firearms was illegal in the Commonwealth, and that  
8 he had been told that the firearms were to be used in a criminal enterprise.  
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10 Despite that, defendant Zheng sold two firearms to the confidential informant,  
11 in two separate and distinct transactions, although the transactions were  
12 conducted on the same night.  
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15 The uncontroverted evidence at the trial, combined with the stipulated  
16 facts, proved beyond a reasonable doubt both that defendant Zheng had guns on  
17 hand and that he also proclaimed himself ready and able to procure additional  
18 guns if the buyer had more money. Thus, defendant Zheng held himself out as a  
19 reliable source of firearms, and not just for an isolated or occasional transaction.  
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24 The cases relied upon by defendant Zheng--United States v. Berry, 644  
25 F.2d 1034 (5th Cir. 1981) and United States v. Tarr, 589 f.2d 55 (1st Cir. 1978)--  
26 pre-date the Ninth Circuit's decision in Breier and the November 15, 1986,  
amendments to 18 U.S.C. § 922. This court is bound by Ninth Circuit  
precedent.

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The uncontroverted evidence before the court was sufficient to prove all the elements of Count Two.

FOR THE FOREGOING REASONS, defendant Zheng's Fed.R.Crim.P. 29 motion for judgment of acquittal is granted as to Count One and denied as to Count Two.

IT IS SO ORDERED.

DATED this 18th day of July, 2002.

  
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ALEX R. MUNSON  
Judge