

FILED

JUN 14 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

AMADO OCHOA, AKA Big Dog,

Defendant-Appellant.

Nos. 16-50309, 16-50310

D.C. Nos.

2:14-cr-00557-FMO-1,

2:14-cr-00553-FMO-3

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Fernando M. Olguin, District Judge, Presiding

Argued and Submitted April 9, 2018
Pasadena, California

Before: BEA and MURGUIA, Circuit Judges, and KEELEY,** District Judge.

Amado Ochoa appeals his jury conviction for engaging in the business of unlicensed firearms dealing in violation of 18 U.S.C. § 922(a)(1)(A). Ochoa argues that there was insufficient evidence to prove that he engaged in the business

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Irene M. Keeley, United States District Judge for the Northern District of West Virginia, sitting by designation.

of firearms dealing without a license. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Under 18 U.S.C. § 922(a)(1)(A), it is unlawful for any person “except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms.” “[E]ngaged in the business” as applied to a “dealer in firearms” is defined as “a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.” 18 U.S.C. § 921(a)(21)(C).

Ochoa does not dispute that he acted as a broker of firearms between the confidential informant and various sellers. Rather, Ochoa argues that brokering is not included in § 922(a)(1)(A)’s ambit. On the contrary, § 922(a)(1)(A) reaches those who hold themselves out as sources of firearms. *See United States v. King*, 735 F.3d 1098, 1107 (9th Cir. 2013) (upholding sufficiency of evidence for conviction of a defendant who “held himself out as a firearms dealer”). “It is enough to prove that the accused has guns on hand or is ready and able to procure

them for the purpose of selling them from time to time to such persons as might be accepted as customers.” *United States v. Breier*, 813 F.2d 212, 213-14 (9th Cir. 1987) (internal quotation marks omitted). Moreover, “Section 922(a)(1)(A) does not require an actual sale of firearms.” *King*, 735 F.3d at 1107 n.8. The language of the statute does not require a defendant personally to carry out repetitive purchases and sales of firearms; the statute requires “*the* repetitive purchase and resale of firearms,” not “*defendant’s* repetitive purchase and resale of firearms.” 18 U.S.C. § 921(a)(21)(C) (emphasis added). Here, while the evidence demonstrated that Ochoa did not purchase and sell firearms himself, it was sufficient to demonstrate that he had the principle objective of making a profit through the repetitive purchase and sale of firearms, even if those purchases and sales were carried out by others.

AFFIRMED.