## 8.143A HOBBS ACT—ROBBERY OR ATTEMPTED ROBBERY

## (18 U.S.C. § 1951)

The defendant is charged in [Count \_\_\_\_\_\_ of] the indictment with [attempted] robbery in violation of Section 1951 of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly [obtained] [attempted to obtain] money or property from or in the presence of [*name of victim*];

Second, the defendant [did so] [attempted to do so] by means of robbery;

Third, the defendant believed that [*name of victim*] [parted] [would part] with the money or property because of the robbery; [and]

Fourth, the robbery [affected] [would have affected] interstate commerce[; and][.]

[Fifth, the defendant did something that was a substantial step toward committing the crime and that strongly corroborated the defendant’s intent to commit the crime.

Mere preparation is not a substantial step toward committing the crime. To constitute a substantial step, a defendant’s act or actions must unequivocally demonstrate that the crime will take place unless interrupted by independent circumstances.

Jurors do not need to agree unanimously as to which particular act or actions constituted a substantial step toward the commission of a crime.]

“Robbery” means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence [or fear of injury, immediate or future, to his person or property, or to property in his custody or possession, or to the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining].

**Comment**

Give the bracketed language appropriate to either a completed crime or an attempt. Only that portion of the definition of robbery that is relevant to the issues in the trial should be given to the jury.

For a definition of “affecting interstate commerce,” *see* Instruction 8.143B (Hobbs Act—Affecting Interstate Commerce). Only a de minimis effect on interstate commerce is required to establish jurisdiction under the Hobbs Act, and the effect need only be probable or potential, not actual. *United States v. Lynch*, 437 F.3d 902, 908-09 (9th Cir. 2006) (en banc). The interstate nexus may arise from either direct or indirect effects on interstate commerce. *Id*. at 909-10. When the effects are only indirect it may be appropriate to measure the adequacy of proof of interstate nexus by applying the test articulated in *United States v. Collins*, 40 F.3d 95, 100 (5th Cir. 1994).

When the defendant has been charged with robbing or attempting to rob a drug dealer, the government satisfies the “affecting commerce” element of this crime if it shows that the defendant robbed or attempted to rob a drug dealer of drugs or drug proceeds. *Taylor v. United States*, 136 S. Ct. 2074 (2016). *See also* *United States v. Woodberry*, 987 F.3d 1231, 1235 (9th Cir. 2021) (applying *Taylor*’s holding to robbery of licensed marijuana dispensary). “[T]he Government need not show that the drugs that a defendant stole or attempted to steal either traveled or were destined for transport across state lines.”  *Taylor*, 136 S. Ct. at 2081.

The bracketed language stating an additional element applies only when the charge is an attempt. In attempt cases, “[t]o constitute a substantial step, a defendant’s actions must cross the line between preparation and attempt by unequivocally demonstrating that the crime will take place unless interrupted by independent circumstances.” *United States v. Goetzke*, 494 F.3d 1231, 1237 (9th Cir. 2007) (internal quotations omitted).

The “strongly corroborated” language in this instruction comes from *United States v. Snell*, 627 F.2d 186, 187 (9th Cir. 1980) (“A conviction for attempt requires proof of culpable intent and conduct constituting a substantial step toward commission of the crime that strongly corroborates that intent”) and *United States v. Darby*, 857 F.2d 623, 625 (9th Cir. 1988) (same).

Jurors do not need to agree unanimously as to which particular act or actions constituted a substantial step toward the commission of a crime. *United States v. Hofus*, 598 F.3d 1171, 1176 (9th Cir. 2010).

“[A] person may be convicted of an attempt to commit a crime even though that person may have actually completed the crime.” *United States v. Rivera-Relle*, 333 F.3d 914, 921 (9th Cir. 2003).

18 U.S.C. § 1951 requires specific intent as an element. In *United States v. Dominguez*, the Ninth Circuit reiterated its prior holding that “criminal intent—acting ‘knowingly or wilingly’—is an implied and necessary element that the government must prove for a Hobbs Act conviction.” 954 F.3d 1251, 1261 (9th Cir. 2020) (quoting *United States v. Du Bo*, 186 F.3d 1177, 1179 (9th Cir. 1999)). In *Dominguez*, the Ninth Circuit held that evidence was sufficient to support defendant’s conviction of attempted Hobbs Act robbery because it “overwhelmingly showed that [defendant] had the specific intent.

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