## 8.146 FINANCIAL TRANSACTION OR ATTEMPTED TRANSACTION

## TO PROMOTE UNLAWFUL ACTIVITY

## (18 U.S.C. § 1956(a)(1)(A))

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [conducting] [attempting to conduct] a financial transaction to promote [*unlawful activity*] in violation of Section 1956(a)(1)(A) 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 [conducted] [intended to conduct] a financial transaction involving property that represented the proceeds of [*specify prior, separate criminal activity*];

Second, the defendant knew that the property represented the proceeds of [*specify prior, separate criminal activity*]; [and]

Third, the defendant acted with the intent to promote the carrying on of [*specify unlawful activity being promoted*][.] [; and]

[Fourth, 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.]

A financial transaction is a transaction involving [the movement of funds by wire or other means that] [one or more monetary instruments that] [the use of a financial institution that is engaged in, or the activities of which] affect[s] interstate or foreign commerce in any way.

**Comment**

*See* *United States v. Sayakhom,* 186 F.3d 928, 940 (9th Cir. 1999), approving a similar version of this instruction.

For cases involving conduct on or after May 20, 2009, “proceeds” means “any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.” 18 U.S.C. § 1956(c)(9) (subsection (c)(9) was added by Pub. L. 111-21, 123 Stat. 1618). For cases involving conduct prior to May 20, 2009, consider *United States v. Santos*, 553 U.S. 507, 513-14 (2008) (plurality opinion) (stating that when prior, separate criminal activity is gambling, “proceeds” must be defined as “profits.”), and *United States v. Van Alstyne*, 584 F.3d 803, 814 (9th Cir. 2009) (“We therefore view the holding that commanded five votes in *Santos* as being that ‘proceeds’ means ‘profits’ where viewing ‘proceeds’ as ‘receipts’ would present a ‘merger’ problem of the kind that troubled the plurality and concurrence in *Santos*.”).

With respect to the second element, the government must prove that the defendant knew that the property represented the proceeds of the specific prior, separate criminal activity but need not prove that the defendant knew that the act of laundering the proceeds was unlawful. *See United States v. Deeb*, 175 F.3d 1163, 1167 (9th Cir. 1999).

Because it is a specific intent crime, it is reversible error to give Instruction 5.7 (Knowingly—Defined) in a money laundering case.  *United States v. Stein*, 37 F.3d 1407, 1410 (9th Cir. 1994).  *See also United States v. Turman*, 122 F.3d 1167, 1170 (9th Cir. 1997) (applying *Stein* retroactively).

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).

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