**8.147 LAUNDERING OR ATTEMPTING TO LAUNDER**

**MONETARY INSTRUMENTS**

**(18 U.S.C. § 1956(a)(1)(B))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [laundering] [attempting to launder] money in violation of Section 1956(a)(1)(B) 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 some form of unlawful activity; and

Third, the defendant knew that the transaction was designed in whole or in part [to conceal or disguise the [nature] [location] [source] [ownership] [control] of the proceeds] [to avoid a transaction reporting requirement under state or federal law][.] [; 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.

The phrase “knew that the property represented the proceeds of some form of unlawful

activity” means that the defendant knew that the property involved in the transaction represented

proceeds from some form, though not necessarily which form, of activity that constitutes a

felony. I instruct you that [*specify relevant unlawful activity*] is a felony.

[The laws of the [United States] [State of \_\_\_\_\_\_\_] require the reporting of [*specify reporting* *requirement*].]

**Comment**

“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 on May 20, 2009).

For cases involving conduct before 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*.”). *See also United States v. Webster*, 623 F.3d 901, 906 (9th Cir. 2010) (reading *Santos* as holding that where money laundering count is based on transfers among co-conspirators of money from sale of drugs, “proceeds” includes all “receipts” from such sales).

If the defendant is charged with laundering a monetary instrument other than cash, *see* 18 U.S.C. § 1956(c)(5), the instruction should be modified accordingly.

Because it is a specific intent crime, it is reversible error to give Instruction 4.8 (Knowingly) 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, 1169 (9th Cir. 1997) (applying *Stein* retroactively).

The government is required to prove “that the defendant knew that the underlying acts which provided the sources of the laundered proceeds were illegal,” but not that “the defendant knew that his money-laundering acts were illegal.” *United States v. Golb*, 69 F.3d 1417, 1428 (9th Cir. 1999).

With respect to the third element of the instruction, *see Cuellar v. United States*, 553 U.S. 550,561-68 (2008) (stating that evidence of how money was moved insufficient to prove knowledge); *see also* *United States v. Wilkes*, 662 F.3d 524, 547 (9th Cir. 2011) (stating that evidence that defendant’s transactions were “convoluted” rather than “simple transactions that can be followed with relative ease, or transactions that involve nothing but the initial crime,” was sufficient to prove transaction designed to conceal) (citation omitted); *United States v. Singh*, 995 F.3d 1069 (9th Cir. 2021) (hawala operation used to transfer and launder drug trafficking proceeds).

The “nexus with interstate commerce is both a jurisdictional requirement and an essential element of the offense.” *United States v. Bazuaye*, 240 F.3d 861, 863 (9th Cir. 2001) (quoting *United States v. Ladum*, 141 F.3d 1328, 1339 n.2 (9th Cir. 1998)). “But the connection need not be extensive; the prosecution need only show that the transaction affected interstate or foreign commercie ‘in any way or degree.’” *United States v. Costanzo*, 956 F.3d 1091 (9th Cir. 2020) (quoting 18 U.S.C. § 1956(c)(4)).

The bracketed language regarding reporting requirements in the last paragraph of the instruction only applies if the defendant is charged with laundering funds to avoid a transaction reporting requirement under state or federal law.

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).

*Revised 6/2021*