**13.2 Passing or Attempting to Pass Counterfeit Obligations**

**(18 U.S.C. § 472)**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [[passing] [uttering] [publishing] [selling]] [[attempting to [pass] [utter] [publish] [sell]] a counterfeit obligation in violation of Section 472 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 [[passed] [uttered] [published] [sold]] [[attempted to [pass] [utter] [publish] [sell]] a [[falsely made] [forged] [counterfeit] [altered]] [*specify obligation or security of United States*];

Second, the defendant knew that the [*specify obligation or security of United States*] was [falsely made] [forged] [counterfeited] [altered]; [and]

Third, the defendant acted with the intent to defraud[.] [; and]

[Fourth, the defendant did something that was a substantial step toward committing the crime.

A “substantial step” is conduct that strongly corroborated the defendant’s intent to commit 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. Mere preparation is not a substantial step toward committing the crime.

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

To be counterfeit, a bill must have a likeness or resemblance to the genuine [*specify obligation or security of United States*].

**Comment**

For a definition of “intent to defraud,” *see* Instruction 4.13 (Intent to Defraud).

An utterance has been described as “tantamount to an offer.” *United States v. Chang*, 207 F.3d 1169, 1174 (9th Cir. 2000).

The bracketed language stating an additional element applies only when the charge is an attempt. In attempt cases, “To 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) (per curiam) (quoting *United States v. Nelson*, 66 F.3d 1036, 1042 (9th Cir. 1995)).

The “strongly corroborated” language in this instruction comes from *United States v. Snell*, 627 F.2d 186, 187 (9th Cir. 1980) (per curiam) (“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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