**14.28 Transportation of an Explosive or Attempted Transportation of an Explosive**

**(18 U.S.C. § 844(d))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [attempted] transportation of an explosive in interstate or foreign commerce in violation of Section 844(d) 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 [transported] [received] [attempted to [transport] [receive]] in [interstate commerce] [foreign commerce] any explosive; and

Second, the defendant [did so] [attempted to do so] with the knowledge or intent that it would be used to [kill, injure, or intimidate any individual] [unlawfully damage or destroy any building, vehicle, or other real or personal property];

[Third, 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, meaning that it 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.]

**Comment**

Concerning the elements of the crime, *see, e.g.*, *United States v. Linehan*, 56 F.4th 693, 699 (9th Cir. 2022) (citing *United States v. Michaels*, 796 F.2d 1112, 1118 (9th Cir. 1986)).

18 U.S.C. § 10 defines interstate and foreign commerce.

Section 844(d)’s intent requirement relates “only to the use of the device to kill, injure, or intimidate, and not to the transportation element.” *Michaels*, 796 F.2d at 1117. Thus, section 844(d) does not require specific intent to transport in interstate commerce. *See id.*

The term “explosive” is defined in 18 U.S.C. § 844(j); see *Linehan*, 56 F.4th at 702 (“For purposes of § 844(d), the term ‘explosive’ means any device or chemical ‘in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion.’” (quoting 18 U.S.C. § 844(j)).

The bracketed language regarding an “attempt” or “substantial step” applies only when the charge is an attempt. *See* Comment to Instruction 4.4 (Attempt).