**17.2 Kidnapping—Within Special Maritime and Territorial**

**Jurisdiction of United States (18 U.S.C. § 1201(a)(2))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with kidnapping [*name of kidnapped person*] within the special maritime and territorial jurisdiction of the United States in violation of Section 1201(a)(2) 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 [seized] [confined] [inveigled] [decoyed] [kidnapped] [abducted] [carried away] [*name of kidnapped person*] within [*specify place of federal jurisdiction*]; and

Second, the defendant [held] [detained] [*name of kidnapped person*] against [his][her] will.

[The government is not required to prove that the defendant kidnapped [*name of kidnapped person*] for reward or ransom, or for any other purpose.]

[The fact that [*name of kidnapped person*] [may have] initially voluntarily accompanied the defendant does not necessarily [prevent the occurrence] [negate the existence] of a later kidnapping.]

[Not every seizure of a person against his or her will is a kidnapping. To decide whether such a seizure in this case amounts to a kidnapping, you should consider the following factors:

First, the duration of the [seizure] [confinement] [detention] [asportation],

Second, whether the [seizure] [confinement] [detention] [asportation] occurred during the commission of a separate offense,

Third, whether the [seizure] [confinement] [detention] [asportation] that occurred is an essential part of the separate offense, and

Fourth, whether the [seizure] [confinement] [detention] [asportation] created a significant danger to the victim independent of that posed by the separate offense.]

**Comment**

*See* Comment to Instruction 17.1 (Kidnapping—Interstate Transportation).

“Special maritime and territorial jurisdiction of the United States” is defined in 18 U.S.C. § 7. While federal jurisdiction over the place may be determined as a matter of law, the locus of the offense within that place is an issue for the jury. *United States v. Gipe*, 672 F.2d 777, 779 (9th Cir. 1982).

The bracketed language beginning with “Not every seizure of a person” is derived from *United States v. Jackson*, 24 F.4th 1308 (9th Cir. 2022), which also illustrates when such an instruction would be appropriate.

In *Jackson*, the defendant was charged with kidnapping under 18 U.S.C. § 1028(a)(2) after he violently assaulted his then-girlfriend. *Id.* at 1309-10. The defendant moved for acquittal under Federal Rule of Criminal Procedure 29, arguing that the facts could not support a kidnapping conviction because there was no “seizure” of the victim, and whatever “seizure” occurred “didn’t occur beyond whatever beating there was.” *Id.* at 1310. The attack on the victim lasted about six or seven minutes, during which the defendant “dragged her around by her hair, yanked her arms, punched her, and tried to pull her into” a small dwelling. *Id.*

Citing Supreme Court and Ninth Circuit precedent, the court reasoned that “kidnapping requires more than a transitory holding, and more than a simple mugging or assault” because “the facts must reflect the ‘essence of the crime of kidnaping.’” *Id.* at 1312 (quoting *Chatwin v. United States*, 326 U.S. 455, 464 (1946)); *see also id.* at 1311-12 (discussing *United States v. Etsitty*, 130 F.3d 420 (9th Cir. 1997)). Accordingly, in *Jackson* the court held that four factors should be evaluated when determining whether charged conduct constitutes kidnapping. *Id.* at 1312. This “factual inquiry” may be taken up by a court in response to a Rule 29 motion, or “if appropriate based on the circumstances of the case, incorporated into jury instructions.” *Id.* at 1314. The factors, derived from the Third Circuit’s opinion in *Government of the Virgin Islands v. Berry*, 604 F.2d 221, 224 (3d Cir. 1979), are:

(1) the duration of the detention or asportation;

(2) whether the detention or asportation occurred during the commission of a separate offense;

(3) whether the detention or asportation which occurred is inherent in the separate offense; and

(4) whether the asportation or detention created a significant danger to the victim independent of that posed by the separate offense.

*Id.* at 1312 (quoting *Berry*, 604 F.2d at 227)). The *Berry* factors are the basis for the proposed optional jury instruction, to be applied when appropriate, to distinguish kidnapping from other offenses.

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