**21.2 Smuggling or Attempting to Smuggle Goods**

**from the United States** **(18 U.S.C. § 554)**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [smuggling] [attempting to smuggle] merchandise from the United States in violation of Section 554 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 [[knowingly] [fraudulently]] [exported] [sent] [attempted to export] [attempted to send] from the United States merchandise [or received, concealed, bought, sold, or in any manner facilitated the transportation, concealment, or sale of such merchandise prior to exportation, knowing the same to be intended for exportation]; and

Second, the [exportation] [sending] was contrary to [*describe applicable United States law(s) or regulation(s)*]; and

Third, the defendant knew the [exportation] [sending] was contrary to law or regulation[.]; [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.]

“Merchandise” means objects, items, goods, and wares of every description.

**Comment**

This instruction may be used when the defendant is charged under 18 U.S.C. § 554 with the crime of smuggling or attempting to smuggle goods from the United States. The bracketed fourth element should be used when the defendant is charged with an attempt to smuggle goods from the United States. *See* Comment to Instruction 21.1 (Smuggling or Attempting to Smuggle Goods).

To convict under 18 U.S.C. § 554, the government need only prove the defendant knew he or she was exporting merchandise that was unlawful to export, not that the defendant knew the nature of the merchandise. *United States v. Rivero*, 889 F.3d 618, 621-22 (9th Cir. 2018).

18 U.S.C. § 554 references “any merchandise, article, or object.” The definition of “merchandise” is found in 19 U.S.C. § 1401(c). *See United States v. Garcia-Paz*, 282 F.3d 1212, 1214 (9th Cir. 2002) (defining “merchandise” as “goods, wares and chattels of every description”).

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) (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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