

16.7 Murder for Hire (18 U.S.C. § 1958)

The defendant is charged in [Count _____ of] the indictment with using interstate commerce facilities in the commission of a murder-for-hire in violation of Section 1958 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 [used] [caused another to use] [conspired to use] [conspired to cause

another to use] a [specify facility in interstate or foreign commerce]];

or

[First, the defendant [traveled] [caused another to travel] [conspired to travel] [conspired to cause another to travel] via [specify method of travel in interstate or foreign commerce]]];

Second, the defendant did so with the intent that murder be committed; and

Third, the defendant intended that the murder be committed in exchange for [specify thing of pecuniary value].

Comment

Concerning the elements of the crime, *see, e.g., United States v. Linehan*, 56 F.4th 693, 707 (9th Cir. 2022) (citing Ninth Cir. Model Crim. Jury Instruction No. 16.7 (2022)).

As to the first element, a “facility in interstate or foreign commerce” includes means of transportation and communication. 18 U.S.C. § 1958(b)(2).

As to the second element, the intent that murder be committed must have existed when the defendant used or conspired to use the facility of interstate commerce. *United States v. Driggers*, 559 F.3d 1021, 1023 (9th Cir. 2009).

“State” includes a State of the United States as well as the District of Columbia, and any

commonwealth, territory, or possession of the United States. 18 U.S.C. § 1958(b)(2).

“Pecuniary value” means anything of value, whether in the form of money, a negotiable

instrument, a commercial interest, or anything else the primary significance of which is economic advantage. 18 U.S.C. § 1958(b)(1). The defendant must have clearly understood he or she would give or receive the thing of pecuniary value in exchange for the murderous act. *United States v. Chong*, 419 F.3d 1076, 1082 (9th Cir. 2005). A promise of economic advantage may constitute a thing of pecuniary value even if it is not enforceable under contract law. *United States v. Phillips*, 929 F.3d 1120, 1124 (9th Cir. 2019).

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