

2.3 Stipulations of Fact

The parties have agreed to certain facts that have been stated to you. Those facts are now conclusively established.

Comment

“[W]hen a stipulation to a crucial fact is entered into the record in open court in the presence of the defendant, and is agreed to by defendant’s acknowledged counsel, the trial court may reasonably assume that the defendant is aware of the content of the stipulation and agrees to it through his or her attorney. Unless a criminal defendant indicates objection at the time the stipulation is made, he or she is ordinarily bound by such stipulation.” *United States v. Ferreboeuf*, 632 F.2d 832, 836 (9th Cir. 1980). In any event, a trial judge need not make as probing an inquiry as is required by Fed. R. Crim. P. 11 when considering whether a defendant’s factual stipulation is knowing and voluntary. *United States v. Miller*, 588 F.2d 1256, 1263-64 (9th Cir. 1978).

See Old Chief v. United States, 519 U.S. 172, 186 (1997) (discussing acceptance of stipulation regarding prior conviction); Jury Instructions Committee of the Ninth Circuit, A Manual on Jury Trial Procedures § 1.1.B (2013).

It may be necessary to add to the instruction a statement of the purpose for which the stipulation is offered. *See United States v. Page*, 657 F.3d 126, 130-31 (2d Cir. 2011); *United States v. Higdon*, 638 F.3d 233, 243 & n.7 (3d Cir. 2011); Instruction 2.12 (Evidence for Limited Purpose).

Revised Sept. 2019