

24.17 Failure to Appear (18 U.S.C. § 3146(a)(1))

The defendant is charged in [Count _____ of] the indictment with failure to appear in violation of Section 3146(a)(1) 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 was released from custody under the Bail Reform Act;

Second, the defendant was required to appear in court or before a judicial officer on [date];

Third, the defendant knew of this required appearance; and

Fourth, the defendant intentionally failed to appear as required.

Comment

If the defendant becomes a fugitive before the hearing, the defendant's release is no longer pursuant to the Bail Reform Act, and the defendant thus may not be convicted under § 3146(a). *See United States v. Castaldo*, 636 F.2d 1169, 1172 (9th Cir. 1980). Vacating a hearing before its occurrence precludes satisfaction of the second element because the defendant is no longer "under . . . order to appear on any date certain"; this rule applies even when the hearing is vacated because the defendant has failed to appear at prior hearings. *See United States v. Fisher*, 137 F.3d 1158, 1163 (9th Cir. 1998).

"When a defendant engages in a course of conduct designed to avoid notice of his trial date, the government is not required to prove the defendant's actual knowledge of that date." *Weaver v. United States*, 37 F.3d 1411, 1413 (9th Cir. 1994).

"A deliberate decision to disobey the law . . . cannot be found beyond a reasonable doubt merely from nonappearance and notice of obligation to appear." *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).

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