

24.2 Arson or Attempted Arson (18 U.S.C. § 81)

The defendant is charged in [Count _____ of] the indictment with [attempted] arson in violation of Section 81 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 [[intentionally set fire to or burned] [intended to set fire to or burn]] [*specify building*];

Second, [*specify building*] was located on [*specify place of federal jurisdiction*]; [and]

Third, the defendant acted wrongfully and without justification[.] [; 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, the 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 the crime.]

[If you decide that the defendant is guilty, you must then decide whether the government has proved beyond a reasonable doubt that [the building was regularly used by people as a place in which to live and sleep] [a person’s life was placed in jeopardy].]

Comment

If the charge is conspiracy to commit the crime, use Instruction 24.3 (Conspiracy to Commit Arson).

As to the second element of the instruction regarding federal jurisdiction, “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 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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