

24.3 Conspiracy to Commit Arson (18 U.S.C. § 81)

The defendant is charged in [Count _____ of] the indictment with conspiracy to commit 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, beginning on or about [date], and ending on or about [date], there was an agreement between two or more persons to commit arson; and

Second, the defendant became a member of the conspiracy knowing of its object and intending to help accomplish it.

As used in this instruction “arson” is the intentional setting of a fire to or burning [specify building] located on [specify place of federal jurisdiction], which is wrongful and without justification.

A conspiracy is a kind of criminal partnership—an agreement of two or more persons to commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful; it does not matter whether the crime agreed upon was committed.

For a conspiracy to have existed, it is not necessary that the conspirators made a formal agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that they simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. You must find that there was a plan to commit arson.

One becomes a member of a conspiracy by willfully participating in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy, even though the person does not have full knowledge of all the details of the conspiracy. Furthermore, one who willfully joins an existing conspiracy is as responsible for it as the originators. On the other hand, one who has no knowledge of a conspiracy, but happens to act in a way that furthers some object or purpose of the conspiracy, does not thereby become a conspirator. Similarly, a person does not become a conspirator merely by associating with one or more persons who are conspirators, nor merely by knowing that a conspiracy exists.

[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

“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).

See Comment to Instruction 11.1 (Conspiracy—Elements). Because 18 U.S.C. § 81 does not expressly require proof of an overt act, the third element of Instruction 11.1 (overt act) is not included in this instruction. *United States v. Shabani*, 513 U.S. 10, 15-17 (1994) (holding that under “the plain language of the statute and settled interpretive principles,” proof of an overt act is not necessary for violation of drug conspiracy statute, 21 U.S.C. § 846); see also *United States v. Montgomery*, 150 F.3d 983, 997-98 (9th Cir. 1998) (recognizing that reasoning in *Shabani* obviates need for proof of an overt act in furtherance of conspiracy under 21 U.S.C. § 963).