

9.5 Hobbs Act—Extortion or Attempted Extortion by Force (18 U.S.C. § 1951)

The defendant is charged in [Count _____ of] the indictment with [attempted] extortion by force, violence, or fear in violation of Section 1951 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 [[induced] [intended to induce]] [*name of victim*] to part with property by the wrongful use of actual or threatened force, violence, or fear;

Second, the defendant obtained the property with [*name of victim*]'s consent;

Third, the defendant acted with the intent to obtain the property; [and]

Fourth, commerce from one state to another [was] [would have been] affected in some way[.] [; and]

[Fifth, the defendant did something that was a substantial step toward committing the crime.

A “substantial step” is conduct that strongly corroborates a defendant’s intent to commit the crime. To constitute a substantial step, a 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 a crime.]

Comment

For an instruction on extortion or attempted extortion by nonviolent threat, *see* Instruction 9.6 (Hobbs Act—Extortion or Attempted Extortion by Nonviolent Threat).

For a definition of “affecting interstate commerce,” *see* Instruction 9.9 (Hobbs Act—Affecting Interstate Commerce).

Only a de minimis effect on interstate commerce is required to establish jurisdiction under the Hobbs Act, and the effect need only be probable or potential, not actual. *United States v. Lynch*, 437 F.3d 902, 908-09 (9th Cir. 2006) (en banc). The interstate nexus may arise from either direct or indirect effects on interstate commerce. *Id.* at 909-10. When the effects are only indirect it may be appropriate to measure the adequacy of proof of interstate nexus by applying the test articulated in *United States v. Collins*, 40 F.3d 95, 100 (5th Cir. 1994).

“Property” under the Hobbs Act is not limited to tangible things; it includes the right to make business decisions and to solicit business free from coercion. *United States v. Hoelker*,

765 F.2d 1422, 1425 (9th Cir. 1985) (citing *United States v. Zemek*, 634 F.2d 1159, 1174 (9th Cir. 1980)). The Hobbs Act is not limited to lawful property and includes contraband. *United States v. Cortes*, 757 F.3d 850, 865-66 (9th Cir. 2014).

Actual or threatened force standing alone does not violate the statute. “We conclude that Congress did not intend to create a freestanding physical violence offense in the Hobbs Act. It did intend to forbid acts or threats of physical violence in furtherance of a plan or purpose to engage in what the statute refers to as robbery or extortion (and related attempts or conspiracies).” *Scheidler v. Nat’l Org. for Women, Inc.*, 547 U.S. 9, 23 (2006).

A defendant’s claim of right to the property is not a defense. “‘Congress meant to punish as extortion any effort to obtain property by inherently wrongful means, such as force or threats of force . . . regardless of the defendant’s claim of right to the property’” *United States v. Daane*, 475 F.3d 1114, 1120 (9th Cir. 2007) (quoting with approval from *United States v. Zappola*, 677 F.2d 264, 268-69 (2d Cir. 1982)). There is an exception to this proposition, but it is confined to cases involving certain types of labor union activity. *Id.* at 1119-20.

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).

It is unclear whether 18 U.S.C. § 1951 requires specific intent as an element. In *United States v. Ornelas*, 906 F.3d 1138 (9th Cir. 2018), the Ninth Circuit discussed the intent element in statutory offenses that appear to “simply punish” common law crimes. In footnote 2, however, the Ninth Circuit distinguished federal statutes that “simply punish” a common law

offense (thus requiring importation of common law elements) from federal statutes that provide their own elements (and thus not requiring importation of common law elements). *Ornelas*, 906 F.3d at 1143 n.2. The circuits are currently split as to whether the Hobbs Act requires specific intent to steal. *Compare United States v. Thomas*, 8 F.3d 1552, 1562-63 (11th Cir. 1993), *with United States v. Nedley*, 255 F.2d 350, 355 (3d Cir. 1958).

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