



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served this 27<sup>th</sup> day of September, 2007, by U.S. Mail, addressed to:

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\_\_\_\_\_/S/  
Cheryl Deere

**JURY INSTRUCTION \_\_\_\_\_**

In order to be guilty of the crime charged in Count One of the Superseding Indictment, knowingly possessing child pornography, the Defendant must have knowingly possessed the pornographic images which were found on the computer hard drive. It is not enough that he knowingly possessed the hard drive. Defendant must have additionally known that the unlawful images were stored on the hard drive.

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JUDGE

SOURCE: *United States v. Bass*, 411 F.3d 1198, 1201 (10<sup>th</sup> Cir. 2005); *United States v. Tucker*, 305 F.3d 1198, 1204 (10<sup>th</sup> Cir. 2002).

**JURY INSTRUCTION \_\_\_\_\_**

The defendant may be found guilty of attempting to commit a crime, even though he did not do all of the acts necessary in order to commit the crime. However, the defendant may not be found guilty of attempting to commit any crime merely by thinking about it, or even by making some plans or some preparation for the commission of a crime.

Instead, in order to prove an attempt, the government must prove beyond a reasonable doubt that (1) the defendant intended to commit the crime; and that (2) the defendant took a substantial step towards commission of that crime.

A “substantial step” is something beyond mere preparation. A substantial step is an act which, in the ordinary and likely course of events, would lead to the commission of the particular crime. The step must be a strong indication of the defendant’s criminal intent, and must unequivocally mark the defendant’s acts as criminal. It should demonstrate commitment to the crime charged.

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JUDGE

SOURCE: 10<sup>th</sup> Circuit Criminal Pattern Jury Instruction 1.32

**JURY INSTRUCTION \_\_\_\_\_**

Count Two of the Superseding Indictment charges the defendant with knowingly attempting to receive child pornography. Federal statutes criminalizing the receipt of contraband require a knowing acceptance or taking of possession of the prohibited item. Therefore, to find the defendant guilty of knowingly attempting to receive child pornography, you must find that he knowingly accepted or took possession of the child pornography.

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JUDGE

SOURCE: *United States v. Romm*, 455 F3d 990, 1001 (9<sup>th</sup> Cir. 2006)