

8.10 Assault by Strangulation or Suffocation (18 U.S.C. § 113(a)(8))

The defendant is charged in [Count _____ of] the indictment with assault by strangulation in violation of Section 113(a)(8) 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 assaulted a [spouse] [intimate partner] [, or] [dating partner] by [[strangling] [suffocating] [, or] [attempting to [strangle] [or] [suffocate]]] [[him] [her]];

Second, the assault took place on [*specify place of federal jurisdiction*].

["Spouse"] ["intimate partner"] [or] ["dating partner"] includes any of the following:

(1) a spouse or former spouse of the defendant; or

(2) a person who shares a child in common with the defendant; or

(3) a person who cohabits or has cohabited as a spouse with the defendant; or

(4) a person who is or has been in a social relationship of a romantic or intimate nature with the defendant; or

(5) [*insert definition of person similarly situated to a spouse who is protected by the domestic or family violence laws of the state or tribal jurisdiction in which the injury occurred or where the victim resides*].

["Intimate partner" [also] means a person who is or has been in a social relationship of a romantic or intimate nature with the defendant. You may determine whether such a relationship existed by considering (a) the length of the relationship, (b) the type of relationship, and (c) the frequency of interaction between the defendant and [*name of victim*].]

["Dating partner" means a person who is or has been in a social relationship of a romantic or intimate nature with the defendant. You may determine whether such a relationship existed by considering (a) the length of the relationship, (b) the type of relationship, and (c) the frequency of interaction between the defendant and [*name of victim*].]

["Strangling" means intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck.]

["Suffocating" means intentionally, knowingly, or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.]

The government is not required to prove that the defendant intended to kill the victim or cause [him] [her] to suffer prolonged injury. It also is not required to prove that the victim suffered any visible injury.

Comment

The definitions of “strangling” and “suffocating” in the instruction are the statutory definitions in 18 U.S.C. § 113(b)(4) and 113(b)(5).

The definitions of “spouse,” “intimate partner,” and “dating partner” are the statutory definitions in 18 U.S.C. § 2266, which is incorporated into 18 U.S.C. § 113(b)(3).

Assault by strangulation is a general intent crime. *United States v. Lamott*, 831 F.3d 1153, 1154 (9th Cir. 2016).

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