

8.5 Assault with Dangerous Weapon (18 U.S.C. § 113(a)(3))

The defendant is charged in [Count _____ of] the indictment with assault with a dangerous weapon in violation of Section 113(a)(3) 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 [name of victim] by intentionally [[striking] [wounding]] [[him] [her]] [using a display of force that reasonably caused [him] [her] to fear immediate bodily harm];

Second, the defendant acted with the intent to do bodily harm to [name of victim];

Third, the defendant used a dangerous weapon; and

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

[A [specify weapon] is a dangerous weapon if it is used in a way that is capable of causing death or serious bodily injury.]

Comment

See Comment to Instruction 8.2 (Assault on Federal Officer or Employee [With a Deadly or Dangerous Weapon] [Which Inflicts Bodily Injury]).

See *United States v. Smith*, 561 F.3d 934, 938-40 (9th Cir. 2009) (en banc) (discussing prior version of jury instruction).

The use of bare hands only to perpetrate an assault did not constitute use of a “dangerous weapon” and therefore could not support a conviction under 18 U.S.C. § 113(a)(3). *United States v. Rocha*, 598 F.3d 1144, 1153-58 (9th Cir. 2010).

The statutory definition of assault with a dangerous weapon, 18 U.S.C. § 113(a)(3), includes “without just cause or excuse.” However, the existence of “just cause or excuse” is an affirmative defense, and the government does not have the burden of pleading or proving its absence. *United States v. Guilbert*, 692 F.2d 1340, 1343 (11th Cir. 1982).