

9.1 Bank Robbery (18 U.S.C. § 2113(a), (d))

The defendant is charged in [Count _____ of] the indictment with [armed] bank robbery in violation of Section 2113 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, through force and violence or intimidation, [[took] [obtained by extortion] [[property] [money] [something of value]] belonging to or in the care, custody, control, management or possession of [specify financial institution];]

or

[First, the defendant entered [specify financial institution] intending to commit [insert applicable crime] affecting [specify financial institution];]

Second, the deposits of [specify financial institution] were then insured by the [Federal Deposit Insurance Corporation] [National Credit Union Administration Board] [.] [; and]

[Third, the defendant intentionally [[struck or wounded [name of victim]] [made a display of force that reasonably caused [name of victim] to fear bodily harm] by using a [specify dangerous weapon or device]. [A weapon or device is dangerous if it is something that creates a greater apprehension in the victim and increases the likelihood that police or bystanders would react using deadly force.]]

Comment

Choose the applicable first element of the instruction depending on which portion of 18 U.S.C. § 2113(a) the defendant is charged under. When the second option of the first element is used, a companion instruction may be necessary to define the applicable crime.

The third element should be used when a violation of 18 U.S.C. § 2113(d) for use of a dangerous weapon is charged. When the § 2113(d) offense is predicated on an underlying § 2113(b) offense, substitute for the first element in this instruction the first element in Instruction 9.2 (Bank Robbery).

Frequently, the weapon used is a firearm, in which case there is not likely to be an issue about whether a dangerous weapon was used. In such cases, the last bracketed sentence in the third element might be omitted. A “dangerous weapon” is required for both the “assault” and “display of force” options of § 2113(d). *See Simpson v. United States*, 435 U.S. 6, 13 n.6 (1978), *superseded by statute on other grounds as stated in United States v. Beierle*, 77 F.3d 1199, 1201 n.1 (9th Cir. 1996).

There may be cases in which a jury must decide whether the weapon or device is dangerous. In such cases the bracketed last sentence in the third element should be used. The definition of dangerous weapon is derived from a discussion in *United States v. Pike*, 473 F.3d 1053, 1060 (9th Cir. 2007), which did not involve a dangerous weapon issue. The Ninth Circuit explained that its previous decisions in *United States v. Taylor*, 960 F.2d 115, 116-17 (9th Cir. 1992), and *United States v. Boyd*, 924 F.2d 945, 947 (9th Cir. 1991), had held devices to be dangerous because the device increased victim apprehension and increased the likelihood of police or bystanders responding with deadly force. *Pike*, 473 F.3d at 1060.

To constitute “use” of a dangerous weapon, the weapon must be actively employed rather

than inadvertently displayed. *United States v. Bain*, 925 F.3d 1172, 1177-78 (9th Cir. 2019)

(holding that inadvertent placement of closed pocket knife on bank counter does not constitute use of dangerous weapon); *see also United States v. Odom*, 329 F.3d 1032, 1033 (9th Cir. 2003) (“[A] bank robber with a concealed gun who never mentions or insinuates having one, but who displays it inadvertently [cannot] be convicted of armed bank robbery.”).

To convict a defendant for armed bank robbery under an aiding and abetting theory, the Ninth Circuit requires the government to show beyond a reasonable doubt both that the defendant knew that the principal had and intended to use a dangerous weapon during the robbery, and that the defendant intended to aid in that endeavor. *United States v. Dinkane*, 17 F.3d 1192, 1195 (9th Cir. 1994). Failure to properly instruct the jury on this issue constitutes reversible error. *Id.*

Armed bank robbery under § 2113(d) “requires that ‘the robber knowingly made one or more victims at the scene of the robbery aware that he had a gun, real or not.’” *United States v. Henry*, 984 F.3d 1343, 1358 (9th Cir. 2021) (quoting *United States v. McDuffy*, 890 F.3d 796, 799 (9th Cir. 2018)).

Bank robbery is a general intent crime. *See Carter v. United States*, 530 U.S. 255, 268 (2000).

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