

18 U.S.C. § 111 – ASSAULTING, RESISTING, OR IMPEDING OFFICERS

(18 U.S.C. § 111(a))

Count One of the Indictment charges the defendant with assaulting, resisting, opposing, impeding, intimidating, or interfering with United States Capitol Police officers at the Speaker's Lobby Door, officers or employees of the United States who was then engaged in the performance of his official duties, which is a violation of federal law.

I am going to instruct you on this charge and explain the various elements that you must consider. After I give you the elements of these crimes, I will tell you in what order you should consider them.

Elements

To find the defendant guilty of this offense, you must find that the government proved each of the following elements beyond a reasonable doubt:

First, the defendant assaulted, resisted, opposed, impeded, intimidated, or interfered with United States Capitol Police officers guarding the Speaker Lobby doors.

Second, the defendant did such acts forcibly.

Third, the defendant did such acts voluntarily and intentionally.

Fourth, the officers the person assaulted, resisted, opposed, impeded, intimidated, or interfered with was an officer or an employee of the United States who was then engaged in the performance of his official duties.

Fifth, the defendant made physical contact with officers or acted with the intent to commit another felony. For purposes of this element, "another felony" refers to the offenses charged in Counts 3 and 5.

Definitions

A person acts “forcibly” if he used force, attempted to use force, or threatened to use force against the officer. Physical force or contact is sufficient but actual physical contact is not required. You may also find that a person who has the present ability to inflict bodily harm upon another and who threatens or attempts to inflict bodily harm upon that person acts forcibly. In such case, the threat must be a present one.¹

The term “assault” means any intentional attempt or threat to inflict injury upon someone else, when coupled with an apparent present ability to do so. To find that the defendant committed an “assault,” you must find beyond a reasonable doubt that the defendant intended to inflict or to threaten injury. Injury means any physical injury, however small, including a touching offensive to a person of reasonable sensibility.²

The terms “resist,” “oppose,” “impede,” “intimidate,” and “interfere with” carry their everyday, ordinary meanings.

¹ *United States v. Taylor*, 848 F.3d 476, 493 (1st Cir. 2017) (The element of ‘forcible’ action can be met by a showing of either physical contact with the federal agent, or by such a threat or display of physical aggression toward the officer as to inspire fear of pain, bodily harm, or death.”) (quotation marks omitted) (citing cases).

² *United States v. Watts*, 798 F.3d 650, 654 (7th Cir. 2015) (“an assault may also be committed by a person who intends to threaten or attempt to make offensive rather than injurious physical contact with the victim”); *United States v. Acosta-Sierra*, 690 F.3d 1111, 1117 (9th Cir. 2012) (“Because Section 111 does not define assault, we have adopted the common law definition of assault as either (1) a willful attempt to inflict injury upon the person of another, or (2) a threat to inflict injury upon the person of another which, when coupled with an apparent present ability, causes a reasonable apprehension of immediate bodily harm.”) (quotation marks omitted); *Comber v. United States*, 584 A.2d 26, 50 (D.C. 1990) (en banc) (explaining that the crime of simple assault “is designed to protect not only against physical injury, but against all forms of offensive touching, . . . and even the mere threat of such touching”); Criminal Jury Instructions for the District of Columbia, No. 4.100 (2022 ed.) (“Injury means any physical injury, however small, including a touching offensive to a person of reasonable sensibility.”). For other January 6 trials that have used similar instructions, see *United States v. Jensen*, No. 21-cr-6 (TJK) (ECF No. 97 at 30), and *United States v. Webster*, No. 21-cr-208 (APM) (ECF No. 101 at 14).