**8.13 Transmitting a Communication Containing a**

**Threat to Kidnap or Injure (18 U.S.C. § 875(c))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with transmitting in [interstate commerce] [foreign commerce] a threatening communication to a person in violation of Section 875(c) 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 knowingly transmitted in [interstate commerce] [foreign commerce] a [*insert form of communication*] containing a threat to [[kidnap] [injure]] [*insert name or title of natural person*].

Second, such [*insert form of communication*] was transmitted for the purpose of issuing a threat, or with knowledge that the [*insert form of communication*] would be viewed as a threat.

The government need not prove that the defendant intended to carry out the threat.

**Comment**

Whether a particular statement may be considered a threat is not governed by an objective standard. The mens rea of the crime involved in communicating a threat is established through proof that a defendant makes a communication for the purpose of issuing a threat, or with knowledge that the communication will be viewed as a threat. *See Elonis v. United States*, 575 U.S. 723, 740 (2015) (involving violation of 18 U.S.C. § 875(c), transmitting in interstate or foreign commerce any threat to kidnap any person or threat to injure the person of another).

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