

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>CURTIS CUMMINGS,</p> <p style="text-align: center;">Defendant.</p>	<p>5:23-CR-50096-03-KES</p> <p style="text-align: center;">FINAL INSTRUCTIONS TO THE JURY</p>
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VERDICT FORM

FINAL INSTRUCTION NO. 1 – INTRODUCTION

Members of the jury, the written instructions I gave you at the beginning of the trial and the oral instructions I gave you during the trial remain in effect. I now give you some additional instructions.

The instructions I am about to give you, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. *All* instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of the trial are not repeated here.

FINAL INSTRUCTION NO. 2 – CONSPIRACY TO DISTRIBUTE A CONTROLLED
SUBSTANCE

For you to find Curtis Cummings guilty of the offense of conspiracy to distribute a controlled substance, as charged in the Superseding Indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

One, that beginning on a date unknown but no later than on or about December 2021 and continuing through June 22, 2023, in Rapid City, in the District of South Dakota, two or more persons reached an agreement or came to an understanding to distribute a mixture or substance containing fentanyl, a Schedule II controlled substance;

Fentanyl is a Schedule II controlled substance.

A conspiracy is an agreement of two or more persons to commit one or more crimes. It makes no difference whether any co-conspirators are defendants or named in the Superseding Indictment. For this element to be proved,

- Cummings may have been, but did not have to be, one of the original conspirators
- The crime that the conspirators agreed to commit did not actually have to be committed
- The agreement did not have to be written or formal
- The agreement did not have to involve every detail of the conspiracy
- The conspirators did not have to personally benefit from the conspiracy

The Superseding Indictment charges a conspiracy to distribute a controlled substance. For you to find that the government has proved a conspiracy, you must unanimously find that there was an agreement to act for this purpose.

To help you decide whether the defendant agreed to commit the crime of distribution of fentanyl, you should consider the elements of a “distribution” offense. The elements of distribution of fentanyl are the following:

- *One*, that a person intentionally transferred fentanyl to another;
- *And two*, that at the time of the transfer, the person knew that what he or she was transferring was a controlled substance.

Remember that the prosecution does not have to prove that distribution of fentanyl actually occurred or that the alleged participants in the agreement actually succeeded in accomplishing their unlawful plan for this element of the “conspiracy” offense to be proved.

Two, that Curtis Cummings voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect;

Cummings must have joined in the agreement, but he may have done so at any time during its existence. Cummings may have joined the agreement even if he agreed to play only a minor role in it.

Cummings did not have to do any of the following to join the agreement:

- join the agreement at the same time as all the other conspirators
- know all of the details of the conspiracy, such as the names, identities, or locations of all the other members, or
- conspire with every other member of the conspiracy
- agree to play any particular part in carrying out the agreement.

On the other hand, each of the following, alone, is not enough to show that Cummings joined the agreement:

- evidence that a person was merely present at the scene of an event
- evidence that a person merely acted in the same way as others
- evidence that a person merely associated with others

- evidence that a person was friends with or met socially with individuals involved in the conspiracy
- evidence that a person who had no knowledge of a conspiracy happened to act in a way that advanced an objective of the conspiracy
- evidence that a person merely knew of the existence of a conspiracy
- evidence that a person merely knew that an objective of the conspiracy was being considered or attempted, or
- evidence that a person merely approved of the objectives of the conspiracy

Rather, the prosecution must prove that Cummings had some degree of knowing involvement in the agreement.

In deciding whether an alleged conspiracy existed, you may consider the acts and statements of each person alleged to be part of the agreement.

In deciding whether Cummings voluntarily and intentionally joined the agreement, you must consider only the evidence of Cummings's own acts and statements. You may not consider actions and statements of others, except to the extent any statement of another describes something that was said or done by Cummings.

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a determination of the defendant's knowledge or intent. You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

Three, that at the time Cummings joined in the agreement or understanding, he knew the purpose of the agreement or understanding;

A person knows the purpose of the agreement if he is aware of the agreement and does not participate in it through ignorance, mistake, carelessness, negligence, or accident. It is seldom, if ever, possible to determine directly what was in the defendant's mind.

Thus, the defendant's knowledge of the agreement and its purpose can be proved like anything else, from reasonable conclusions drawn from the evidence.

It is not enough that Cummings and other alleged participants in the agreement to commit the crime of distribution of fentanyl simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. Cummings must have known of the existence and purpose of the agreement. Without such knowledge, the defendant cannot be guilty of conspiracy, even if his acts furthered the conspiracy.

And four, that the agreement or understanding involved 400 grams or more of a mixture or substance containing fentanyl.

For you to find Cummings guilty of the offense charged in the Superseding Indictment, the prosecution must prove all four of the essential elements beyond a reasonable doubt. Otherwise, you must find Cummings not guilty of the offense charged in the Superseding Indictment.

If you do not unanimously find all four elements beyond a reasonable doubt, but you do find the first three elements beyond a reasonable doubt, you must go on to consider whether Cummings conspired to distribute some lesser amount of fentanyl. If you unanimously find beyond a reasonable doubt that Cummings conspired to distribute less than 400 grams of a mixture or substance containing fentanyl but more than 40 grams, then you must find Cummings guilty of the crime of conspiracy to distribute 40 grams or more of a mixture or substance containing fentanyl. If you unanimously find beyond a reasonable doubt that Cummings conspired to distribute some quantity less than 40 grams of a mixture or substance containing fentanyl, then you must find Cummings guilty of the crime of conspiracy to distribute fentanyl. Otherwise, you must find Cummings not guilty.

FINAL INSTRUCTION NO. 3 – CONSPIRACY TO DISTRIBUTE A CONTROLLED
SUBSTANCE RESULTING IN DEATH

The Superseding Indictment also charges that death resulted from the use of the fentanyl Cummings conspired to distribute. Specifically, on or about April 26, 2022, Michael Mohr died as a result of using fentanyl distributed in furtherance of the conspiracy.

If you find Cummings guilty of conspiring to distribute fentanyl as alleged in the Superseding Indictment, you must then consider whether the fentanyl distributed during the conspiracy caused the death of Michael Mohr on or about April 26, 2022.

For you to find Cummings guilty of Conspiracy to Distribute a Controlled Substance Resulting in Death, the prosecution must prove the following four essential elements beyond a reasonable doubt:

One, that in furtherance of the conspiracy a member of the conspiracy intentionally transferred fentanyl to another, and that the substance was subsequently used by Michael Mohr;

The prosecution need not prove that Cummings intentionally transferred fentanyl directly to Michael Mohr, so long as the prosecution proves beyond a reasonable doubt that the fentanyl transferred by Cummings is the same fentanyl that later resulted in the death of Mohr. Similarly, the law does not require the prosecution to prove that Cummings intended to cause Mohr's death.

The prosecution is not required to prove that the defendant knew that his acts or omissions were unlawful. An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. You may consider evidence of the defendant's words, acts, or omissions, along with all other evidence, in deciding whether the defendant acted knowingly.

Before you can find that the defendant acted intentionally, you must be satisfied beyond a reasonable doubt that the defendant acted deliberately and purposefully; that is, defendant's act must have been the product of the defendant's conscious objective rather than the product of a mistake or an accident.

Intent is further defined above under element 2 of Final Instruction No. 2.

Two, at the time of the transfer, the member of the conspiracy knew he or she was transferring fentanyl to those other individual(s);

It is not necessary for the prosecution to prove that the defendant knew the precise nature of the controlled substance that he distributed. The prosecution must prove beyond a reasonable doubt, however, that the defendant did know that some type of controlled substance was distributed.

Three, that Mohr would not have died but for the use of that same fentanyl transferred by the co-conspirator;

The prosecution must prove that death resulted from the knowingly or intentionally transferred fentanyl, not merely from a combination of factors to which the drug use contributed. This is known as “but for” causation. For example, where A shoots B, who is hit and dies, we can say that A caused B’s death, because but for A’s conduct, B would not have died. The same thing is true if a person’s act combines with other factors to produce the result, so long as the other factors alone would not have produced the result—the straw that broke the camel’s back, so to speak. Thus, if poison is administered to a man debilitated by multiple diseases, the poison is a “but for” cause of death even if the diseases played a part in his deterioration, so long as, without the effect of the poison, he would have lived.

The law does not require the prosecution to prove that the defendant intended to cause death. Similarly, the law does not require the prosecution to prove that Cummings knew or should have known that he was exposing Mohr specifically to death when Cummings transferred the controlled substance.

And four, it was reasonably foreseeable to Cummings that death could result from using the fentanyl he conspired to distribute.

If you find beyond a reasonable doubt that Cummings distributed or conspired to distribute the fentanyl that later resulted in the death of Mohr, then Cummings is responsible even though he did not intend for Mohr to die, so long as death was reasonably foreseeable to Cummings.

For you to find Cummings guilty of ^{Conspiracy to Distribute} ~~Distribution~~ of a Controlled ^{KES}
Substance Resulting in Death, as charged in the Superseding Indictment, the
prosecution must prove all four of the essential elements beyond a reasonable
doubt. Otherwise, you must find Cummings not guilty of ^{Conspiracy to Distribute} ~~Distribution~~ of a ^{KES}
Controlled Substance Resulting in Death.

FINAL INSTRUCTION NO. 4 – QUANTITY OF FENTANYL

If you determine a conspiracy existed and Cummings joined the conspiracy, you must determine beyond a reasonable doubt the quantity of a mixture or substance containing fentanyl for which Cummings is responsible, if any. If you find Cummings guilty of conspiracy to distribute a mixture or substance containing fentanyl, he is responsible for:

- Any fentanyl he possessed for personal use, distributed or agreed to distribute during the course of the conspiracy; and
- Any fentanyl fellow conspirators distributed or agreed to distribute, if you find those distribution or agreements to distribute were a necessary or natural consequence of the agreement or understanding and were reasonably foreseeable by Cummings during the course of the conspiracy.

Do not double count any quantities of fentanyl if more than one co-conspirator was involved in conspiring to distribute that particular quantity of fentanyl. Instead, you must determine the amount of fentanyl involved in the conspiracy for which Cummings can be held responsible, if any.

FINAL INSTRUCTION NO. 5 – CONVERSION CHART

The following conversion chart may be helpful:

FENTANYL PILLS	WEIGHT IN GRAMS
1 pill	0.1 gram
10 pills	1 gram
100 pills	10 grams
1,000 pills	100 grams

FINAL INSTRUCTION NO. 6 – IMPEACHMENT

In Preliminary Instruction No. 6, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

You have heard that some witnesses were once convicted of a crime or multiple crimes. You may use that evidence only to help you decide whether to believe the witnesses and how much weight to give their testimony, if any.

You have heard that one or more witnesses pleaded guilty to a crime which arose out of the same events for which the defendant is on trial here. You must not consider that guilty plea as any evidence of the defendant’s guilt. You may consider a witness’s guilty plea only for the purpose of determining how much, if at all, to rely upon that witness’s testimony.

You have also heard evidence that one or more witnesses has made a plea agreement with the prosecution. The witness’s testimony was received in evidence and may be considered by you. You may give the witness’s testimony such weight as you think it deserves. Whether or not the witness’s testimony may have been influenced by the plea agreement or the prosecution’s promise is for you to determine. A witness’s guilty plea cannot be considered by you as any evidence of the defendant’s guilt. A witness’s guilty plea can be considered

by you only for the purpose of determining how much, if at all, to rely upon the witness's testimony.

You have heard evidence that one or more witnesses have made a plea agreement with the prosecution that the witness may receive a sentence reduction if he or she provides substantial assistance to the government in the prosecution of other defendants. The witnesses' testimony was received in evidence and may be considered by you. You may give the witnesses' testimony such weight as you think it deserves. Whether or not his or her testimony may have been influenced by the plea agreement and the government's promises is for you to determine.

The witness' guilty plea cannot be considered by you as any evidence of the defendant's guilt. The witness' guilty plea can be considered by you only for the purpose of determining how much, if at all, to rely upon the witness' testimony.

You have also heard evidence that one or more witnesses hopes to receive a reduced sentence on the criminal charge on which the witness was previously sentenced because of his or her cooperation with the government in this case. If the prosecutor handling this witness' case believes he or she provided substantial assistance, that prosecutor can file in the court in which the charges are pending against this witness a motion to reduce his or her sentence. The judge has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney, files a such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the government, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness's testimony whatever weight, if any, you think it deserves.

Your decision on the facts of this case should not be determined by the number of witnesses testifying for or against a party. You should consider all the facts and circumstances in evidence to determine which of the witnesses

you choose to believe or not believe. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

FINAL INSTRUCTION NO. 7 – PRESUMPTION OF INNOCENCE AND BURDEN
OF PROOF

The presumption of innocence means that the defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from the defendant's arrest, the charge, or the fact that he is here in court.
- This presumption remains with the defendant throughout the trial.
- This presumption is enough, alone, for you to find the defendant not guilty, unless the prosecution proves, beyond a reasonable doubt, all of the elements of the offense charged against him.

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove his innocence.
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify.
- This burden means that, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict.

This burden means that you must find the defendant not guilty of the offense charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense.

FINAL INSTRUCTION NO. 8 – REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense, and not doubt based on speculation.

- A reasonable doubt may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence.
- A reasonable doubt may arise from the prosecution's lack of evidence.

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all the evidence, or lack of evidence, in the case before making a decision.
- Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt.
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs.

The prosecution's burden is heavy, but it does not require proof beyond all possible doubt.

FINAL INSTRUCTION NO. 9 – DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. Before you make that judgment, you must consult with one another and try to reach agreement if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has not proved beyond a reasonable doubt that the defendant is guilty, say so.
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty, say so.
- Do not give up your honest beliefs just because others think differently or because you simply want to be finished with the case.
- On the other hand, do not hesitate to re-examine your own views and to change your opinion if you are convinced that it is wrong.
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views.
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence.
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence, reason, your common sense, and these Instructions.
- You must consider all of the evidence bearing on each element before you.
- Take all the time that you feel is necessary.

Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case.

FINAL INSTRUCTION NO. 10 – DUTY DURING DELIBERATIONS

You must follow certain rules while conducting your deliberations and returning your verdict:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is guilty or not guilty. If the defendant is guilty, I will decide what the sentence should be.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Base your verdict solely on the evidence, reason, your common sense, and these Instructions. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to his race, color, religious beliefs, national origin, or sex.
- Complete the Verdict Form. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

Dated November 7, 2024.

BY THE COURT:

A handwritten signature in black ink, reading "Karen E. Schreier", is written over a horizontal line.

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. CURTIS CUMMINGS, Defendant.	5:23-CR-50096-03-KES VERDICT
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We, the Jury, unanimously find the defendant, **Curtis Cummings**, as follows:

CONSPIRACY TO DISTRIBUTE A CONTROLLED SUBSTANCE RESULTING IN DEATH		VERDICT
Step 1:	On the charge of “conspiracy to distribute a controlled substance” as explained in Final Instruction No. 2, please mark your verdict.	____ Not Guilty ____ Guilty
	If you have found Cummings guilty of this offense, please move to Step 2. If you have found Cummings not guilty of this offense, please skip Steps 2 and 3 and sign and date the verdict form.	

Step 2:	<p>Please indicate the quantity of fentanyl involved in the conspiracy for which you find beyond a reasonable doubt that the defendant can be held responsible.</p> <p>_____ 400 grams or more of a mixture or substance containing a detectable amount of fentanyl; or</p> <p>_____ 40 grams or more but less than 400 grams of a mixture or substance containing a detectable amount of fentanyl; or</p> <p>_____ Less than 40 grams of a mixture or substance containing a detectable amount of fentanyl.</p> <p>Please move to Step 3.</p>	
Step 3:	<p>If you found Cummings guilty of Conspiracy to Distribute a Controlled Substance in Step 1, please indicate whether Michael Mohr's death resulted from the use of fentanyl Cummings conspired to distribute, as explained in Final Instruction No. 3.</p>	<p>_____ No</p> <p>_____ Yes</p>

Please sign and date the Verdict Form.

Date

Foreperson