

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

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| <p>UNITED STATES OF AMERICA,<br/><br/>Plaintiff,<br/><br/>vs.<br/><br/>SHAUN GRAGORY MITCHELL,<br/><br/>Defendant.</p> | <p>4:24-40008-KES<br/><br/>FINAL INSTRUCTIONS</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 Shaun Mitchell guilty of the offense charged in the Indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

**One, that beginning on a date unknown and continuing until on or about January 4, 2024, two or more persons reached an agreement or came to an understanding to distribute a mixture or substance containing fentanyl;**

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 Indictment. For this element to be proved,

- Mitchell 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 express, written, or formal;
- The agreement did not have to involve every detail of how the conspiracy was to be carried out; or
- The conspirators did not have to personally benefit from the conspiracy.

The Indictment charges a conspiracy to distribute fentanyl. 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 a mixture or substance containing fentanyl to another;

- And *two*, that at the time of the transfer, the person knew what he or she was transferring was a controlled substance.

It does not matter whether the crime of distribution of a controlled substance was actually committed or whether the alleged participants in the agreement actually succeeded in accomplishing their unlawful plan.

***Two, that Mitchell 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;***

Intent or knowledge may be proven like anything else. You may consider any statements made or acts done by the defendant and all the facts and circumstances in evidence which may aid in a determination of the defendant's 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.

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

Mitchell 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,
- conspire with every other member of the conspiracy, or
- 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 Mitchell 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 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 Mitchell 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 Mitchell voluntarily and intentionally joined the agreement, you must consider only the evidence of Mitchell'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 Mitchell.

***Three, that at the time Mitchell 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 or she 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 a defendant's mind. Thus, a 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 a defendant and other alleged participants in the agreement to commit the crime of distribution of a controlled substance simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. A defendant must have known of the existence and purpose of the agreement. Without such knowledge, a defendant cannot be guilty of conspiracy, even if his or her acts furthered the conspiracy.

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

The quantity of controlled substances involved in the agreement or understanding includes the controlled substances a defendant possessed for personal use or distributed or agreed to distribute. The quantity also includes the controlled substances fellow conspirators distributed or agreed to distribute, if you find that those distributions or agreements to distribute were a necessary or natural consequence of the agreement or understanding and were reasonably foreseeable by a defendant.

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

For you to find Mitchell guilty of the offense charged in the Indictment, the prosecution must prove all four of the essential elements beyond a reasonable doubt. Otherwise, you must find Mitchell not guilty of the offense as charged in the 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 Mitchell conspired to distribute some lesser amount of fentanyl.

If you unanimously find beyond a reasonable doubt that Mitchell conspired to distribute less than 400 grams of a mixture or substance containing fentanyl but at least 40 grams of a mixture or substance containing fentanyl, then you must find Mitchell 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 Mitchell conspired to distribute some quantity less than 40 grams of a mixture or substance containing fentanyl, then you must find Mitchell guilty of the crime of conspiracy to distribute fentanyl.

Otherwise, you must find Mitchell not guilty of the crime charged in the Indictment.

### FINAL INSTRUCTION NO. 3 – BUYER-SELLER RELATIONSHIP

A buyer-seller relationship between a defendant and another person, standing alone, cannot support a conviction for conspiracy. The fact that a defendant may have bought fentanyl from another person or sold fentanyl to another person is not sufficient without more to establish that the defendant was a member of the charged conspiracy. Instead, a conviction for conspiracy requires proof of an agreement to commit a crime beyond that of the mere sale.

In considering whether the evidence supports the existence of a conspiracy or the existence of a buyer-seller relationship, you should consider all the evidence, including the following factors:

- 1) Whether the sales were made on credit or consignment;
- 2) The frequency of the sales;
- 3) The quantity of the sales;
- 4) The level of trust demonstrated between the buyer and the seller, including the use of codes;
- 5) The length of time during which the sales were ongoing;
- 6) Whether the transactions were standardized;
- 7) Whether the parties advised each other on the conduct of the other's business;
- 8) Whether the buyer assisted the seller by looking for other customers;
- 9) Whether the parties agreed to warn each other of potential threats from competitors or law enforcement; and
- 10) Whether the buyer was free to shop elsewhere.

These are merely a list of relevant factors to aid you in analyzing the evidence; the presence or absence of any single factor is not determinative.

FINAL INSTRUCTION NO. 4 – 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 one or more witnesses were once convicted of a crime or multiple crimes. You may use that evidence only to help you decide whether to believe that witness and how much weight to give their testimony.

You have heard that one or more witnesses pleaded guilty to a crime that arose out of the same events for which Mitchell is on trial here. You must not consider that guilty plea as any evidence of this defendant’s guilt. You may consider that witness’s guilty plea 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 hope to receive a reduced sentence on criminal charges on which the witness was previously sentenced or for charges pending against him or her in return for their cooperation with the government in this case. These witnesses entered into an agreement with the United States Attorney that provides that in return for his or her assistance, the government will recommend a less severe sentence. If the prosecutor handling this witness's case believes the witness provided

substantial assistance, that prosecutor can file in the court in which the charges are pending against this witness a motion to reduce the witness's sentence. The judge has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney, files 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. You may give a witness's testimony such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by their hope of receiving a reduced sentence is for you to decide.

You have heard evidence that a witness has an arrangement with the government under which this witness had the possibility for a reduction in criminal charges for providing information to the government. This witness' testimony was received in evidence and may be considered by you. You may give this witness' testimony such weight as you think it deserves. Whether or not this witness' information or testimony may have been influenced by the possibility of a reduction of criminal charges is for you to determine.

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. 5 – OPINION TESTIMONY

You have heard testimony from various witnesses who testified about both facts and opinions and the reasons for their opinions. Fact testimony is based on what the witness saw, heard or did. Opinion testimony is based on the specialized knowledge, skill, experience, training, or education of the witness.

As to each witness's testimony about the facts, it is your job to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, part of it, or none of it.

You have also heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

You must apply these instructions separately and to each witness individually. You also should pay careful attention to whether each witness individually testified to his personal observations or involvement as a fact witness or whether he testified to an opinion based on his specialized knowledge, skill, experience, training, or education. When a witness provides opinion testimony based on knowledge, skill, experience, training, or education, that person might rely on facts that are not based on his personal observations or involvement, but that opinion cannot serve as proof of the underlying facts.

Take into account the factors discussed in Preliminary Instruction No. 6 that was provided to assist you in weighing the credibility of witnesses. The fact

that a witness is allowed to express opinions based on that person's specialized knowledge, skill, experience, training, or education should not cause you to give undue deference to the credibility of that witness.

FINAL INSTRUCTION NO. 6 – 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 an 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 you must find the defendant not guilty of the offenses charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of the offenses.
- This burden means that, if a defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict.

FINAL INSTRUCTION NO. 7 – REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense.

- 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 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. 8 – 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. 9 – 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.
- Do not decide this case based on “implicit biases.” As discussed in jury selection, everyone can have feelings, assumptions, perceptions, fears, and stereotypes, that are “implicit biases” that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, you must evaluate the evidence

carefully and guard against the danger of jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluations of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.

- 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 June 4, 2026.

BY THE COURT:



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KAREN E. SCHREIER  
UNITED STATES DISTRICT JUDGE