UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. JUAN SERTUCHE, Defendant.	5:24-CR-50020-KES FINAL JURY INSTRUCTIONS

TABLE OF CONTENTS

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 Juan Sertuche guilty of the offense of conspiracy to distribute a controlled substance, as charged in Count 1 of the Superseding Indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

***One*, beginning at a time unknown but no later than on or about January 2022, and continuing through on or about October 2023, in the District of South Dakota and elsewhere, two or more persons reached an agreement or came to an understanding to distribute a mixture or substance containing methamphetamine, a Schedule II controlled substance;**

Methamphetamine 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,

- Sertuche 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.

Count 1 of 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 methamphetamine, you should consider the elements of a "distribution" offense. The elements of distribution of methamphetamine are the following:

- *One*, that a person intentionally transferred a mixture or substance containing methamphetamine 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 methamphetamine actually occurred for this element of the "conspiracy" offense to be proved.

***Two*, that Sertuche 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 the 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.

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

Sertuche 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 Sertuche 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 Sertuche 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 Sertuche voluntarily and intentionally joined the agreement, you must consider only the evidence of Sertuche'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 Sertuche.

***Three*, that at the time Sertuche 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 the defendant and other alleged participants in the agreement to commit the crime of distribution of

methamphetamine simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. The defendant 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 500 grams or more of a mixture or substance containing methamphetamine.**

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 methamphetamine if more than one conspirator was involved in conspiring to distribute that particular quantity of the methamphetamine. Instead, you must determine the amount of the methamphetamine involved in the conspiracy for which Sertuche can be held responsible, if any.

In making your determination of quantity as required, the following conversion chart may be helpful:

OUNCES/POUNDS	GRAMS/KILOGRAMS
1 ounce	28.35 grams (0.028 kilogram)
1 pound	453.59 grams (0.4536 kilogram)
2.2 pounds	1,000 grams (1 kilogram)

For you to find Sertuche guilty of the offense charged in Count 1 of the Superseding Indictment, the prosecution must prove all four of the essential elements beyond a reasonable doubt. Otherwise, you must find Sertuche not guilty of the offense as charged in Count 1 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 Sertuche conspired to distribute some lesser amount of methamphetamine.

If you unanimously find beyond a reasonable doubt that Sertuche conspired to distribute less than 500 grams of a mixture or substance containing methamphetamine but at least 50 grams of a mixture or substance containing methamphetamine, then you must find Sertuche guilty of the crime of conspiracy to distribute 50 grams or more of a mixture or substance containing methamphetamine.

If you unanimously find beyond a reasonable doubt that Sertuche conspired to distribute some quantity less than 50 grams of a mixture or substance containing methamphetamine, then you must find Sertuche guilty of the crime of conspiracy to distribute methamphetamine.

Otherwise, you must find Sertuche not guilty of Count 1 as charged in the Superseding Indictment.

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

For you to find Juan Sertuche guilty of the offense of conspiracy to distribute a controlled substance, as charged in Count 2 of the Superseding Indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

***One*, that beginning at a time unknown but no later than on or about January 2022, and continuing through on or about October 2023, in the District of South Dakota and elsewhere, 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.

To help you decide whether the defendant agreed to commit the crime of distribution of a mixture or substance containing fentanyl, you should consider the elements of a "distribution" offense. The elements of distribution of a mixture or substance containing 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 that what he or she was transferring was a controlled substance.

What is necessary to prove this element is described for you in Final Instruction No. 2, under Element One.

***Two*, that Sertuche 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;**

What is necessary to prove this element is described for you in Final Instruction No. 2, under Element Two.

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

What is necessary to prove this element is described for you in Final Instruction No. 2, under Element Three.

***And four*, that 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 Sertuche can be held responsible, if any.

In making your determination of quantity as required, 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

For you to find Sertuche guilty of the offense charged in Count 2 of the Superseding Indictment, the prosecution must prove all four of the essential elements beyond a reasonable doubt. Otherwise, you must find Sertuche not guilty of Count 2 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 Sertuche conspired to distribute some lesser amount of fentanyl.

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

Otherwise, you must find Sertuche not guilty of Count 2 as charged in the Superseding Indictment.

FINAL INSTRUCTION NO. 4 – POSSESSION OF A FIREARM IN FURTHERANCE OF A DRUG TRAFFICKING CRIME

For you to find Juan Sertuche guilty of the offense of possession of a firearm in furtherance of a drug trafficking crime as charged in Count 3 of the Superseding Indictment, the prosecution must prove the following two essential elements beyond a reasonable doubt:

***One*, that Sertuche committed the crime of conspiracy to distribute a controlled substance as charged in Counts 1 or 2 of the Superseding Indictment;**

***And two*, that Sertuche knowingly possessed one or more firearms in furtherance of that crime.**

> The phrase "in furtherance of" means furthering, advancing, or helping forward. This means the government must prove that the defendant possessed the firearm with the intent that it advance, assist or help commit the crime, but the government need not prove that the firearm actually did so.

For you to find Juan Sertuche guilty of the offense charged in Count 3 of the Superseding Indictment, the prosecution must prove both essential elements beyond a reasonable doubt.

Otherwise, you must find Sertuche not guilty of Count 3 as charged in the Superseding Indictment.

FINAL INSTRUCTION NO. 5 – POSSESSION

The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Whenever the word "possession" has been used in these instructions, it includes actual as well as constructive possession and also sole as well as joint possession.

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 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 the witness 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 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. One or more witnesses entered into an agreement with the government which provides that in return for his or her assistance, the government will recommend a less severe sentence. One or more witnesses is

also subject to a mandatory minimum sentence, that is, a sentence that the law provides must be of a certain minimum length. If the prosecutor handling this witness's 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 below the statutory minimum. 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 offenses 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 offenses 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 January 8, 2025.

BY THE COURT:

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE