

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

<p>UNITED STATES OF AMERICA, Plaintiff, vs. ARMANDO ANGEL CHESHER, Defendant.</p>	<p>4:22-CR-40060-KES 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 – DISTRIBUTION OF FENTANYL RESULTING IN
DEATH

For you to find Armando Angel Cheshier guilty of the offense of distribution of fentanyl resulting in death as charged in Count 1 of the Indictment, the prosecution must prove the following three essential elements beyond a reasonable doubt:

One, that on or about September 29, 2021, Cheshier knowingly or intentionally transferred fentanyl to Victim #1;

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 the 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 defendant's conscious objective rather than the product of a mistake or an accident.

Intent 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 that 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.

Two, that at the time of the transfer, Cheshier knew it was fentanyl;

And three, that Victim #1 would not have died but for the use of that same fentanyl transferred by Cheshier.

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 the defendant knew or should have known that he was exposing Victim #1 to a risk of death when defendant transferred fentanyl.

For you to find Cheshier guilty of Count 1 of the Indictment, the prosecution must prove all three of the essential elements beyond a reasonable doubt. Otherwise, you must find Cheshier not guilty of Count 1 of the Indictment.

FINAL INSTRUCTION NO. 3 – “BUT FOR” CAUSE

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.

FINAL INSTRUCTION NO. 4 – DISTRIBUTION OF FENTANYL

The crime of distributing fentanyl, as charged in Count 2 of the Indictment, has two elements, which are:

One, that on or about September 29, 2021, Cheshier knowingly or intentionally transferred fentanyl to Victim #1;

“Knowingly” or “intentionally” are defined in Final Jury Instruction No. 2, under the first element of Count 1.

And two, that at the time of the transfer, Cheshier knew it was fentanyl.

For you to find Cheshier guilty of Count 2 of the Indictment, the prosecution must prove both of these essential elements beyond a reasonable doubt. Otherwise, you must find Cheshier not guilty of Count 2 of the Indictment.

FINAL INSTRUCTION NO. 5 – DISTRIBUTION OF ALPRAZOLAM

The crime of distributing alprazolam, as charged in Count 3 of the Indictment, has two elements, which are:

One, that on or about September 29, 2021, Cheshier knowingly or intentionally transferred alprazolam to Victim #1;

“Knowingly” or “intentionally” are defined in Final Jury Instruction No. 2, under the first element of Count 1.

And two, that at the time of the transfer, Cheshier knew it was alprazolam.

For you to find Cheshier guilty of Count 3 of the Indictment, the prosecution must prove both of these essential elements beyond a reasonable doubt. Otherwise, you must find Cheshier not guilty of Count 3 of the Indictment.

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.

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 – DEFENDANT’S OTHER ACTS

You have heard testimony that the defendant has used and purchased drugs. You may consider this evidence only if you (unanimously) find it is more likely true than not true that the defendant committed these acts. This is a lower standard than proof beyond a reasonable doubt. You decide that by considering all of the evidence relating to the alleged act, then deciding what evidence is more believable.

If you find that this evidence has not been proved, you must disregard it. If you find this evidence has been proved, then you may consider it only for the limited purpose of deciding whether defendant had the state of mind or intent necessary to commit the crime charged in the indictment; or committed the acts he is on trial for by accident or mistake. You should give it the weight and value you believe it is entitled to receive.

FINAL INSTRUCTION NO. 10 – 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. 11 – DUTY DURING DELIBERATIONS

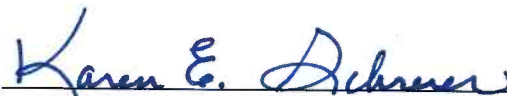
You must follow certain rules while conducting your deliberations and returning your verdict:

- 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.
- After you reach a unanimous verdict, 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 22, 2023.

BY THE COURT:

A handwritten signature in blue ink that reads "Karen E. Schreier". The signature is written in a cursive style and is positioned above a horizontal line.

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. ARMANDO ANGEL CHESHIER, Defendant.	4:22-CR-40060-KES FINAL SUPPLEMENTAL INSTRUCTION
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The Government has argued two theories as to why Cheshier is guilty on Counts 2 and 3: namely that Cheshier distributed fentanyl and/or alprazolam to Victim # 1 before going into the casino or at his apartment. To find Cheshier guilty on either Count 2 or 3, you must unanimously agree on at least one of these theories.

In addition, for you to find the defendant guilty of Count 2 or Count 3, the prosecution must prove both essential elements beyond a reasonable doubt for each respective count, as explained in Final Jury Instructions No. 4 and 5. Otherwise, you must find the defendant not guilty of the respective count.

Dated November 22, 2023.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE