

**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>Jeffrey Bailey and James Hand,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: right;">5:23-CR-50024</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
METHAMPHETAMINE – BAILEY

For you to find Jeffrey Bailey guilty of the offense of conspiracy to distribute methamphetamine, as charged in Count 1 of the Superseding Indictment, the prosecution must prove the following four essential elements beyond a reasonable doubt:

One, beginning on an unknown date, and continuing through on or about February 10, 2023, two or more persons reached an agreement or came to an understanding to distribute 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,

- Bailey 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 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 methamphetamine to another;
- *And two*, that at the time of the transfer, the person knew that what he 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 Bailey 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;**

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

Bailey 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

On the other hand, each of the following, alone, is not enough to show that Bailey 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 Bailey 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 Bailey joined the agreement, you may consider only the acts and statements of Bailey.

Three, that at the time Bailey 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 methamphetamine.

For you to find methamphetamine 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 Bailey not guilty of the offense charged in Count 1 of 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 Bailey conspired to distribute some lesser amount of methamphetamine. If you unanimously find that Bailey conspired to distribute an amount of methamphetamine less than 500 grams beyond a reasonable doubt, you must find Bailey guilty of the crime of conspiracy to distribute methamphetamine. Otherwise, you must find Bailey not guilty.

FINAL INSTRUCTION NO. 3 – CONSPIRACY TO DISTRIBUTE
METHAMPHETAMINE – HAND

For you to find James Hand 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 three essential elements beyond a reasonable doubt:

One, beginning on an unknown date, and continuing through on or about February 10, 2023, two or more persons reached an agreement or came to an understanding to distribute methamphetamine, a Schedule II controlled substance;

Methamphetamine is a Schedule II controlled substance.

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 methamphetamine to another;
- *And two*, that at the time of the transfer, the person knew that what he 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 Hand 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 Hand 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.

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

FINAL INSTRUCTION NO. 4 – CONVERSION CHART

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

FINAL INSTRUCTION NO. 5 – 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.

You have heard testimony from one or more witnesses who stated that they participated in the crime charged against the defendant. That testimony was received in evidence and may be considered by you. You may give that testimony such weight as you think it deserves. Whether or not that testimony may have been influenced by that witness’s desire to please the prosecution or to strike a good bargain with the prosecution about that witness’s own situation is for you to determine.

You have heard that one or more witnesses pled 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 this 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.

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. 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 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. 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 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 – DELIBERATE IGNORANCE/WILLFUL
BLINDNESS

You may find that a defendant acted knowingly if you find, beyond a reasonable doubt, that a defendant believed there was a high probability that the distribution of methamphetamine was occurring and that he took deliberate actions to avoid learning of that fact. Knowledge may be inferred if a defendant deliberately closed his eyes to what would otherwise have been obvious to him. A willfully blind defendant is one who takes deliberate actions to avoid confirming a high probability of wrongdoing and who can almost be said to have actually known the critical facts.

You may not find a defendant acted “knowingly” if you find he was merely negligent, careless or mistaken as to the fact that the distribution of methamphetamine was occurring.

FINAL INSTRUCTION NO. 9 – OPINION EVIDENCE – EXPERT WITNESS

You have 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' 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.

FINAL INSTRUCTION NO. 10 – INFERENCES

You are to consider only the evidence in the case. In your consideration of the evidence, you are not limited to the statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proven, such reasonable inferences as you feel are justified in light of experience and common sense.

FINAL INSTRUCTION NO. 11 – A DEFENDANT’S DECISION NOT TO TESTIFY

There is no burden upon a Defendant to prove that he is innocent. Instead, the burden of proof remains on the Government throughout trial. The fact that a Defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

FINAL INSTRUCTION NO. 12 – 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. 13 – DUTY DURING DELIBERATIONS

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

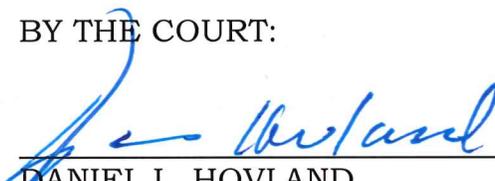
- Select a foreperson to preside over your discussions and to speak for you here in court.
- It is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can, because the verdict – whether guilty or not guilty - must be unanimous. Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors. Do not be afraid to change your opinions if the discussion persuades you that you should. Do not come to a decision, however, simply because other jurors think it is right, or simply to reach a verdict. Remember there will not be a transcript of this trial available to you when you retire to the jury room.
- During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as the telephone, a cell phone, smart phone, iPhone, or computer, the internet, any internet service, any text or instant messaging service, any internet chat room, blog, or website such as Facebook, My Space, YouTube, Twitter, Snapchat, or Instagram (or another other social media platform) to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict.

- 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 February 23, 2024.

BY THE COURT:



DANIEL L. HOVLAND
UNITED STATES DISTRICT JUDGE