

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION**

UNITED STATES OF AMERICA

v.

No. 5:22CR50020

SAM BOYD

COURT'S JURY INSTRUCTION

COURT'S INSTRUCTION NO. 1

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

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you during trial are not repeated here.

The instructions I am about to give you now, as well as those I gave you earlier, are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

COURT'S INSTRUCTION NO. 2

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

COURT'S INSTRUCTION NO. 3

I have mentioned the word "evidence." The "evidence" in this case consists of the testimony of witnesses, the documents and other things received as exhibits, and the facts that have been stipulated—this is, formally agreed to by the parties.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I will list those things again for you now:

1. Statements, arguments, questions, and comments by lawyers representing the parties in the case are not evidence.
2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
4. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

COURT'S INSTRUCTION NO. 4

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

COURT'S INSTRUCTION NO. 5

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'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.

COURT'S INSTRUCTION NO. 6

The Indictment in this case charges the defendant with three different crimes.

Count 1 charges that the defendant committed the crime of conspiracy to distribute methamphetamine.

Count 2 charges that the defendant committed the crime of possession of a firearm by a felon.

Count 3 charges that the defendant committed the crime of possession of ammunition by a felon.

The defendant has pleaded not guilty each of these charges.

The Indictment is simply the document that formally charges the defendant with the crimes for which he is on trial. The Indictment is not evidence. At the beginning of the trial, I instructed you that you must presume the defendant to be innocent. Thus, the defendant began the trial with a clean slate with no evidence against him.

The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the United States proved during the trial, beyond a reasonable doubt, each element of the crime charged.

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

COURT'S INSTRUCTION NO. 7

COUNT 1: CONSPIRACY TO DISTRIBUTE METHAMPHETAMINE

Count 1 of the indictment charges that beginning on a date unknown but no later than on or about September 2020, and continuing through on or about February 2022, in the District of South Dakota and elsewhere, the defendant, Sam Boyd, knowingly and intentionally combined, conspired, confederated and agreed with persons known and unknown to the grand jury, to knowingly and intentionally distribute 500 grams or more of a mixture of substance containing a detectable amount of methamphetamine, a Schedule II controlled substance, all in violation of federal law.

For you to find Mr. Boyd guilty of the offense of conspiracy to distribute methamphetamine as charged in Count I of the indictment, the government must prove the following essential elements beyond a reasonable doubt:

One, beginning on a date unknown but no later than on or about September 2020, and continuing through on or about February 2022, in the District of South Dakota and elsewhere, 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.

Two, the defendant 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; and

Three, at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding; and

Four, the agreement or understanding involved 500 grams or more of methamphetamine.

If you find these four elements unanimously and beyond a reasonable doubt, and if you find unanimously and beyond a reasonable doubt that the defendant was not entrapped as defined in Instruction No. 17, then you must find the defendant guilty of the crime of conspiracy to distribute 500 grams or more of a mixture or substance containing methamphetamine.

If you do not find the defendant guilty of this crime under Count 1, go on to consider whether the defendant conspired to distribute 50 grams or more of a mixture or substance containing methamphetamine.

If you find unanimously and beyond a reasonable doubt:

The first three elements set forth above; and

Fourth, you find that the agreement or understanding involved 50 grams or more of a mixture or substance containing methamphetamine, and if you find unanimously and beyond a reasonable doubt that the defendant was not entrapped as defined in Instruction No. 17, then you must find the defendant guilty of the crime of conspiracy to distribute 50 grams or more of a mixture or substance containing methamphetamine.

If you do not find the defendant guilty of this crime under Count 1, go on to consider whether the defendant conspired to distribute some amount of methamphetamine. If you find the first three elements unanimously and beyond a reasonable doubt, and if you find unanimously and beyond a reasonable doubt that the defendant was not entrapped as defined in Instruction No. 17, you must find the defendant guilty of the crime of conspiracy to distribute methamphetamine. Otherwise, you must find the defendant not guilty.

The quantity of controlled substances involved in the agreement or understanding includes the controlled substances the 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 the defendant.

COURT'S INSTRUCTION NO. 8

Count II: Possession of a Firearm by a Prohibited Person

The crime of possession of a firearm by a felon, as charged in Count II of the Indictment, has four elements, which are:

One, prior to January 31, 2022, the defendant had been convicted of a crime punishable by imprisonment for more than one year;

You are instructed that the government and the defendant have agreed that prior to January 31, 2022, the defendant had been convicted of a crime punishable by imprisonment for more than one year, and you must consider the first element as proven.

Two, at the time of the charged act, the defendant knew that he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year;

Three, on or about January 31, 2022, the defendant knowingly possessed a firearm, that is, a Savage, model 93R17, .17 H.M.R. caliber bolt-action rifle bearing serial number 3126508;

The term "firearm" means any weapon which will, is designed to, or may be readily converted to expel a projectile by the action of an explosive.

Four, the firearm was transported across a state line at some point during or before the defendant's possession of it.

"Interstate commerce" means commerce between any combination of states, territories and possessions of the United States, including the District of Columbia.

"Foreign commerce" means commerce between any state, territory or possession of the United States and a foreign country.

"Commerce" includes, among other things, travel, trade, transportation and communication.

The government is not required to prove Mr. Boyd knew the firearm had been shipped or transported in interstate or foreign commerce.

You are instructed that the government and the defendant have agreed that prior to January 31, 2022, the defendant had been convicted of a crime punishable by imprisonment for more than one year, and you must consider the first element as proven.

You are instructed that the government and the defendant have agreed that prior to and at the time of the charged act on January 31, 2022, the defendant knew that he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year, and you must consider the second element as proven.

If all of these elements have been proved beyond a reasonable doubt as to the defendant then you must find the defendant guilty of the crime charged under Count II; otherwise, you must find the defendant not guilty of this crime.

COURT'S INSTRUCTION NO. 9

Count III: Possession of Ammunition by a Prohibited Person

The crime of possession of ammunition by a felon, as charged in Count III of the Indictment, has four elements, which are:

One, prior to February 1, 2022, the defendant had been convicted of a crime punishable by imprisonment for more than one year;

Two, at the time of the charged act, the defendant knew that he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year;

Three, on or about February 1, 2022, the defendant knowingly possessed ammunition, that is, Winchester, .22 caliber ammunition and Hornady .17 caliber ammunition;

The term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

Four, the ammunition was transported across a state line at some point during or before the defendant's possession of it.

"Interstate commerce" means commerce between any combination of states, territories and possessions of the United States, including the District of Columbia.

"Foreign commerce" means commerce between any state, territory or possession of the United States and a foreign country.

"Commerce" includes, among other things, travel, trade, transportation and communication.

The government is not required to prove Mr. Boyd knew the ammunition had been shipped or transported in interstate or foreign commerce.

You are instructed that the government and the defendant have agreed that prior to February 1, 2022, the defendant had been convicted of a crime punishable by imprisonment for more than one year, and you must consider the first element as proven.

You are instructed that the government and the defendant have agreed that prior to and at the time of the charged act on February 1, 2022, the defendant knew that he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year, and you must consider the second element as proven.

If all of these elements have been proved beyond a reasonable doubt as to the defendant then you must find the defendant guilty of the crime charged under Count III; otherwise, you must find the defendant not guilty of this crime.

COURT'S INSTRUCTION NO. 10

If you determine a conspiracy existed and Mr. Boyd joined the conspiracy, you must then determine beyond a reasonable doubt the quantity of methamphetamine for which Mr. Boyd is responsible, if any. If you find Mr. Boyd guilty of conspiracy to distribute methamphetamine, he is responsible for:

1. Any methamphetamine he possessed for personal use, distributed or agreed to distribute during the course of the conspiracy; and
2. Any methamphetamine fellow conspirators distributed or agreed to distribute if you find those distributions or agreements to distribute were a necessary or natural consequence of the agreement or understanding and were reasonably foreseeable by Mr. Boyd during the course of the conspiracy.

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

COURT'S INSTRUCTION NO. 11 – 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

COURT'S INSTRUCTION NO. 12

To find the existence of a "conspiracy," the government must prove two or more persons reached an agreement or understanding to distribute a controlled substance. It makes no difference whether those persons are named in the indictment.

To assist you in determining whether there was an agreement or understanding to conspire to distribute a controlled substance, you should consider the elements of a "distribution" offense. The elements of distributing a controlled substance are:

- (1) a person intentionally distributed a controlled substance to another; and
- (2) at the time of the distribution, the person knew that what he was distributing was a controlled substance.

To find Mr. Boyd guilty of the conspiracy charged against him, you do not have to find the offense of distribution of a controlled substance was actually committed by Mr. Boyd or anyone else. It is the agreement to distribute a controlled substance which is illegal. The agreement is the conduct which has been charged in the indictment and which must be proven beyond a reasonable doubt to establish Mr. Boyd's guilt on the offense charged in the indictment.

The "agreement" or "understanding" need not be an express or formal agreement, or be in writing, or cover all the details of how the conspiracy was to be carried out. It is not necessary that the members have directly stated between themselves the details or purpose of the conspiracy.

Merely being present at the scene of an event, or merely acting in the same way as others, or merely associating with others, does not prove a defendant has joined in an agreement or understanding. A person who has no knowledge of a conspiracy but who happens to act in a way which advances some purpose of a conspiracy does not thereby become a member of that

conspiracy. Similarly, the mere knowledge of an illegal act or association by Mr. Boyd with an individual engaged in the illegal conduct of a conspiracy is not enough to prove he joined the conspiracy, even if his acts furthered the conspiracy.

On the other hand, a person may join in an agreement or understanding without knowing all the details of the agreement or understanding, and without knowing all the other members of the conspiracy. Further, it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

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

COURT'S INSTRUCTION NO. 13

If you determine an agreement existed and Mr. Boyd joined the agreement, you may consider acts knowingly done and statements knowingly made by Mr. Boyd's co-conspirators during the existence of the conspiracy and in furtherance of the conspiracy as evidence pertaining to Mr. Boyd even though the acts or statements were done or made in the absence of and without the knowledge of Mr. Boyd. This includes acts done or statements made before Mr. Boyd joined in the conspiracy. A person who knowingly, voluntarily and intentionally joins an existing conspiracy is responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

COURT'S INSTRUCTION NO. 14

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.

COURT'S INSTRUCTION NO. 15

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.

COURT'S INSTRUCTION NO. 16

Reasonable doubt is doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

COURT'S INSTRUCTION NO. 17

One of the issues in this case is whether the defendant was entrapped. The government has the burden of proving beyond a reasonable doubt that the defendant was not entrapped by showing **either**: (1) the defendant was willing to commit conspiracy to distribute methamphetamine before he was approached or contacted by law enforcement agents or someone acting for the government; **or** (2) the government, or someone acting for the government, did not persuade or talk the defendant into committing conspiracy to distribute methamphetamine. If you find that the government proved at least one of these two things beyond a reasonable doubt, then you must reject the defendant's claim of entrapment. If you find that the government failed to prove at least one of these two things beyond a reasonable doubt, then you must find the defendant not guilty.

The law allows the government to use undercover agents, deception, and other methods to present a person already willing to commit a crime with the opportunity to commit a crime, but the law does not allow the government to persuade an unwilling person to commit a crime. Simply giving someone a favorable opportunity to commit a crime is not the same as persuading him.

COURT'S INSTRUCTION NO. 18

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I will list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a 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. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the United States has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Fifth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict whether guilty or not guilty must be unanimous. Nothing I

have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. The form reads: [READ FORM].

You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.

If more than one form was furnished, you will bring the unused forms in with you.

John M. [Signature]
11/2/23