

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WAYLON YOUNG BIRD,

Defendant.

3:18-CR-30061-RAL

FINAL JURY INSTRUCTIONS

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. The instructions I am about to give you now are in writing and will be available to you in the jury room.

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.

All instructions, whenever given and whether in writing or not, must be followed.

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.

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—that 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 shall 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.

When you were instructed that evidence was received for a limited purpose, you must follow that instruction.

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 of any witness 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.

INSTRUCTION NO. 5

The indictment in this case charges the defendant with two different crimes. The defendant is charged with one count of conspiracy to distribute a controlled substance and one count of possession with intent to distribute a controlled substance. The defendant has pleaded not guilty to 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 of anything. 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. This presumption can be overcome only if the United States proved during the trial, beyond a reasonable doubt, each element of the crimes charged.

Please remember that only the defendant, not anyone else, is on trial here, and that the defendant is on trial only for the crimes charged, not for anything else.

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 a defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NO. 6

The crime of conspiracy to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, as charged in Count I of the indictment, has four essential elements, which are:

One, beginning on or about January 1, 2016, and continuing through May 15, 2018, in the District of South Dakota and elsewhere, two or more persons reached an agreement or came to an understanding to distribute or to possess with the intent to distribute methamphetamine, a Schedule II controlled substance;

Methamphetamine is a Schedule II controlled substance.

Two, the defendant, Waylon Young Bird, 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;

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 a mixture or substance containing a detectable amount of methamphetamine.

If you find unanimously that the government has proved these four elements beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of the crime charged in this count. Otherwise, you must find the defendant not guilty on this count.

If you do not find the defendant guilty of conspiracy to distribute or to possess with the intent to distribute 500 grams or more of methamphetamine, you must go on to consider whether the defendant conspired to distribute some lesser amount of methamphetamine. If you find that the defendant conspired to distribute an amount of methamphetamine less than 500 grams, you must then determine if the amount was 50 grams or more but less than 500 grams or was some amount less than 50 grams. You are to use the beyond a reasonable doubt standard in making this decision.

The quantity of the 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.

INSTRUCTION NO. 7

To find the existence of a “conspiracy,” the government must prove two or more persons reached an agreement or understanding to distribute or to possess with the intent to distribute methamphetamine. 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 or to possess with the intent to distribute methamphetamine, you should consider the elements of a “distribution” offense. The elements of distributing methamphetamine are: (1) a person intentionally distributed methamphetamine to another; and (2) at the time of the distribution, the person knew that what he or she was distributing was methamphetamine.

To find the defendant guilty of the “conspiracy” charged against him, you do not have to find the offense of distribution of methamphetamine was actually committed by the defendant or anyone else. It is the agreement to distribute methamphetamine 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 the defendant’s guilt on the offense charged in Count I of 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 the defendant with an individual engaged in the illegal conduct of a conspiracy is not enough to prove he joined the conspiracy. The defendant must know of the existence and purpose of the conspiracy. Without such knowledge, the defendant cannot be guilty of 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 the defendant voluntarily and intentionally joined in the agreement, you must consider only evidence of the defendant’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 the defendant.

INSTRUCTION NO. 8

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

INSTRUCTION NO. 9

The crime of possession of methamphetamine with the intent to distribute, as charged in Count II of the indictment, has three elements, which are:

One, on or about March 9, 2018, in the District of South Dakota, defendant, Waylon Young Bird, was in possession of methamphetamine;

Two, the defendant knew that he was in possession of methamphetamine; and

Three, the defendant intended to distribute some or all of the methamphetamine to another person.

If you find unanimously that the government has proved these three elements beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of this crime. Otherwise, you must find the defendant not guilty of this offense.

INSTRUCTION NO. 9A

If you find the defendant not guilty of the crime of possession of methamphetamine with the intent to distribute as charged in Count II of the indictment, you must then consider whether the defendant committed the offense of simple possession of methamphetamine. The crime of simple possession of methamphetamine has two elements, which are:

One, on or about March 9, 2018, in the District of South Dakota, defendant, Waylon Young Bird, was in possession of methamphetamine; and

Two, the defendant knew that he was in possession of methamphetamine.

If you find unanimously that the government has proved these two elements beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of this crime. Otherwise, you must find the defendant not guilty of this offense.

INSTRUCTION NO. 10

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.

INSTRUCTION NO. 11

To the extent it may be helpful in your deliberations, one ounce is the equivalent of 28.35 grams and one pound is the equivalent of 453.59 grams.

INSTRUCTION NO. 12

You have heard evidence that the defendant had previously possessed or delivered methamphetamine to others. You may consider this evidence only if you find it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable. This is a lower standard than proof beyond a reasonable doubt.

If you find this evidence has been proved, then you may consider it to help you decide the defendant's motive, opportunity, intent, preparation, plan, knowledge, or absence of mistake or accident. You should give it the weight and value you believe it is entitled to receive. If you find that this evidence has not been proved, you must disregard it.

Remember, even if you find that the defendant may have committed similar acts in the past, this is not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed similar acts in the past. The defendant is on trial only for the crimes charged, and you may consider the evidence of prior acts only on the issue of the defendant's motive, opportunity, intent, preparation, plan, knowledge, or absence of mistake or accident.

INSTRUCTION NO. 13

You have heard testimony from witnesses who made a plea agreement with the government, have a hope for a reduced sentence, or received a promise that their testimony will not be used against them. Such testimony was received in evidence and may be considered by you. You may give this testimony such weight as you think it deserves. Whether or not testimony may have been influenced by an agreement, promise, or the hope to receive a reduced sentence is for you to determine.

Any witness's guilty plea or conviction cannot be considered by you as any evidence of this defendant's guilt. The witness's guilty plea or conviction can be considered by you only for the purpose of determining how much, if at all, to rely upon the witness's testimony.

INSTRUCTION NO. 14

You have heard testimony a from person described as an expert. 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.

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 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.

INSTRUCTION NO. 16

The indictment charges that the offenses alleged were committed “on or about” certain dates. It is enough for the government to prove beyond a reasonable doubt that the offenses were committed on a date reasonably near the dates alleged in the indictment. It is not necessary for the government to prove that the offenses were committed precisely on the dates charged.

INSTRUCTION NO. 17

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.

INSTRUCTION NO. 18

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall 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 court security officer, 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, during your deliberations, you must not communicate with or provide any information to anyone other than by note to me by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry, or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, Snapchat, Instagram, YouTube, or Twitter, to communicate to anyone information about this case or to conduct any research about this case until I accept your verdict.

Sixth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. 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. 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 court security officer that you are ready to return to the courtroom.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. WAYLON YOUNG BIRD, Defendant.	3:18-CR-30061-RAL VERDICT FORM
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We, the jury, duly empaneled and sworn to try the issues in this case, find as follows:

1. We find Defendant Waylon Young Bird _____ (fill in either “guilty” or “not guilty”) of the crime of conspiracy to distribute a controlled substance as charged in Count I of the indictment.

If you find the defendant “guilty” of conspiracy to distribute methamphetamine, as charged in Count I of the indictment, you must answer the following:

The quantity of methamphetamine the defendant conspired to distribute was:

- a. _____ 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine; or
- b. _____ 50 grams or more but less than 500 grams of a mixture or substance containing a detectable amount of methamphetamine; or
- c. _____ Less than 50 grams of a mixture or substance containing a detectable amount of methamphetamine.

Please check the drug quantity of methamphetamine involved in the conspiracy for which you find beyond a reasonable doubt that this defendant can be held responsible.

2. We find Defendant Waylon Young Bird _____ (fill in either “guilty” or “not guilty”) of the crime of possession with intent to distribute a controlled substance as charged in Count II of the indictment.

2a. If and only if you find the defendant not guilty of the crime of possession of methamphetamine with the intent to distribute as charged in Count II of the indictment, you must then consider whether the defendant committed the offense of simple possession of methamphetamine.

We find Defendant Waylon Young Bird _____ (fill in either “guilty” or “not guilty”) of the crime of simple possession of methamphetamine.

Dated April ____, 2019

Foreperson