

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAMUEL B. FORD,

Defendant.

No. 11-CR-46-LRR

FINAL JURY INSTRUCTIONS

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will 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 at the beginning of and during trial are not repeated here.

The instructions I am about to give you now 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.

INSTRUCTION NO. 1

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdicts should be.

INSTRUCTION NO. 3

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 just verdicts, unaffected by anything except the evidence, your common sense and the law as I give it to you.

INSTRUCTION NO. 4

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses, including the defendant, the stipulations of the parties and documents and other things received as exhibits.

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 the lawyers are not evidence.
2. Anything that might have been said by jurors, the attorneys or the judge during the jury selection process is not evidence.
3. Objections are not evidence. The parties 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.
4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
5. Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, documents were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

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

INSTRUCTION NO. 5

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 6

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to the testimony of each witness, including the defendant, who has testified in this case. 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.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 7

In a previous instruction, 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 are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; 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.

You have heard evidence that certain witnesses were once convicted of a crime. You may use that evidence only to help you decide whether you believe these witnesses and how much weight to give their testimony.

You have heard evidence that certain witnesses hope to receive a reduced sentence on criminal charges pending against these witnesses in return for the witnesses’ cooperation with the government in this case. If the prosecutor handling a witness’s case believes the witness provided substantial assistance, that prosecutor can file in the court in which the charges are pending against the witness a motion to reduce the witness’s sentence. The judge has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney, files 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.

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INSTRUCTION NO. 7 (Cont'd)

You may give the testimony of these witnesses such weight as you think it deserves. Whether or not the testimony of the witnesses may have been influenced by the witnesses' hopes of receiving a reduced sentence is for you to decide. These witnesses' guilty pleas cannot be considered by you as any evidence of this defendant's guilt. These witnesses' guilty pleas can be considered by you only for the purpose of determining how much, if at all, to rely upon these witnesses' testimony.

INSTRUCTION NO. 8

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdicts, in the same condition as it was received by you.

INSTRUCTION NO. 9

You have heard testimony from persons described as experts. A person who, by knowledge, skill, training, education or experience, has become an expert in some field may state his opinions on matters in that field and may also state the reasons for his opinions.

Expert testimony should be considered just like any other testimony. You may accept it 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.

INSTRUCTION NO. 10

The government and the defendant have stipulated—that is, they have agreed—that certain facts are as counsel have stated. You must therefore treat those facts as having been proved.

INSTRUCTION NO. 11

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 12

You have heard evidence that the defendant committed drug offenses in the past. You may consider this evidence only if you unanimously find it is more likely true than not true. This is a lower standard of proof than beyond a reasonable doubt. If you find that this evidence is more likely true than not true, you may consider it to help you decide issues related to the defendant's intent and/or knowledge. You should give it the weight and value you believe it is entitled to receive. If you find that it is not more likely true than not true, then you shall disregard it.

Remember, even if you find that the defendant may have committed a similar act 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 evidence of prior acts only on the issue of intent and/or knowledge.

INSTRUCTION NO. 13

The Indictment in this case charges the defendant with two separate crimes.

In Count 1, the Indictment charges that on or about February 19, 2011, in the Northern District of Iowa, the defendant did knowingly and intentionally distribute a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance, to J.S., resulting in the death of J.S. from the use of the controlled substance, and the distribution occurred within 1,000 feet of the real property comprising a school.

In Count 2, the Indictment charges that on or about February 23, 2011, in the Northern District of Iowa, defendant did knowingly and intentionally distribute: (1) a mixture or substance containing a detectable amount of cocaine base, more commonly called "crack cocaine," a Schedule II controlled substance, and (2) a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance.

The defendant has pleaded not guilty to each charge.

As I told you at the beginning of the trial, an Indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him.

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INSTRUCTION NO. 13 (Cont'd)

The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each element of the crimes charged.

Keep in mind that each count charges a separate crime. You must consider each count separately and return a separate verdict for each count.

INSTRUCTION NO. 14

The crime of distributing a controlled substance, as charged in Count 1 of the Indictment, has two essential elements, which are:

One, the defendant intentionally transferred a controlled substance, to wit: heroin; and

Two, at the time of the transfer, the defendant knew that it was a controlled substance, to wit: heroin.

If both of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 1; otherwise you must find the defendant not guilty of the crime charged under Count 1.

INSTRUCTION NO. 15

The crime of distributing a controlled substance, as charged in Count 2 of the Indictment, has two essential elements, which are:

One, the defendant intentionally transferred a controlled substance, to wit: heroin and cocaine base, more commonly known as crack cocaine; and

Two, at the time of the transfer, the defendant knew that it was a controlled substance, to wit: heroin and cocaine base, more commonly known as crack cocaine.

If both of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 2; otherwise you must find the defendant not guilty of the crime charged under Count 2.

INSTRUCTION NO. 16

If you find the defendant guilty of the offense charged in Count 1, you must decide whether J.S. died as a result of using the heroin the defendant distributed to him. In deciding this, you are instructed that the government must prove, beyond a reasonable doubt, that the heroin the defendant distributed contributed to J.S.'s death. In other words, the government must prove, beyond a reasonable doubt, that the heroin the defendant distributed was a factor in causing J.S.'s death. Although the heroin the defendant distributed need not be the primary cause of J.S.'s death, it must at least have played a part in J.S.'s death. You are further instructed that the government need not prove that the defendant knew or should have known that death would result from the distribution.

INSTRUCTION NO. 17

If you find the defendant guilty of the offense charged in Count 1, you must determine whether the location at which the distribution of heroin took place was within 1,000 feet of the real property comprising a school. The 1,000-foot zone can be measured in a straight line from the school irrespective of actual pedestrian travel routes. The government does not have to prove that the defendant agreed, knew or intended that the offense would take place within 1,000 feet of a school.

INSTRUCTION NO. 18

You are instructed as a matter of law that heroin is a Schedule I controlled substance. You must ascertain whether or not the substance in question in Counts 1 and 2 was heroin. In doing so, you may consider all the evidence in the case which may aid in the determination of that issue.

You are instructed as a matter of law that cocaine base is a Schedule II controlled substance. During this trial, you have heard the terms “crack cocaine” and “a mixture or substance containing a detectable amount of cocaine base” referred to interchangeably. You are instructed that “crack cocaine” and “a mixture or substance containing a detectable amount of cocaine base” refer to the same substance. You must ascertain whether or not the substance in question in Count 2 was cocaine base. In so doing, you may consider all the evidence in the case which may aid in the determination of that issue.

INSTRUCTION NO. 19

The term “distribute” means to deliver a controlled substance to the possession of another person. The term “deliver” means the actual or attempted transfer of a controlled substance to the possession of another person. No consideration for the delivery need exist, and it is not necessary that money or anything of value change hands. The law is directed at the act of “distribution” of a controlled substance and does not concern itself with any need for a “sale” to occur.

INSTRUCTION NO. 20

The government 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.

INSTRUCTION NO. 21

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have previously mentioned, it is entirely up to you to decide what facts to find from the evidence.

INSTRUCTION NO. 22

You have heard testimony that the defendant made statements to law enforcement officials in this case. It is for you to decide: (1) whether the defendant made the statements and (2) if so, how much weight you should give to them. In making these two decisions, you should consider all of the evidence, including the circumstances under which the statements may have been made.

INSTRUCTION NO. 23

You will note that the Indictment charges that the offenses were committed “on or about” certain dates. The government need not prove with certainty the exact date or the exact time period of the offenses charged. It is sufficient if the evidence establishes that the offenses occurred within a reasonable time of the date or period of time alleged in the Indictment.

INSTRUCTION NO. 24

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 25

In conducting your deliberations and returning your verdicts, 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 an agreement if you can do so without violence to individual judgment, because your verdicts—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 your verdicts.

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 government 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 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.

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INSTRUCTION NO. 25 (Cont'd)

Fifth, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. The verdicts, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts might be—that is entirely for you to decide.

INSTRUCTION NO. 26

Attached to these instructions you will find the Verdict Forms and Interrogatory Form. The Verdict Forms and Interrogatory Form are simply the written notices of the decisions that you reach in this case. The answers to the Verdict Forms and Interrogatory Form must be the unanimous decisions of the Jury.

You will take the Verdict Forms and Interrogatory Form to the jury room, and when you have completed your deliberations and each of you has agreed to the answers to the Verdict Forms and Interrogatory Form, your foreperson will fill out the Verdict Forms and Interrogatory Form, sign and date them and advise the Court Security Officer that you are ready to return to the courtroom.

Finally, members of the Jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Forms and Interrogatory Form in accord with the evidence and these instructions.

August 11, 2011
Date

Linda R. Reade
Linda R. Reade, Chief Judge
United States District Court
Northern District of Iowa