

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH TYLER MCDONALD,

Defendant.

No. CR 14-3012-MWB

**INSTRUCTIONS
TO THE JURY**

TABLE OF CONTENTS

INSTRUCTIONS

No. 1 — INTRODUCTION	1
No. 2 — PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF	3
No. 3 — REASONABLE DOUBT	5
No. 4 — OTHER IMPORTANT TERMS	6
No. 5 — COUNT 1: THE ALLEGED “METHAM- PHETAMINE CONSPIRACY” OFFENSE	9
No. 6 — COUNT 2: THE ALLEGED “POSSESSION WITH INTENT TO DISTRIBUTE METHAM- PHETAMINE” OFFENSE	13
No. 7 — COUNT 2: THE ALLEGED “LESSER- INCLUDED OFFENSE” OF “POSSESSION OF METHAMPHETAMINE”	16
No. 8 — FORM AND QUANTITY OF METHAM- PHETAMINE	18
No. 9 — DEFINITION OF EVIDENCE	22
No. 10 — TESTIMONY OF WITNESSES	24
No. 11 — OBJECTIONS	27
No. 12 — BENCH CONFERENCES	28

No. 13 — NOTE-TAKING	29
No. 14 — CONDUCT OF JURORS DURING TRIAL	30
No. 15 — DUTY TO DELIBERATE	33
No. 16 — DUTY DURING DELIBERATIONS	35

VERDICT FORM

No. 1 — INTRODUCTION

Congratulations on your selection as a juror! These Instructions are to help you better understand the trial and your role in it.

In an Indictment, a Grand Jury has charged defendant Joseph Tyler McDonald with a “methamphetamine conspiracy” offense and a “possession with intent to distribute methamphetamine” offense. An Indictment is simply an accusation—it is not evidence of anything. The defendant has pled not guilty to the crimes charged against him, and he is presumed absolutely not guilty of each offense, unless and until the prosecution proves his guilt on that offense beyond a reasonable doubt.

You must decide during your deliberations whether or not the prosecution has proved the defendant’s guilt on each offense charged beyond a reasonable doubt. In making your decision, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

Remember, only defendant McDonald, and not anyone else, is on trial. Also, the defendant is on trial only for the offenses charged against him in the Indictment, and not for anything else.

You must consider each charge against the defendant separately and return a separate, unanimous verdict for or against the defendant on each charged offense.

Please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

No. 2 — 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 charges, 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 an 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 each offense charged against him, unless the prosecution proves beyond a

reasonable doubt that he has committed each and every element of that offense

No. 3 — 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 of 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 doubt.

No. 4 — OTHER IMPORTANT TERMS

Before I turn to specific instructions on the offenses charged in this case, I will explain some important terms.

Elements

Each offense charged consists of “elements,” which are the parts of the offense. The prosecution must prove beyond a reasonable doubt all of the elements of an offense for you to find the defendant guilty of that offense.

Timing

The Indictment alleges an approximate period or an approximate date for each charged offense.

- The prosecution does not have to prove that an offense occurred on an exact date
- The prosecution only has to prove that an offense occurred at a time that was reasonably within the time period or reasonably close to the date alleged for that offense in the Indictment.

Location

You must decide whether the defendant’s conduct occurred in the Northern District of Iowa. Fort Dodge and Webster County are in the Northern District of Iowa.

Methamphetamine

The offenses charged in this case allegedly involved methamphetamine. Methamphetamine is an illegal drug. Two forms of methamphetamine are allegedly involved in this case:

- “methamphetamine mixture”
 - “methamphetamine mixture” is a mixture or substance containing a detectable amount of methamphetamine
- “actual (pure) methamphetamine”
 - “actual (pure) methamphetamine” is methamphetamine itself—either by itself or contained in a methamphetamine mixture

Possession

A person possessed something if both of the following are true:

- the person knew about it, *and*
- the person had
 - physical control over it, *or*
 - the power, or ability, and the intention to control it

More than one person may have possessed something at the same time.

Distribution

A person distributed an illegal drug, if

- the person transferred possession of the illegal drug to another person

The prosecution does not have to prove

- that the illegal drug was “sold,” or
- that money or anything of value changed hands

Verdict Form

A Verdict Form is attached to these Instructions.

- A Verdict Form is simply a written notice of your decision
- When you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question
- You will all sign that copy to indicate that you agree with the verdict and that it is unanimous
- Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict

* * *

I will now give you the “elements” instructions on the charged offenses. The “elements” of the charged offenses are set out in **bold**.

**No. 5 — COUNT 1: THE ALLEGED
“METHAMPHETAMINE CONSPIRACY”
OFFENSE**

Count 1 of the Indictment charges defendant McDonald with a “methamphetamine conspiracy” offense. The defendant denies that he committed this offense.

For you to find the defendant guilty of this offense, the prosecution must prove beyond a reasonable doubt *all* of the following elements against him:

***One*, at some time during the period alleged for the conspiracy, from about 2012 through about January 2014, in the Northern District of Iowa, two or more persons reached an agreement or understanding to distribute methamphetamine.**

A conspiracy is an agreement of two or more persons to commit one or more crimes. For this element to be proved,

- the defendant 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

Here, the conspirators allegedly agreed to “distribute methamphetamine.”

- To help you decide whether or not the conspirators agreed to “distribute methamphetamine,” you should consider the elements of that crime
- The elements of “distributing methamphetamine” are the following:
 - a person intentionally distributed methamphetamine to another; and
 - at the time of the distribution, the person knew that he or she was distributing an illegal drug

Remember,

- the prosecution does not have to prove that any conspirator actually distributed methamphetamine for a conspiracy charge to be proved, *but*
- if there was no agreement, there was no conspiracy.

Two, the defendant voluntarily and intentionally joined in the agreement or understanding.

The prosecution must prove that the defendant had some degree of knowing involvement and cooperation in the agreement to prove that he joined in the agreement.

The defendant may have joined in the agreement

- at any time during its existence
- even if he agreed to play only a minor role in it

The defendant did not have to do any of the following to join the agreement:

- join the agreement at the same time as all of the other conspirators
- know all of the details of the conspiracy, such as the names, identities, or locations of all of 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 a person 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 acted 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.

If you find that there was an agreement, but you find that the defendant did not join in that agreement, then you cannot find the defendant guilty of the charged conspiracy offense.

Three, at the time that the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

The prosecution

- must prove that the defendant knew the purpose of the conspiracy, *but*
- does not have to prove that the defendant knew that what he did was unlawful

If the prosecution *does not* prove all of these elements beyond a reasonable doubt, then you must find the defendant not guilty of the “methamphetamine conspiracy” offense charged in the Indictment.

If you find the defendant guilty of the “methamphetamine conspiracy” charged in the Indictment, then you must also determine the form and quantity of any methamphetamine involved in that conspiracy for which the defendant can be held responsible, as explained in Instruction No. 8.

**No. 6 — COUNT 2: THE ALLEGED
“POSSESSION WITH INTENT TO
DISTRIBUTE METHAMPHETAMINE”
OFFENSE**

Count 2 of the Indictment charges defendant McDonald with a “possession with intent to distribute methamphetamine” offense. The defendant denies that he committed this offense.

For you to find the defendant guilty of this offense, the prosecution must prove beyond a reasonable doubt *all* of the following elements against him:

One, on or about January 30, 2014, defendant McDonald possessed methamphetamine.

You must decide whether or not the substance that defendant McDonald possessed or thought he was possessing was, in fact, methamphetamine, as defined in Instruction No. 4.

- You may consider all of the evidence in the case that may aid in the determination of this issue
- If the substance that defendant McDonald possessed or thought he was possessing was not methamphetamine, as defined, then you cannot convict him of this offense, even if you find that he possessed some other controlled substance

Two, defendant McDonald knew that he was, or intended to be, in possession of an illegal drug.

The defendant

- must have known or thought that what he possessed was an illegal drug
- need not have known what the illegal drug was, if he knew that he was in possession of some illegal drug

***Three,* defendant McDonald intended to distribute the methamphetamine to another person.**

You may, but are not required, to infer an “intent to distribute” from the following:

- drug purity, suggesting that the drugs were intended to be “cut” or diluted before distribution, if the evidence shows that the defendant was aware of such purity;
- the presence of firearms, cash, packaging material, or other distribution paraphernalia; and
- possession of a large quantity of methamphetamine in excess of what an individual user would consume

If the prosecution fails to prove these elements beyond a reasonable doubt, then you must find the defendant not guilty of the “possession with intent to distribute methamphetamine” offense charged in **Count 2** of the Indictment.

If your verdict on the charged “possession with intent to distribute” offense is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on that offense, you should record that decision on the verdict form and go on to consider whether defendant McDonald is guilty of the lesser-included offense of “possession,” as explained in Instruction No. 7.

On the other hand, if you find the defendant guilty of this offense, then you must also determine the form and quantity of any methamphetamine involved in the offense for which the defendant can be held responsible, as explained in Instruction No. 8.

**No. 7 — COUNT 2: THE ALLEGED “LESSER-
INCLUDED OFFENSE” OF “POSSESSION OF
METHAMPHETAMINE”**

As I explained in Instruction No. 6, you should only consider the “lesser-included offense” of “possession of methamphetamine,” if

- you find defendant McDonald not guilty of the “possession with intent to distribute methamphetamine” offense charged in **Count 2**, or
- you are unable to reach a verdict on that offense

For you to find defendant McDonald guilty of the “lesser-included offense” of “possession of methamphetamine,” the prosecution must prove beyond a reasonable doubt *both* of the following elements against him:

One, on or about January 30, 2014, defendant McDonald possessed methamphetamine.

You must decide whether or not the substance that defendant McDonald possessed or thought he was possessing was, in fact, methamphetamine, as defined in Instruction No. 4.

- You may consider all of the evidence in the case that may aid in the determination of this issue
- If the substance that defendant McDonald possessed or thought he was possessing was not methamphetamine, as defined, then you cannot convict him of this offense, even if you find that he possessed some other controlled substance

***Two*, defendant McDonald knew that he was, or intended to be, in possession of an illegal drug.**

The defendant

- must have known or thought that what he possessed was an illegal drug
- need not have known what the illegal drug was, if he knew that he was in possession of some illegal drug

If the prosecution fails to prove these elements beyond a reasonable doubt, then you must find the defendant not guilty of the “lesser-included offense” of “possession of methamphetamine.”

No. 8 — FORM AND QUANTITY OF METHAMPHETAMINE

If you find defendant McDonald guilty of an offense charged in the Indictment, then you must determine beyond a reasonable doubt the form and quantity of any methamphetamine involved in that offense for which he can be held responsible. You do not need to determine the form or quantity of methamphetamine involved in the “lesser-included offense” of “possession of methamphetamine,” if you find defendant McDonald guilty of that offense.

Responsibility

A defendant guilty of the “*methamphetamine conspiracy*” offense charged in **Count 1** of the Indictment is responsible for:

- any methamphetamine that he actually distributed or agreed to distribute during the course of the conspiracy
- any methamphetamine that he personally used or acquired for personal use from a co-conspirator
- any methamphetamine that fellow conspirators actually distributed or agreed to distribute during the conspiracy that was reasonably foreseeable as a necessary or natural consequence of the conspiracy

A defendant guilty of the “*possession with intent to distribute methamphetamine*” offense charged in **Count 2** of the Indictment:

- is responsible for any methamphetamine that he possessed or thought he was possessing with intent to distribute, *but*
- is *not* responsible for any methamphetamine that he acquired only for personal use

Forms Of Methamphetamine

If you find the defendant guilty of a charged offense, then you must determine whether that offense involved

- a “methamphetamine mixture”
- “actual (pure) methamphetamine,” *or*
- both

Quantities Of Methamphetamine

If you find the defendant guilty of the “**methamphetamine conspiracy**” offense charged in **Count 1**, then you must determine the total quantity of each form of methamphetamine, if any, involved in that offense.

- If you find that this offense involved both forms of methamphetamine, then you must determine the total quantity of each form of methamphetamine, even if any “actual (pure) methamphetamine” was contained in a “methamphetamine mixture”

- If you find that this offense involved **“methamphetamine mixture,”** then you must indicate in the Verdict Form whether defendant McDonald can be held responsible for
 - 500 grams or more of “methamphetamine mixture,” or
 - 50 grams or more, but less than 500 grams, of “methamphetamine mixture,” or
 - less than 50 grams of “methamphetamine mixture”
- If you find that this offense involved **“actual (pure) methamphetamine,”** then you must indicate in the Verdict Form whether defendant McDonald can be held responsible for
 - 50 grams or more of “actual (pure) methamphetamine,” or
 - 5 grams or more, but less than 50 grams, of “actual (pure) methamphetamine,” or
 - less than 5 grams of “actual (pure) methamphetamine”

If you find the defendant guilty of the **“possession with intent to distribute methamphetamine” offense in Count 2**, then you must determine the total quantity of “actual (pure) methamphetamine,” if any, involved in that offense.

- You do not need to determine the quantity of any “methamphetamine mixture” involved in this offense, even if you find that this offense involved “methamphetamine mixture” or both “methamphetamine mixture” and “actual (pure) methamphetamine”

- If you find that this offense involved “**actual (pure) methamphetamine,**” then you must indicate in the Verdict Form whether defendant McDonald can be held responsible for
 - 50 grams or more of “actual (pure) methamphetamine,” or
 - 5 grams or more, but less than 50 grams, of “actual (pure) methamphetamine,” or
 - less than 5 grams of “actual (pure) methamphetamine”

The following conversion table may be helpful:

POUNDS/OUNCES	GRAMS
1 lb.	453.6 g. (0.4536 kilogram)
2.2 lb.	1,000 g. (1 kilogram)
1 oz.	28.34 g. (0.028 kilogram)

Verdict

At the end of your deliberations, if you have found defendant McDonald guilty of an offense charged in the Indictment, you will check the appropriate blanks in the Verdict Form to indicate your findings concerning the form or forms and quantities of methamphetamine involved in that offense.

No. 9 — DEFINITION OF EVIDENCE

Evidence is the following:

- testimony
- exhibits admitted into evidence, but exhibits are not necessarily more important than any other evidence, just because they are shown to you
- stipulations, which are agreements between the parties that certain facts are true; you must treat stipulated facts as having been proved

The following are not evidence:

- testimony that I tell you to disregard
- exhibits that are not admitted into evidence
- statements, arguments, questions, and comments by the lawyers
- objections and rulings on objections
- anything that you see or hear about this case outside the courtroom

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact
 - An example is testimony by a witness about what that witness personally saw or heard or did
- “Circumstantial” evidence is proof of one or more facts from which you could find another fact

- An example is testimony that a witness personally saw a broken window and a brick on the floor, from which you could find that the brick broke the window
- You should consider both kinds of evidence, because the law makes no distinction in their weight
- The weight to be given any evidence, whether it is “direct” or “circumstantial,” is for you to decide

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

No. 10 — TESTIMONY OF WITNESSES

You may believe all of what any witness says, only part of it, or none of it.

In evaluating a witness's testimony, consider the following:

- the witness's
 - intelligence
 - memory
 - opportunity to have seen and heard what happened
 - motives for testifying
 - interest in the outcome of the case
 - manner while testifying
 - drug or alcohol use or addiction, if any
- the reasonableness of the witness's testimony
- any differences between what the witness says now and said earlier
- any inconsistencies between the witness's testimony and any other evidence that you believe
- whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes or are, instead, the result of lies or phony memory lapses, and
- any other factors that you find bear on believability or credibility

You should not give any more or less weight to a witness's testimony just because the witness is one of the following:

- a public official or law enforcement officer
- an expert

You may give any witness's opinion whatever weight you think it deserves, but you should consider the following:

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased, and
- all of the other evidence in the case

If the defendant testifies,

- you should judge his testimony in the same way that you judge the testimony of any other witness

You may hear evidence that a witness has been convicted of a crime. You may use that evidence only to help you decide

- whether or not to believe that witness, and
- how much weight to give that witness's testimony

You must consider the testimony of the following witnesses with greater caution and care:

- Any witness testifying about participation in a charged crime
- Any witness testifying pursuant to a plea agreement

- Whether or not the witness's testimony has been influenced by the plea agreement is for you to decide
- The plea agreement may be a "cooperation" plea agreement that provides that the prosecution may recommend a less severe sentence if the prosecutor believes that the witness has provided "substantial assistance"
- A judge cannot reduce a sentence for "substantial assistance" unless the prosecution asks the judge to do so, but if the prosecution does ask, the judge decides if and how much to reduce the witness's sentence

It is for you to decide

- What weight you think the testimony of such a witness deserves
- Whether or not such a witness's testimony has been influenced by that witness's desire to please the prosecutor or to strike a good bargain

Remember, it is your exclusive right to give any witness's testimony whatever weight you think it deserves.

No. 11 — OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

No. 12 — BENCH CONFERENCES

During the trial, it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- These conferences are to decide how certain evidence is to be treated, to avoid confusion and error, and to save your valuable time, so please be patient
- We will do our best to keep such conferences short and infrequent

No. 13 — NOTE-TAKING

You are allowed to take notes during the trial, if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them

If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.

An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

No. 14 — CONDUCT OF JURORS DURING TRIAL

You must decide this case *solely* on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.

- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a Blackberry, a PDA, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.
- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any “blog,” about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you

will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on subconscious biases. Everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer (CSO), who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining two Instructions at the end of the evidence.

No. 15 — DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. However, 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 of a charged offense, say so
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty of a charged offense, say so
- Don't 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 opinions, if you are convinced that they are 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 question 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

No. 16 — DUTY DURING DELIBERATIONS

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

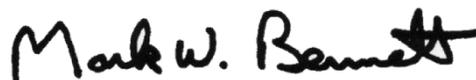
- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is not guilty or guilty. If the defendant is guilty of a charged offenses or “lesser-included offense,” I will decide what his sentence 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. To emphasize the importance of this requirement, the verdict form contains a certification statement. Each of you should carefully read that statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects how you reached your 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 this 7th day of July, 2014.



MARK W. BENNETT
U.S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH TYLER MCDONALD,

Defendant.

No. CR 14-3012-MWB

VERDICT FORM

As to defendant Joseph Tyler McDonald, we, the Jury, find as follows:

COUNT 1: THE ALLEGED “METHAMPHETAMINE CONSPIRACY” OFFENSE		VERDICT
Step 1: Verdict	On the “methamphetamine conspiracy” offense, as charged in Count 1 of the Indictment and explained in Instruction No. 5 , please mark your verdict. <i>(If you find the defendant “not guilty” of this offense, do not answer the question in Step 2. Instead, please go on to consider your verdict on Count 2.)</i>	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
Step 2: Form and Quantity of Methamphetamine	<i>If you found the defendant “guilty” of the “methamphetamine conspiracy” offense charged in Count 1 of the Indictment in Step 1, please indicate (a) the form or forms of any methamphetamine involved in the offense and (b) the quantity of any form of methamphetamine involved in the offense for which the defendant is responsible, as explained in Instruction No. 8. (When you have answered the question in this step, please go on to consider your verdict on Count 2.)</i>	
(a)	<input type="checkbox"/> methamphetamine mixture	<input type="checkbox"/> actual (pure) methamphetamine
(b)	<input type="checkbox"/> 500 grams or more	<input type="checkbox"/> 50 grams or more
	<input type="checkbox"/> 50 grams or more, but less than 500 grams	<input type="checkbox"/> 5 grams or more, but less than 50 grams
	<input type="checkbox"/> less than 50 grams	<input type="checkbox"/> less than 5 grams

COUNT 2: THE ALLEGED “POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE” OFFENSE		VERDICT
Step 1: Verdict	On the “possession with intent to distribute methamphetamine” offense, as charged in Count 2 of the Indictment and explained in Instruction No. 6 , please mark your verdict. <i>(If you find the defendant “guilty,” please answer the question in Step 2. If you find the defendant “not guilty” or answer “no verdict,” please skip to Step 3.)</i>	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty <input type="checkbox"/> No Verdict
Step 2: Form and Quantity of Methamphetamine	<i>If you found the defendant “guilty” of the offense charged in Count 2 of the Indictment in Step 1, please indicate (a) the form or forms of any methamphetamine involved in the offense and (b) the quantity of actual (pure) methamphetamine, if any, involved in the offense for which the defendant is responsible, as explained in Instruction No. 8. (When you have completed this step, please notify the Court Security Officer (CSO) that you have reached a verdict. Do not consider Step 3.)</i>	
(a)	<input type="checkbox"/> methamphetamine mixture	<input type="checkbox"/> actual (pure) methamphetamine
(b)		<input type="checkbox"/> 50 grams or more
		<input type="checkbox"/> 5 grams or more, but less than 50 grams
		<input type="checkbox"/> less than 5 grams
Step 3: “Lesser-Included Offense” of “Possession”	<i>If you found the defendant “not guilty” or answered “no verdict” in Step 1, please indicate your verdict on the “lesser-included offense” of “possession of methamphetamine,” as explained in Instruction No. 7. (After completing this Step, please sign the Verdict Form and notify the Court Security Officer (CSO) that you have reached a verdict.)</i>	
	<input type="checkbox"/> Not Guilty	<input type="checkbox"/> Guilty

CERTIFICATION

By signing below, each juror certifies the following:

(1) that consideration of the defendant's race, color, religious beliefs, national origin, or sex was not involved in reaching the juror's individual decision, *and*

(2) that the individual juror would have returned the same verdict for or against the defendant on the charged offenses and the "lesser-included offense" regardless of the defendant's race, color, religious beliefs, national origin, or sex.

Date

Foreperson	Juror
Juror	Juror

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH TYLER MCDONALD,

Defendant.

No. CR 14-3012-MWB

**INSTRUCTIONS
TO THE JURY**

TABLE OF CONTENTS

INSTRUCTIONS

No. 1 — INTRODUCTION	1
No. 2 — PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF	3
No. 3 — REASONABLE DOUBT	5
No. 4 — OTHER IMPORTANT TERMS	6
No. 5 — COUNT 1: THE ALLEGED “METHAM- PHETAMINE CONSPIRACY” OFFENSE	9
No. 6 — COUNT 2: THE ALLEGED “POSSESSION WITH INTENT TO DISTRIBUTE METHAM- PHETAMINE” OFFENSE	13
No. 7 — COUNT 2: THE ALLEGED “LESSER- INCLUDED OFFENSE” OF “POSSESSION OF METHAMPHETAMINE”	16
No. 8 — FORM AND QUANTITY OF METHAM- PHETAMINE	18
No. 9 — DEFINITION OF EVIDENCE	22
No. 10 — TESTIMONY OF WITNESSES	24

No. 11 — OBJECTIONS	27
No. 12 — BENCH CONFERENCES	28
No. 13 — NOTE-TAKING	29
No. 14 — CONDUCT OF JURORS DURING TRIAL	30
No. 15 — DUTY TO DELIBERATE	33
No. 16 — DUTY DURING DELIBERATIONS	35

VERDICT FORM

No. 17 — INTRODUCTION

Congratulations on your selection as a juror! These Instructions are to help you better understand the trial and your role in it.

In an Indictment, a Grand Jury has charged defendant Joseph Tyler McDonald with a “methamphetamine conspiracy” offense and a “possession with intent to distribute methamphetamine” offense. An Indictment is simply an accusation—it is not evidence of anything. The defendant has pled not guilty to the crimes charged against him, and he is presumed absolutely not guilty of each offense, unless and until the prosecution proves his guilt on that offense beyond a reasonable doubt.

You must decide during your deliberations whether or not the prosecution has proved the defendant’s guilt on each offense charged beyond a reasonable doubt. In making your decision, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

Remember, only defendant McDonald, and not anyone else, is on trial. Also, the defendant is on trial only for the offenses charged against him in the Indictment, and not for anything else.

You must consider each charge against the defendant separately and return a separate, unanimous verdict for or against the defendant on each charged offense.

Please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

No. 18 — 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 charges, 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 an 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 each offense charged against him, unless the prosecution proves beyond a

reasonable doubt that he has committed each and every element of that offense

No. 19 — 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 of 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 doubt.

No. 20 — OTHER IMPORTANT TERMS

Before I turn to specific instructions on the offenses charged in this case, I will explain some important terms.

Elements

Each offense charged consists of “elements,” which are the parts of the offense. The prosecution must prove beyond a reasonable doubt all of the elements of an offense for you to find the defendant guilty of that offense.

Timing

The Indictment alleges an approximate period or an approximate date for each charged offense.

- The prosecution does not have to prove that an offense occurred on an exact date
- The prosecution only has to prove that an offense occurred at a time that was reasonably within the time period or reasonably close to the date alleged for that offense in the Indictment.

Location

You must decide whether the defendant’s conduct occurred in the Northern District of Iowa. Fort Dodge and Webster County are in the Northern District of Iowa.

Methamphetamine

The offenses charged in this case allegedly involved methamphetamine. Methamphetamine is an illegal drug. Two forms of methamphetamine are allegedly involved in this case:

- “methamphetamine mixture”
 - “methamphetamine mixture” is a mixture or substance containing a detectable amount of methamphetamine
- “actual (pure) methamphetamine”
 - “actual (pure) methamphetamine” is methamphetamine itself—either by itself or contained in a methamphetamine mixture

Possession

A person possessed something if both of the following are true:

- the person knew about it, *and*
- the person had
 - physical control over it, *or*
 - the power, or ability, and the intention to control it

More than one person may have possessed something at the same time.

Distribution

A person distributed an illegal drug, if

- the person transferred possession of the illegal drug to another person

The prosecution does not have to prove

- that the illegal drug was “sold,” or
- that money or anything of value changed hands

Verdict Form

A Verdict Form is attached to these Instructions.

- A Verdict Form is simply a written notice of your decision
- When you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question
- You will all sign that copy to indicate that you agree with the verdict and that it is unanimous
- Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict

* * *

I will now give you the “elements” instructions on the charged offenses. The “elements” of the charged offenses are set out in **bold**.

**No. 21 — COUNT 1: THE ALLEGED
“METHAMPHETAMINE CONSPIRACY”
OFFENSE**

Count 1 of the Indictment charges defendant McDonald with a “methamphetamine conspiracy” offense. The defendant denies that he committed this offense.

For you to find the defendant guilty of this offense, the prosecution must prove beyond a reasonable doubt *all* of the following elements against him:

***One*, at some time during the period alleged for the conspiracy, from about 2012 through about January 2014, in the Northern District of Iowa, two or more persons reached an agreement or understanding to distribute methamphetamine.**

A conspiracy is an agreement of two or more persons to commit one or more crimes. For this element to be proved,

- the defendant 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

Here, the conspirators allegedly agreed to “distribute methamphetamine.”

- To help you decide whether or not the conspirators agreed to “distribute methamphetamine,” you should consider the elements of that crime
- The elements of “distributing methamphetamine” are the following:
 - a person intentionally distributed methamphetamine to another; and
 - at the time of the distribution, the person knew that he or she was distributing an illegal drug

Remember,

- the prosecution does not have to prove that any conspirator actually distributed methamphetamine for a conspiracy charge to be proved, *but*
- if there was no agreement, there was no conspiracy.

Two, the defendant voluntarily and intentionally joined in the agreement or understanding.

The prosecution must prove that the defendant had some degree of knowing involvement and cooperation in the agreement to prove that he joined in the agreement.

The defendant may have joined in the agreement

- at any time during its existence
- even if he agreed to play only a minor role in it

The defendant did not have to do any of the following to join the agreement:

- join the agreement at the same time as all of the other conspirators
- know all of the details of the conspiracy, such as the names, identities, or locations of all of 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 a person 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 acted 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.

If you find that there was an agreement, but you find that the defendant did not join in that agreement, then you cannot find the defendant guilty of the charged conspiracy offense.

Three, at the time that the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

The prosecution

- must prove that the defendant knew the purpose of the conspiracy, *but*
- does not have to prove that the defendant knew that what he did was unlawful

If the prosecution *does not* prove all of these elements beyond a reasonable doubt, then you must find the defendant not guilty of the “methamphetamine conspiracy” offense charged in the Indictment.

If you find the defendant guilty of the “methamphetamine conspiracy” charged in the Indictment, then you must also determine the form and quantity of any methamphetamine involved in that conspiracy for which the defendant can be held responsible, as explained in Instruction No. 8.

**No. 22 — COUNT 2: THE ALLEGED
“POSSESSION WITH INTENT TO
DISTRIBUTE METHAMPHETAMINE”
OFFENSE**

Count 2 of the Indictment charges defendant McDonald with a “possession with intent to distribute methamphetamine” offense. The defendant denies that he committed this offense.

For you to find the defendant guilty of this offense, the prosecution must prove beyond a reasonable doubt *all* of the following elements against him:

One, on or about January 30, 2014, defendant McDonald possessed methamphetamine.

You must decide whether or not the substance that defendant McDonald possessed was, in fact, methamphetamine, as defined in Instruction No. 2.

- You may consider all of the evidence in the case that may aid in the determination of this issue
- If the substance that defendant McDonald possessed was not methamphetamine, as defined, then you cannot convict him of this offense, even if you find that he possessed some other controlled substance

Two, defendant McDonald knew that he was, or intended to be, in possession of an illegal drug.

The defendant

- must have known that what he possessed was an illegal drug

- need not have known what the illegal drug was, if he knew that he was in possession of some illegal drug

Three, defendant McDonald intended to distribute the methamphetamine to another person.

You may, but are not required, to infer an “intent to distribute” from the following:

- drug purity, suggesting that the drugs were intended to be “cut” or diluted before distribution, if the evidence shows that the defendant was aware of such purity;
- the presence of firearms, cash, packaging material, or other distribution paraphernalia; and
- possession of a large quantity of methamphetamine in excess of what an individual user would consume

If the prosecution fails to prove these elements beyond a reasonable doubt, then you must find the defendant not guilty of the “possession with intent to distribute methamphetamine” offense charged in **Count 2** of the Indictment.

If your verdict on the charged “possession with intent to distribute” offense is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on that offense, you should record that decision on the verdict form and go on to consider whether defendant McDonald is guilty of the lesser-included offense of “possession,” as explained in Instruction No. 7.

On the other hand, if you find the defendant guilty of this offense, then you must also determine the form and quantity of any methamphetamine involved in

the offense for which the defendant can be held responsible, as explained in Instruction No. 8.

**No. 23 — COUNT 2: THE ALLEGED “LESSER-
INCLUDED OFFENSE” OF “POSSESSION OF
METHAMPHETAMINE”**

As I explained in Instruction No. 6, you should only consider the “lesser-included offense” of “possession of methamphetamine,” if

- you find defendant McDonald not guilty of the “possession with intent to distribute methamphetamine” offense charged in **Count 2**, or
- you are unable to reach a verdict on that offense

For you to find defendant McDonald guilty of the “lesser-included offense” of “possession of methamphetamine,” the prosecution must prove beyond a reasonable doubt *both* of the following elements against him:

One, on or about January 30, 2014, defendant McDonald possessed methamphetamine.

You must decide whether or not the substance that defendant McDonald possessed was, in fact, methamphetamine, as defined in Instruction No. 2.

- You may consider all of the evidence in the case that may aid in the determination of this issue
- If the substance that defendant McDonald possessed was not methamphetamine, as defined, then you cannot convict him of this offense, even if you find that he possessed some other controlled substance

***Two*, defendant McDonald knew that he was, or intended to be, in possession of an illegal drug.**

The defendant

- must have known that what he possessed was an illegal drug
- need not have known what the illegal drug was, if he knew that he was in possession of some illegal drug

If the prosecution fails to prove these elements beyond a reasonable doubt, then you must find the defendant not guilty of the “lesser-included offense” of “possession of methamphetamine.”

No. 24 — FORM AND QUANTITY OF METHAMPHETAMINE

If you find defendant McDonald guilty of an offense charged in the Indictment, then you must determine beyond a reasonable doubt the form and quantity of any methamphetamine involved in that offense for which he can be held responsible. You do not need to determine the form or quantity of methamphetamine involved in the “lesser-included offense” of “possession of methamphetamine,” if you find defendant McDonald guilty of that offense.

Responsibility

A defendant guilty of the “*methamphetamine conspiracy*” offense charged in **Count 1** of the Indictment is responsible for:

- any methamphetamine that he actually distributed or agreed to distribute during the course of the conspiracy
- any methamphetamine that he personally used or acquired for personal use from a co-conspirator
- any methamphetamine that fellow conspirators actually distributed or agreed to distribute during the conspiracy that was reasonably foreseeable as a necessary or natural consequence of the conspiracy

A defendant guilty of the “*possession with intent to distribute methamphetamine*” offense charged in **Count 2** of the Indictment:

- is responsible for any methamphetamine that he possessed with intent to distribute, *but*
- is *not* responsible for any methamphetamine that he acquired only for personal use

Forms Of Methamphetamine

If you find the defendant guilty of a charged offense, then you must determine whether that offense involved

- a “methamphetamine mixture”
- “actual (pure) methamphetamine,” *or*
- both

Quantities Of Methamphetamine

If you find the defendant guilty of the “**methamphetamine conspiracy**” offense charged in **Count 1**, then you must determine the total quantity of each form of methamphetamine, if any, involved in that offense.

- If you find that this offense involved both forms of methamphetamine, then you must determine the total quantity of each form of methamphetamine, even if any “actual (pure) methamphetamine” was contained in a “methamphetamine mixture”

- If you find that this offense involved **“methamphetamine mixture,”** then you must indicate in the Verdict Form whether defendant McDonald can be held responsible for
 - 500 grams or more of “methamphetamine mixture,” or
 - 50 grams or more, but less than 500 grams, of “methamphetamine mixture,” or
 - less than 50 grams of “methamphetamine mixture”
- If you find that this offense involved **“actual (pure) methamphetamine,”** then you must indicate in the Verdict Form whether defendant McDonald can be held responsible for
 - 50 grams or more of “actual (pure) methamphetamine,” or
 - 5 grams or more, but less than 50 grams, of “actual (pure) methamphetamine,” or
 - less than 5 grams of “actual (pure) methamphetamine”

If you find the defendant guilty of the **“possession with intent to distribute methamphetamine” offense in Count 2**, then you must determine the total quantity of “actual (pure) methamphetamine,” if any, involved in that offense.

- You do not need to determine the quantity of any “methamphetamine mixture” involved in this offense, even if you find that this offense involved “methamphetamine mixture” or both “methamphetamine mixture” and “actual (pure) methamphetamine”

- If you find that this offense involved “**actual (pure) methamphetamine,**” then you must indicate in the Verdict Form whether defendant McDonald can be held responsible for
 - 50 grams or more of “actual (pure) methamphetamine,” or
 - 5 grams or more, but less than 50 grams, of “actual (pure) methamphetamine,” or
 - less than 5 grams of “actual (pure) methamphetamine”

The following conversion table may be helpful:

POUNDS/OUNCES	GRAMS
1 lb.	453.6 g. (0.4536 kilogram)
2.2 lb.	1,000 g. (1 kilogram)
1 oz.	28.34 g. (0.028 kilogram)

Verdict

At the end of your deliberations, if you have found defendant McDonald guilty of an offense charged in the Indictment, you will check the appropriate blanks in the Verdict Form to indicate your findings concerning the form or forms and quantities of methamphetamine involved in that offense.

No. 25 — DEFINITION OF EVIDENCE

Evidence is the following:

- testimony
- exhibits admitted into evidence, but exhibits are not necessarily more important than any other evidence, just because they are shown to you
- stipulations, which are agreements between the parties that certain facts are true; you must treat stipulated facts as having been proved

The following are not evidence:

- testimony that I tell you to disregard
- exhibits that are not admitted into evidence
- statements, arguments, questions, and comments by the lawyers
- objections and rulings on objections
- anything that you see or hear about this case outside the courtroom

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact
 - An example is testimony by a witness about what that witness personally saw or heard or did
- “Circumstantial” evidence is proof of one or more facts from which you could find another fact

- An example is testimony that a witness personally saw a broken window and a brick on the floor, from which you could find that the brick broke the window
- You should consider both kinds of evidence, because the law makes no distinction in their weight
- The weight to be given any evidence, whether it is “direct” or “circumstantial,” is for you to decide

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

No. 26 — TESTIMONY OF WITNESSES

You may believe all of what any witness says, only part of it, or none of it.

In evaluating a witness's testimony, consider the following:

- the witness's
 - intelligence
 - memory
 - opportunity to have seen and heard what happened
 - motives for testifying
 - interest in the outcome of the case
 - manner while testifying
 - drug or alcohol use or addiction, if any
- the reasonableness of the witness's testimony
- any differences between what the witness says now and said earlier
- any inconsistencies between the witness's testimony and any other evidence that you believe
- whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes or are, instead, the result of lies or phony memory lapses, and
- any other factors that you find bear on believability or credibility

You should not give any more or less weight to a witness's testimony just because the witness is one of the following:

- a public official or law enforcement officer
- an expert

You may give any witness's opinion whatever weight you think it deserves, but you should consider the following:

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased, and
- all of the other evidence in the case

If the defendant testifies,

- you should judge his testimony in the same way that you judge the testimony of any other witness

You may hear evidence that a witness has been convicted of a crime. You may use that evidence only to help you decide

- whether or not to believe that witness, and
- how much weight to give that witness's testimony

You must consider the testimony of the following witnesses with greater caution and care:

- Any witness testifying about participation in a charged crime
- Any witness testifying pursuant to a plea agreement

- Whether or not the witness's testimony has been influenced by the plea agreement is for you to decide
- The plea agreement may be a "cooperation" plea agreement that provides that the prosecution may recommend a less severe sentence if the prosecutor believes that the witness has provided "substantial assistance"
- A judge cannot reduce a sentence for "substantial assistance" unless the prosecution asks the judge to do so, but if the prosecution does ask, the judge decides if and how much to reduce the witness's sentence

It is for you to decide

- What weight you think the testimony of such a witness deserves
- Whether or not such a witness's testimony has been influenced by that witness's desire to please the prosecutor or to strike a good bargain

Remember, it is your exclusive right to give any witness's testimony whatever weight you think it deserves.

No. 27 — OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

No. 28 — BENCH CONFERENCES

During the trial, it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- These conferences are to decide how certain evidence is to be treated, to avoid confusion and error, and to save your valuable time, so please be patient
- We will do our best to keep such conferences short and infrequent

No. 29 — NOTE-TAKING

You are allowed to take notes during the trial, if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them

If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.

An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

No. 30 — CONDUCT OF JURORS DURING TRIAL

You must decide this case *solely* on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.

- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a Blackberry, a PDA, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.
- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any “blog,” about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you

will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on subconscious biases. Everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer (CSO), who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining two Instructions at the end of the evidence.

No. 31 — DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. However, 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 of a charged offense, say so
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty of a charged offense, say so
- Don't 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 opinions, if you are convinced that they are 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 question 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

No. 32 — DUTY DURING DELIBERATIONS

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

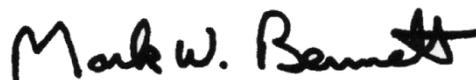
- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is not guilty or guilty. If the defendant is guilty of a charged offenses or “lesser-included offense,” I will decide what his sentence 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. To emphasize the importance of this requirement, the verdict form contains a certification statement. Each of you should carefully read that statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects how you reached your 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 this 7th day of July, 2014.



MARK W. BENNETT
U.S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH TYLER MCDONALD,

Defendant.

No. CR 14-3012-MWB

VERDICT FORM

As to defendant Joseph Tyler McDonald, we, the Jury, find as follows:

COUNT 1: THE ALLEGED “METHAMPHETAMINE CONSPIRACY” OFFENSE		VERDICT
Step 1: Verdict	On the “methamphetamine conspiracy” offense, as charged in Count 1 of the Indictment and explained in Instruction No. 5 , please mark your verdict. <i>(If you find the defendant “not guilty” of this offense, do not answer the question in Step 2. Instead, please go on to consider your verdict on Count 2.)</i>	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
Step 2: Form and Quantity of Methamphetamine	<i>If you found the defendant “guilty” of the “methamphetamine conspiracy” offense charged in Count 1 of the Indictment in Step 1, please indicate (a) the form or forms of any methamphetamine involved in the offense and (b) the quantity of any form of methamphetamine involved in the offense for which the defendant is responsible, as explained in Instruction No. 8. (When you have answered the question in this step, please go on to consider your verdict on Count 2.)</i>	
(a)	<input type="checkbox"/> methamphetamine mixture	<input type="checkbox"/> actual (pure) methamphetamine
(b)	<input type="checkbox"/> 500 grams or more	<input type="checkbox"/> 50 grams or more
	<input type="checkbox"/> 50 grams or more, but less than 500 grams	<input type="checkbox"/> 5 grams or more, but less than 50 grams
	<input type="checkbox"/> less than 50 grams	<input type="checkbox"/> less than 5 grams

COUNT 2: THE ALLEGED “POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE” OFFENSE		VERDICT
Step 1: Verdict	On the “possession with intent to distribute methamphetamine” offense, as charged in Count 2 of the Indictment and explained in Instruction No. 6 , please mark your verdict. <i>(If you find the defendant “guilty,” please answer the question in Step 2. If you find the defendant “not guilty” or answer “no verdict,” please skip to Step 3.)</i>	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty <input type="checkbox"/> No Verdict
Step 2: Form and Quantity of Methamphetamine	<i>If you found the defendant “guilty” of the offense charged in Count 2 of the Indictment in Step 1, please indicate (a) the form or forms of any methamphetamine involved in the offense and (b) the quantity of actual (pure) methamphetamine, if any, involved in the offense for which the defendant is responsible, as explained in Instruction No. 8. (When you have completed this step, please notify the Court Security Officer (CSO) that you have reached a verdict. Do not consider Step 3.)</i>	
(a)	<input type="checkbox"/> methamphetamine mixture	<input type="checkbox"/> actual (pure) methamphetamine
(b)		<input type="checkbox"/> 50 grams or more
		<input type="checkbox"/> 5 grams or more, but less than 50 grams
		<input type="checkbox"/> less than 5 grams
Step 3: “Lesser-Included Offense” of “Possession”	<i>If you found the defendant “not guilty” or answered “no verdict” in Step 1, please indicate your verdict on the “lesser-included offense” of “possession of methamphetamine,” as explained in Instruction No. 7. (After completing this Step, please sign the Verdict Form and notify the Court Security Officer (CSO) that you have reached a verdict.)</i>	
	<input type="checkbox"/> Not Guilty	<input type="checkbox"/> Guilty

CERTIFICATION

By signing below, each juror certifies the following:

(1) that consideration of the defendant's race, color, religious beliefs, national origin, or sex was not involved in reaching the juror's individual decision, *and*

(2) that the individual juror would have returned the same verdict for or against the defendant on the charged offenses and the "lesser-included offense" regardless of the defendant's race, color, religious beliefs, national origin, or sex.

Date

_____ Foreperson	_____ Juror
_____ Juror	_____ Juror

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH TYLER MCDONALD,

Defendant.

No. CR 14-3012-MWB

**COURT’S PROPOSED
INSTRUCTIONS
TO THE JURY**

(07/01/14 REVISED
“ANNOTATED” VERSION)

TABLE OF CONTENTS

INSTRUCTIONS

No. 1 — INTRODUCTION	1
No. 2 — PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF	3
No. 3 — REASONABLE DOUBT	5
No. 4 — OTHER IMPORTANT TERMS	6
No. 5 — COUNT 1: THE ALLEGED “METHAM- PHETAMINE CONSPIRACY” OFFENSE	10
No. 6 — COUNT 2: THE ALLEGED “POSSESSION WITH INTENT TO DISTRIBUTE METHAM- PHETAMINE” OFFENSE	15
No. 7 — COUNT 2: THE ALLEGED “LESSER- INCLUDED OFFENSE” OF “POSSESSION OF METHAMPHETAMINE”	19
No. 8 — FORM AND QUANTITY OF METHAM- PHETAMINE	21
No. 9 — DEFINITION OF EVIDENCE	26
No. 10 — TESTIMONY OF WITNESSES	28

No. 11 — OBJECTIONS	32
No. 12 — BENCH CONFERENCES	33
No. 13 — NOTE-TAKING	34
No. 14 — CONDUCT OF JURORS DURING TRIAL	35
No. 15 — DUTY TO DELIBERATE	39
No. 16 — DUTY DURING DELIBERATIONS	41

VERDICT FORM

No. 33 — INTRODUCTION¹

Congratulations on your selection as a juror! These Instructions are to help you better understand the trial and your role in it.

In an Indictment, a Grand Jury has charged defendant Joseph Tyler McDonald with a “methamphetamine conspiracy” offense and a “possession with intent to distribute methamphetamine” offense.² An Indictment is simply an accusation—it is not evidence of anything. The defendant has pled not guilty to the crimes charged against him, and he is presumed absolutely not guilty of each offense, unless and until the prosecution proves his guilt on that offense beyond a reasonable doubt.

You must decide during your deliberations whether or not the prosecution has proved the defendant’s guilt on each offense charged beyond a reasonable doubt. In making your decision, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

¹ *Compare* 8th Cir. Criminal Model 1.01 (2013).

² I do not find it necessary to explain more specifically here the offenses charged in the Indictment (docket no. 2).

Remember, only defendant McDonald, and not anyone else, is on trial. Also, the defendant is on trial only for the offenses charged against him in the Indictment, and not for anything else.

You must consider each charge against the defendant separately and return a separate, unanimous verdict for or against the defendant on each charged offense.

Please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

No. 34 — PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF³

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 charges, 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 an 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

³ Compare 8th Cir. Criminal Model 3.05 (2013).

- This burden means that you must find the defendant not guilty of each offense charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense

No. 35 — REASONABLE DOUBT⁴

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 of 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 doubt.

⁴ Compare 8th Cir. Criminal Model 3.11 (2013).

No. 36 — OTHER IMPORTANT TERMS

Before I turn to specific instructions on the offenses charged in this case, I will explain some important terms.

Elements

Each offense charged consists of “elements,” which are the parts of the offense. The prosecution must prove beyond a reasonable doubt all of the elements of an offense for you to find the defendant guilty of that offense.

Timing

The Indictment alleges an approximate period or an approximate date for each charged offense.

- The prosecution does not have to prove that an offense occurred on an exact date
- The prosecution only has to prove that an offense occurred at a time that was reasonably within the time period or reasonably close to the date alleged for that offense in the Indictment.

Location

You must decide whether the defendant’s conduct occurred in the Northern District of Iowa. Fort Dodge and Webster County are in the Northern District of Iowa.

Methamphetamine

The offenses charged in this case allegedly involved methamphetamine. Methamphetamine is an illegal drug. Two forms of methamphetamine are allegedly involved in this case:

- “methamphetamine mixture”
 - “methamphetamine mixture” is a mixture or substance containing a detectable amount of methamphetamine
- “actual (pure) methamphetamine”
 - “actual (pure) methamphetamine” is methamphetamine itself—either by itself or contained in a methamphetamine mixture⁵

*Possession*⁶

A person possessed something if both of the following are true:

- the person knew about it, *and*
- the person had
 - physical control over it, *or*

⁵ My “stock” instruction on forms of methamphetamine. See *United States v. Kuenstler*, 325 F.3d 1015, 1023 (8th Cir. 2003) (defining the phrase “mixture or substance containing a detectable amount of methamphetamine”); U.S.S.G. § 2D1.1 (defining “methamphetamine (actual)”); see also *United States v. Mesner*, 377 F.3d 849, 852 & n.1 (8th Cir. 2004) (relying on U.S.S.G. § 2D1.1); *United States v. Houston*, 338 F.3d 876, 881 (8th Cir. 2003) (same).

⁶ 9th Cir. Criminal Model 3.18 (modified and recast in past tense). I have defined “possession,” because it is relevant to the definition of “distribution.”

- the power, or ability, and the intention to control it ⁷

More than one person may have possessed something at the same time.

Distribution⁸

A person distributed an illegal drug, if

- the person transferred possession of the illegal drug to another person

The prosecution does not have to prove

- that the illegal drug was “sold,” or
- that money or anything of value changed hands

Verdict Form

A Verdict Form is attached to these Instructions.

- A Verdict Form is simply a written notice of your decision
- When you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question

⁷ I note that the comparable definition in Joint Proposed Jury Instruction No. 4 does not include “control over a vehicle in which [an item] was concealed,” presumably because that explanation is not relevant in this case. I have followed the parties’ proposal in this regard.

⁸ 8th Cir. Criminal Model 6.21.841B n.1 (suggesting that “transfer” may be more understandable than “distribute”); *see also United States v. Ragland*, 555 F.3d 706, 714 (8th Cir. 2009) (noting that “[n]o commercial element is required,” and citing cases).

- You will all sign that copy to indicate that you agree with the verdict and that it is unanimous
- Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict

* * *

I will now give you the “elements” instructions on the charged offenses. The “elements” of the charged offenses are set out in **bold**.

**No. 37 — COUNT 1: THE ALLEGED
“METHAMPHETAMINE CONSPIRACY”
OFFENSE⁹**

Count 1 of the Indictment charges defendant McDonald with a “methamphetamine conspiracy” offense. The defendant denies that he committed this offense.

For you to find the defendant guilty of this offense, the prosecution must prove beyond a reasonable doubt *all* of the following elements against him:¹⁰

***One*, at some time during the period alleged for the conspiracy, from about 2012 through about January 2014, in the Northern District of Iowa, two or more persons reached an agreement or understanding to distribute methamphetamine.**

A conspiracy is an agreement of two or more persons to commit one or more crimes. For this element to be proved,

- the defendant may have been, but did not have to be, one of the original conspirators

⁹ Compare 8th Cir. Criminal Model 6.21.846A; Joint Proposed Jury Instruction No. 5.

¹⁰ I consider a drug conspiracy offense complete upon proof of these elements; determination of the drug quantity involved (where necessary) is made pursuant to a separate Instruction, not as an element of the offense (or as a “lesser-included offense”). This is so, because drug quantity is only the “functional equivalent” of an element of the offense under *Apprendi* and its progeny in the specific sense that drug quantity must be charged and determined by a jury beyond a reasonable doubt. Moreover, treating drug quantity as an element or as the basis for a “lesser-included offense” determination is unnecessarily confusing to a jury.

- 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 conspiracy¹¹

Here, the conspirators allegedly agreed to “distribute methamphetamine.”

- To help you decide whether or not the conspirators agreed to “distribute methamphetamine,” you should consider the elements of that crime
- The elements of “distributing methamphetamine” are the following:
 - a person intentionally distributed methamphetamine to another; and
 - at the time of the distribution, the person knew that he or she was distributing an illegal drug¹²

Remember,

- the prosecution does not have to prove that any conspirator actually distributed methamphetamine for a conspiracy charge to be proved, *but*

¹¹ 9th Cir. Criminal Model 8.16, ¶¶ 6-7.

¹² See 8th Cir. Crim. Model 6.21.841B (2013).

- if there was no agreement, there was no conspiracy.¹³

Two, the defendant voluntarily and intentionally joined in the agreement or understanding.

The prosecution must prove that the defendant had some degree of knowing involvement and cooperation in the agreement to prove that he joined in the agreement.¹⁴

The defendant may have joined in the agreement

- at any time during its existence
- even if he agreed to play only a minor role in it¹⁵

The defendant did not have to do any of the following to join the agreement:

- join the agreement at the same time as all of the other conspirators

¹³ See 8th Cir. Criminal Model 5.06E (success immaterial) and 5.06B (“agreement” explained).

¹⁴ See *United States v. Shakur*, 691 F.3d 979, 989 (8th Cir. 2012) (“‘To establish that a defendant conspired to distribute drugs under 21 U.S.C. § 846, the government must prove: (1) that there was a conspiracy, i.e., an agreement to distribute the drugs; (2) that the defendant knew of the conspiracy; and (3) that the defendant intentionally joined the conspiracy.’” (quoting *United States v. Bowie*, 618 F.3d 802, 812 (8th Cir.2010) (quotation omitted), *cert. denied*, --- U.S. ----, 131 S.Ct. 954 (2011)); *United States v. Slagg*, 651 F.3d 832, 846 (8th Cir. 2011) (“To prove that Taylor participated in the charged conspiracy, the Government was required to present evidence ‘establish[ing] some degree of knowing involvement and cooperation,’ *United States v. Cabrera*, 116 F.3d 1243, 1244 (8th Cir. 1997) (quoting *United States v. Fregoso*, 60 F.3d 1314, 1323 (8th Cir. 1995)), beyond ‘a mere sales agreement with respect to contraband,’ *United States v. West*, 15 F.3d 119, 121 (8th Cir. 1994).”).

¹⁵ 8th Cir. Criminal Model 5.06B (2013), ¶ 4, last sentence (“minor role”).

- know all of the details of the conspiracy, such as the names, identities, or locations of all of the other members, or
- conspire with every other member of the conspiracy¹⁶

On the other hand, each of the following, alone, is not enough to show that a person 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 acted 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.¹⁷

¹⁶ 8th Cir. Criminal Model 5.06B (2013), ¶ 4.

¹⁷ My stock “mere presence, etc.,” instruction, modified in light of 8th Cir. Criminal Model 5.06A (2013), Comments, ¶ 5; 8th Cir. Criminal Model 5.06B (2013),

If you find that there was an agreement, but you find that the defendant did not join in that agreement, then you cannot find the defendant guilty of the charged conspiracy offense.

Three, at the time that the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

The prosecution

- must prove that the defendant knew the purpose of the conspiracy, *but*
- does not have to prove that the defendant knew that what he did was unlawful

If the prosecution *does not* prove all of these elements beyond a reasonable doubt, then you must find the defendant not guilty of the “methamphetamine conspiracy” offense charged in the Indictment.

If you find the defendant guilty of the “methamphetamine conspiracy” charged in the Indictment, then you must also determine the form and quantity of any methamphetamine involved in that conspiracy for which the defendant can be held responsible, as explained in Instruction No. 8.

¶ 3, and Comments, ¶ 3; *United States v. Burchinal*, 657 F.2d 885, 991 n.3 (8th Cir. 1981) (“Although we are aware that neither mere association with members of a conspiracy nor mere knowledge, approval or acquiescence in the object of a conspiracy is sufficient as proof that an individual is part of that conspiracy, [citing cases], there is no issue in the present case as to whether Burchinal contributed to the furtherance of the conspiracy.”).

**No. 38 — COUNT 2: THE ALLEGED
“POSSESSION WITH INTENT TO
DISTRIBUTE METHAMPHETAMINE”
OFFENSE¹⁸**

Count 2 of the Indictment charges defendant McDonald with a “possession with intent to distribute methamphetamine” offense. The defendant denies that he committed this offense.

For you to find the defendant guilty of this offense, the prosecution must prove beyond a reasonable doubt *all* of the following elements against him:

One, on or about January 30, 2014, defendant McDonald possessed methamphetamine.

You must decide whether or not the substance that defendant McDonald possessed was, in fact, methamphetamine, as defined in Instruction No. 2.

- You may consider all of the evidence in the case that may aid in the determination of this issue
- If the substance that defendant McDonald possessed was not methamphetamine, as defined, then you cannot convict him of this offense, even if you find that he possessed some other controlled substance

¹⁸ See 8th Cir. Criminal Model 6.21.841A; Joint Proposed Jury Instruction No. 6. Again, in my view, the offense of “possession with intent to distribute methamphetamine” is complete upon the proof of these elements, and the form and quantity of methamphetamine involved in the offense can be determined separately, pursuant to Instruction No. 8. See, *supra*, n.10.

Two, defendant McDonald knew that he was, or intended to be, in possession of an illegal drug.

The defendant

- must have known that what he possessed was an illegal drug
- need not have known what the illegal drug was, if he knew that he was in possession of some illegal drug¹⁹

Three, defendant McDonald intended to distribute the methamphetamine to another person.²⁰

¹⁹ 8th Cir. Criminal Model 6.21.841A, n.2 (knowledge of what drug is being possessed is not required for, only knowledge that some illegal drug is being possessed).

²⁰ The Committee Comments and note 4 to 8th Cir. Criminal Model 6.21.841A observe that it is uncertain whether drugs intended only for personal use are included in the drug quantity for a “possession with intent” offense, but add that the Eighth Circuit Court of Appeals has concluded that drugs possessed solely for personal use should not be included and that the phrase “some or all,” therefore, “should be used with care.” The Eighth Circuit Court of Appeals has reiterated,

[W]here a defendant is “charged with conspiracy to distribute [a controlled substance] ... the amount consumed for personal use should be included in the total.” *United States v. Kamerud*, 326 F.3d 1008, 1013 (8th Cir.2003). By contrast, “[d]rugs acquired for personal use are not relevant conduct when [the] charge is for possession with intent to distribute.” *Id.* (citing *United States v. Fraser*, 243 F.3d 473, 475–76 (8th Cir.2001)).

United States v. Payton, 636 F.3d 1027, 1047 (8th Cir. 2011). Using the suggested care, I believe that it is appropriate to delete the “some or all” language from this element, and require that the defendant intended to distribute “the methamphetamine” to another person. Doing so will remove any potential conflict with the part of the “quantity” instruction, Instruction No. 8, concerning the quantity for a “possession with intent”

You may, but are not required, to infer an “intent to distribute” from the following:

- drug purity, suggesting that the drugs were intended to be “cut” or diluted before distribution, if the evidence shows that the defendant was aware of such purity;
- the presence of firearms, cash, packaging material, or other distribution paraphernalia; and
- possession of a large quantity of methamphetamine in excess of what an individual user would consume²¹

If the prosecution fails to prove these elements beyond a reasonable doubt, then you must find the defendant not guilty of the “possession with intent to distribute methamphetamine” offense charged in **Count 2** of the Indictment.

If your verdict on the charged “possession with intent to distribute” offense is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on that offense, you should record that decision on the verdict form and go on to consider whether defendant McDonald is guilty of the lesser-included offense of “possession,” as explained in Instruction No. 7.

On the other hand, if you find the defendant guilty of this offense, then you must also determine the form and quantity of any methamphetamine involved in

offense, which will specifically state that methamphetamine possessed only for personal use is *not* included in the quantity for such an offense.

²¹ See 8th Cir. Criminal Model 6.21.841A n.3; *accord* Joint Proposed Jury Instruction No. 6.

the offense for which the defendant can be held responsible, as explained in Instruction No. 8.

**No. 39 — COUNT 2: THE ALLEGED “LESSER-
INCLUDED OFFENSE” OF “POSSESSION OF
METHAMPHETAMINE”²²**

As I explained in Instruction No. 6, you should only consider the “lesser-included offense” of “possession of methamphetamine,” if

- you find defendant McDonald not guilty of the “possession with intent to distribute methamphetamine” offense charged in **Count 2**, or
- you are unable to reach a verdict on that offense

For you to find defendant McDonald guilty of the “lesser-included offense” of “possession of methamphetamine,” the prosecution must prove beyond a reasonable doubt *both* of the following elements against him:

One, on or about January 30, 2014, defendant McDonald possessed methamphetamine.

You must decide whether or not the substance that defendant McDonald possessed was, in fact, methamphetamine, as defined in Instruction No. 2.

- You may consider all of the evidence in the case that may aid in the determination of this issue
- If the substance that defendant McDonald possessed was not methamphetamine, as defined, then you cannot convict him of this

²² See 8th Cir. Criminal Model 6.21.841A, committee cmts. (stating that, in an appropriate case, a lesser-included offense instruction under 21 U.S.C. § 844 must be given, but not offering a specific lesser-included offense instruction on possession). It is readily apparent that the common elements between the “greater” and the “lesser” offense are the first two elements of the “greater” offense.

offense, even if you find that he possessed some other controlled substance

Two, defendant McDonald knew that he was, or intended to be, in possession of an illegal drug.

The defendant

- must have known that what he possessed was an illegal drug
- need not have known what the illegal drug was, if he knew that he was in possession of some illegal drug²³

If the prosecution fails to prove these elements beyond a reasonable doubt, then you must find the defendant not guilty of the “lesser-included offense” of “possession of methamphetamine.”²⁴

²³ 8th Cir. Criminal Model 6.21.841A, n.2 (knowledge of what drug is being possessed is not required for, only knowledge that some illegal drug is being possessed).

²⁴ Joint Proposed Jury Instruction No. 7 includes a direction to the jury to determine the quantity of methamphetamine involved in the “lesser-included offense” of “possession of methamphetamine.” I required such a determination for the “lesser-included offense” of possession of *crack cocaine* in the case the parties used as a model, *United States v. Bryson*, No. CR 08-3008-MWB (N.D. Iowa 2009), because, at that time, 21 U.S.C. § 844(a) imposed graduated penalties based on the amount of crack cocaine involved in the “simple possession.” See 21 U.S.C. § 844(a) (valid from March 9, 2006, to August 2, 2010). That version of § 844(a) did not include graduated penalties depending on any quantity of methamphetamine, however. Furthermore, the post-Fair Sentencing Act version of § 844, under which McDonald’s “simple possession” offense would fall, does not contain graduated penalties for simple possession of “methamphetamine.” I find it unnecessary to request that the jury make a quantity determination for this “lesser-included offense” offense.

**No. 40 — FORM AND QUANTITY OF
METHAMPHETAMINE**

If you find defendant McDonald guilty of an offense charged in the Indictment, then you must determine beyond a reasonable doubt the form and quantity of any methamphetamine involved in that offense for which he can be held responsible.²⁵ You do not need to determine the form or quantity of methamphetamine involved in the “lesser-included offense” of “possession of methamphetamine,” if you find defendant McDonald guilty of that offense.

Responsibility

A defendant guilty of the “*methamphetamine conspiracy*” offense charged in **Count 1** of the Indictment is responsible for:

- any methamphetamine that he actually distributed or agreed to distribute during the course of the conspiracy
- any methamphetamine that he personally used or acquired for personal use from a co-conspirator

²⁵ In prior “drug quantity” instructions, I have stated that the jurors must determine whether the offense actually involved the illegal drug charged in the Indictment. However, the jurors have already made that determination, if they have convicted the defendant of a charged drug offense. What they have not yet determined are the form of the methamphetamine (“methamphetamine mixture” or “actual (pure) methamphetamine”) and the quantity of the form or forms of methamphetamine involved.

- any methamphetamine that fellow conspirators actually distributed or agreed to distribute during the conspiracy that was reasonably foreseeable as a necessary or natural consequence of the conspiracy

A defendant guilty of the “*possession with intent to distribute methamphetamine*” offense charged in **Count 2** of the Indictment:²⁶

- is responsible for any methamphetamine that he possessed with intent to distribute, *but*
- is *not* responsible for any methamphetamine that he acquired only for personal use²⁷

²⁶ Joint Proposed Jury Instruction No. 8 does not include any explanation of responsibility for quantities of methamphetamine possessed with intent to distribute.

²⁷ Defendant McDonald relies on *United States v. Burke*, 431 F.3d 883, 886 (5th Cir. 2005), for his request for an instruction stating that the quantity of methamphetamine involved in a “possession with intent” offense does not include any *uncontrolled* substance or non-drug substance. I believe that the defendant has misread *Burke*. That case states, *inter alia*, “A defendant may not be convicted of the possession or sale of drugs unless the defendant possesses or sells *actual* drugs.” *Burke*, 431 F.3d at 886 (emphasis in the original). It holds, however, “that a sentence for [a] drug conspiracy may be based on fake drugs.” *Id.* It also concludes “for inchoate offenses, the quantity of drugs is based, not on the amount actually delivered, but on the amount agreed upon.” *Id.* at 886-87. It then explains,

Indeed, in convictions based on reverse-sting operations such as this one, where the actual quantity of drugs is controlled by the government instead of by the defendant, the quantity of drugs agreed upon more accurately reflects the scale of the offense than the quantity actually delivered. U.S.S.G. § 2D1.1 Commentary, Application Note 12.

Forms Of Methamphetamine

If you find the defendant guilty of a charged offense, then you must determine whether that offense involved

- a “methamphetamine mixture”
- “actual (pure) methamphetamine,” *or*
- both

Quantities Of Methamphetamine

If you find the defendant guilty of the **“methamphetamine conspiracy”** offense charged in **Count 1**, then you must determine the total quantity of each form of methamphetamine, if any, involved in that offense.

- If you find that this offense involved both forms of methamphetamine, then you must determine the total quantity of each form of methamphetamine, even if any “actual (pure) methamphetamine” was contained in a “methamphetamine mixture”

Burke, 431 F.3d at 887. “Possession with intent to distribute” is, likewise, an inchoate offense, based on the *intent* to distribute a certain controlled substance, not the *actual* distribution of that controlled substance. Thus, McDonald can be held responsible for the quantity of methamphetamine that he *believed* he possessed with intent to distribute. Eighth Circuit case law confirms this conclusion. See *United States v. Ruiz*, 446 F.3d 762, 768-69 (8th Cir. 2006) (evidence was sufficient to convict defendants of conspiracy to distribute 500 grams or more of cocaine and with possession with intent to distribute 500 grams or more of cocaine, based on a reverse-sting operation in which the box of cocaine that the defendants expected had been filled by agents with fake cocaine).

- If you find that this offense involved **“methamphetamine mixture,”** then you must indicate in the Verdict Form whether defendant McDonald can be held responsible for
 - 500 grams or more of “methamphetamine mixture,” or
 - 50 grams or more, but less than 500 grams, of “methamphetamine mixture,” or
 - less than 50 grams of “methamphetamine mixture”
- If you find that this offense involved **“actual (pure) methamphetamine,”** then you must indicate in the Verdict Form whether defendant McDonald can be held responsible for
 - 50 grams or more of “actual (pure) methamphetamine,” or
 - 5 grams or more, but less than 50 grams, of “actual (pure) methamphetamine,” or
 - less than 5 grams of “actual (pure) methamphetamine”

If you find the defendant guilty of the **“possession with intent to distribute methamphetamine” offense in Count 2**, then you must determine the total quantity of “actual (pure) methamphetamine,” if any, involved in that offense.

- You do not need to determine the quantity of any “methamphetamine mixture” involved in this offense, even if you find that this offense involved “methamphetamine mixture” or both “methamphetamine mixture” and “actual (pure) methamphetamine”

- If you find that this offense involved “**actual (pure) methamphetamine,**” then you must indicate in the Verdict Form whether defendant McDonald can be held responsible for
 - 50 grams or more of “actual (pure) methamphetamine,” or
 - 5 grams or more, but less than 50 grams, of “actual (pure) methamphetamine,” or
 - less than 5 grams of “actual (pure) methamphetamine”

The following conversion table may be helpful:

POUNDS/OUNCES	GRAMS
1 lb.	453.6 g. (0.4536 kilogram)
2.2 lb.	1,000 g. (1 kilogram)
1 oz.	28.34 g. (0.028 kilogram)

Verdict

At the end of your deliberations, if you have found defendant McDonald guilty of an offense charged in the Indictment, you will check the appropriate blanks in the Verdict Form to indicate your findings concerning the form or forms and quantities of methamphetamine involved in that offense.

No. 41 — DEFINITION OF EVIDENCE²⁸

Evidence is the following:

- testimony
- exhibits admitted into evidence, but exhibits are not necessarily more important than any other evidence, just because they are shown to you
- stipulations, which are agreements between the parties that certain facts are true; you must treat stipulated facts as having been proved

The following are not evidence:

- testimony that I tell you to disregard
- exhibits that are not admitted into evidence
- statements, arguments, questions, and comments by the lawyers
- objections and rulings on objections
- anything that you see or hear about this case outside the courtroom

²⁸ My “plain language” jury instructions. *See* 8th Cir. Criminal Model 1.03 (2013). The parties’ Joint Proposed Jury Instruction No. 10 concerns “evidence of a defendant’s prior convictions.” However, pursuant to my ruling on the parties’ cross-motions in limine, Order (docket no. 32), only evidence that the defendant has committed one or more “felonies” will be admissible, and only for purposes of impeachment, if the defendant testifies. My Instruction No. 10, concerning testimony of witnesses, explains that a witness’s prior felony conviction is admitted only for purposes of attacking the witness’s credibility and that, if the defendant testifies, his testimony should be treated like any other witness’s. Thus, no part of Joint Proposed Jury Instruction No. 10 has been included here.

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact
 - An example is testimony by a witness about what that witness personally saw or heard or did
- “Circumstantial” evidence is proof of one or more facts from which you could find another fact
 - An example is testimony that a witness personally saw a broken window and a brick on the floor, from which you could find that the brick broke the window
- You should consider both kinds of evidence, because the law makes no distinction in their weight
- The weight to be given any evidence, whether it is “direct” or “circumstantial,” is for you to decide²⁹

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

²⁹ See 8th Cir. Civil Model 1.03 (2013) (last paragraph, modified) and 9th Cir. Criminal Model 1.9 (modified); *but see* 8th Cir. Criminal Model 1.04 (2013) (suggesting that definitions of direct and circumstantial evidence are ordinarily not required).

No. 42 — TESTIMONY OF WITNESSES³⁰

You may believe all of what any witness says, only part of it, or none of it.

In evaluating a witness's testimony, consider the following:

- the witness's
 - intelligence
 - memory
 - opportunity to have seen and heard what happened
 - motives for testifying
 - interest in the outcome of the case
 - manner while testifying
 - drug or alcohol use or addiction, if any
- the reasonableness of the witness's testimony
- any differences between what the witness says now and said earlier
- any inconsistencies between the witness's testimony and any other evidence that you believe
- whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes or are, instead, the result of lies or phony memory lapses, and
- any other factors that you find bear on believability or credibility

³⁰ My "stock" jury instructions. See 8th Cir. Criminal Models 1.05 and 3.04 (2013).

You should not give any more or less weight to a witness's testimony just because the witness is one of the following:

- a public official or law enforcement officer
- an expert

You may give any witness's opinion whatever weight you think it deserves, but you should consider the following:

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased, and
- all of the other evidence in the case

If the defendant testifies,

- you should judge his testimony in the same way that you judge the testimony of any other witness

You may hear evidence that a witness has been convicted of a crime. You may use that evidence only to help you decide

- whether or not to believe that witness, and
- how much weight to give that witness's testimony

You must consider the testimony of the following witnesses with greater caution and care:³¹

- Any witness testifying about participation in a charged crime
- Any witness testifying pursuant to a plea agreement
 - Whether or not the witness’s testimony has been influenced by the plea agreement is for you to decide
 - The plea agreement may be a “cooperation” plea agreement that provides that the prosecution may recommend a less severe sentence if the prosecutor believes that the witness has provided “substantial assistance”
 - A judge cannot reduce a sentence for “substantial assistance” unless the prosecution asks the judge to do so, but if the prosecution does ask, the judge decides if and how much to reduce the witness’s sentence

It is for you to decide

- What weight you think the testimony of such a witness deserves
- Whether or not such a witness’s testimony has been influenced by that witness’s desire to please the prosecutor or to strike a good bargain

³¹ This “greater caution and care” instruction is consistent with Joint Proposed Jury Instruction No. 11. *See* 8th Cir. Criminal Model 2.19 (2013); 8th Cir. Criminal Model 4.05B.

Remember, it is your exclusive right to give any witness's testimony whatever weight you think it deserves.

No. 43 — OBJECTIONS³²

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

³² My “stock” jury instructions. *See* 8th Cir. Criminal Model 1.03, numbered ¶ 2 (2013).

No. 44 — BENCH CONFERENCES³³

During the trial, it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- These conferences are to decide how certain evidence is to be treated, to avoid confusion and error, and to save your valuable time, so please be patient
- We will do our best to keep such conferences short and infrequent

³³ My “stock” jury instructions. *See* 8th Cir. Criminal Model 1.07 (2013).

No. 45 — NOTE-TAKING³⁴

You are allowed to take notes during the trial, if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them

If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.

An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

³⁴ My “stock” jury instructions. *See* 8th Cir. Criminal Model 1.06A (2013).

**No. 46 — CONDUCT OF JURORS DURING
TRIAL³⁵**

You must decide this case *solely* on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.

³⁵ My “stock” jury instructions. See 8th Cir. Criminal Model 1.08 (2013).

- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a Blackberry, a PDA, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.
- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any “blog,” about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you

will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on subconscious biases. Everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.³⁶
- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer (CSO), who

³⁶ My “stock” instruction on “implicit bias.”

will give it to me. I want you to be comfortable, so please do not
hesitate to tell us about any problem.

I will read the remaining two Instructions at the end of the evidence.

No. 47 — DUTY TO DELIBERATE³⁷

A verdict must represent the careful and impartial judgment of each of you. However, 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 of a charged offense, say so
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty of a charged offense, say so
- Don't 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 opinions, if you are convinced that they are 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

³⁷ My “stock” jury instructions. *See* 8th Cir. Criminal Model 3.12 (2013).

based solely on the evidence, reason, your common sense, and these instructions

- You must consider all of the evidence bearing on each question 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

No. 48 — DUTY DURING DELIBERATIONS³⁸

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 not guilty or guilty. If the defendant is guilty of a charged offenses or “lesser-included offense,” I will decide what his 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

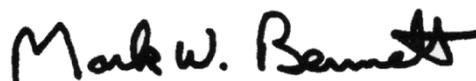
³⁸ My “stock” jury instructions. *See* 8th Cir. Criminal Model 3.12 (2013).

the defendant unless you would return the same verdict without regard to his race, color, religious beliefs, national origin, or sex. To emphasize the importance of this requirement, the verdict form contains a certification statement. Each of you should carefully read that statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects how you reached your 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 this 7th day of July, 2014.



MARK W. BENNETT
U.S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH TYLER MCDONALD,

Defendant.

No. CR 14-3012-MWB

**COURT’S PROPOSED
VERDICT FORM
(07/01/14 REVISED VERSION)**

As to defendant Joseph Tyler McDonald, we, the Jury, find as follows:

COUNT 1: THE ALLEGED “METHAMPHETAMINE CONSPIRACY” OFFENSE		VERDICT
Step 1: Verdict	On the “methamphetamine conspiracy” offense, as charged in Count 1 of the Indictment and explained in Instruction No. 5 , please mark your verdict. <i>(If you find the defendant “not guilty” of this offense, do not answer the question in Step 2. Instead, please go on to consider your verdict on Count 2.)</i>	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
Step 2: Form and Quantity of Methamphetamine	<i>If you found the defendant “guilty” of the “methamphetamine conspiracy” offense charged in Count 1 of the Indictment in Step 1, please indicate (a) the form or forms of any methamphetamine involved in the offense and (b) the quantity of any form of methamphetamine involved in the offense for which the defendant is responsible, as explained in Instruction No. 8. (When you have answered the question in this step, please go on to consider your verdict on Count 2.)</i>	
(a)	<input type="checkbox"/> methamphetamine mixture	<input type="checkbox"/> actual (pure) methamphetamine
(b)	<input type="checkbox"/> 500 grams or more	<input type="checkbox"/> 50 grams or more
	<input type="checkbox"/> 50 grams or more, but less than 500 grams	<input type="checkbox"/> 5 grams or more, but less than 50 grams
	<input type="checkbox"/> less than 50 grams	<input type="checkbox"/> less than 5 grams

COUNT 2: THE ALLEGED “POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE” OFFENSE		VERDICT
Step 1: Verdict	On the “possession with intent to distribute methamphetamine” offense, as charged in Count 2 of the Indictment and explained in Instruction No. 6 , please mark your verdict. <i>(If you find the defendant “guilty,” please answer the question in Step 2. If you find the defendant “not guilty” or answer “no verdict,” please skip to Step 3.)</i>	___ Not Guilty ___ Guilty ___ No Verdict
Step 2: Form and Quantity of Methamphetamine	<i>If you found the defendant “guilty” of the offense charged in Count 2 of the Indictment in Step 1, please indicate (a) the form or forms of any methamphetamine involved in the offense and (b) the quantity of actual (pure) methamphetamine, if any, involved in the offense for which the defendant is responsible, as explained in Instruction No. 8. (When you have completed this step, please notify the Court Security Officer (CSO) that you have reached a verdict. Do not consider Step 3.)</i>	
(a)	___ methamphetamine mixture	___ actual (pure) methamphetamine
(b)		___ 50 grams or more
		___ 5 grams or more, but less than 50 grams
		___ less than 5 grams
Step 3: “Lesser-Included Offense” of “Possession”	<i>If you found the defendant “not guilty” or answered “no verdict” in Step 1, please indicate your verdict on the “lesser-included offense” of “possession of methamphetamine,” as explained in Instruction No. 7. (After completing this Step, please sign the Verdict Form and notify the Court Security Officer (CSO) that you have reached a verdict.)</i>	
	___ Not Guilty	___ Guilty

CERTIFICATION

By signing below, each juror certifies the following:

(1) that consideration of the defendant's race, color, religious beliefs, national origin, or sex was not involved in reaching the juror's individual decision, *and*

(2) that the individual juror would have returned the same verdict for or against the defendant on the charged offenses and the "lesser-included offense" regardless of the defendant's race, color, religious beliefs, national origin, or sex.

Date

Foreperson	Juror
Juror	Juror