

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

REX BERNARD BREITBACH,

Defendant.

No. CR 04-1015 LRR

FINAL JURY INSTRUCTIONS

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

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

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

INSTRUCTION NUMBER _____

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

INSTRUCTION NUMBER _____

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

INSTRUCTION NUMBER _____

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

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

INSTRUCTION NUMBER _____

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses; the documents and other things received as exhibits; and stipulations, that is, agreements between the parties that certain facts are as they have stated.

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

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

1. Statements, arguments, questions, and comments by the lawyers are not evidence.

2. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

3. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.

4. Anything you saw or heard about this case outside the courtroom is not evidence.

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

INSTRUCTION NUMBER _____

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

INSTRUCTION NUMBER _____

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

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

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

INSTRUCTION NUMBER _____

In the previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony.

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

You have heard evidence that Ed Mulgrew could receive a reduced sentence in a criminal case in return for his cooperation with the prosecution in this case. This witness entered into an agreement with the U.S. Attorney’s Office providing that if he gives substantial assistance to the government in its investigation of crimes, the prosecutor could file a motion for a reduction of his sentence. The judge has no power to reduce a sentence for substantial assistance unless the government, acting through the United States Attorney, files such a motion. If such a motion for reduction of sentence for substantial assistance is filed by the government, then it is up to the judge to decide whether to reduce the sentence at all, and if so, how much to reduce it. You may give his testimony such weight as you think it deserves. Whether or not his testimony may have been influenced by his hope of receiving a reduced sentence is for you to decide.

(CONTINUED)

INSTRUCTION NUMBER ____ (Cont'd)

You have heard evidence that Pamela Hoftender received a promise from the government that her testimony will not be used against her in a criminal case. Her testimony was received in evidence and may be considered by you. You may give her testimony such weight as you think it deserves. Whether or not her testimony may have been influenced by the government's promise is for you to determine.

You have heard evidence that Eric Kreiger may have received a benefit from the government in connection with his testimony and information in this case. His testimony was received in evidence and may be considered by you. You may give his testimony such weight as you think it deserves. Whether or not his testimony may have been influenced by receiving a benefit from the government is for you to determine.

You have heard testimony from Randy Metcalf who is facing state court charges. His testimony was received in evidence and may be considered by you. You may give his testimony such weight as you think it deserves. Whether or not his testimony may have been influenced by his desire to please the government or strike a good bargain with the government about his own situation is for you to determine.

INSTRUCTION NUMBER _____

You have heard a certain category of evidence called “similar acts” evidence. Here, you have heard evidence of the defendant’s involvement with controlled substances at times other than those set forth in the Indictment. You may not use this “similar acts” evidence to decide whether the defendant carried out the acts involved in the crimes charged in the Indictment. In order to consider “similar acts” evidence at all, you must first unanimously find beyond a reasonable doubt, based on the rest of the evidence introduced, that the defendant carried out the acts involved in the crimes charged in the Indictment. If you make that finding, then you may consider the “similar acts” evidence to decide whether the defendant had the knowledge, motive, and intent to commit the crimes charged. “Similar acts” evidence must be proven by a preponderance of the evidence; that is, you must find that the evidence is more likely true than not true. This is a lower standard than proof beyond a reasonable doubt. If you find that this evidence is proven by a preponderance of the evidence, you should give it the weight and value you believe it is entitled to receive. If you find that it is not proven by a preponderance of the evidence, then you shall disregard such evidence.

Remember, even if you find that the defendant may have committed a similar act at another time, this is not evidence that he committed such acts in this case. You may not convict a person simply because you believe he may have committed a similar act at another time. The defendant is on trial only for the crimes charged, and you may consider the evidence of “similar acts” only on the issue of defendant’s knowledge, motive, and intent.

INSTRUCTION NUMBER _____

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

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

INSTRUCTION NUMBER _____

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

INSTRUCTION NUMBER _____

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

INSTRUCTION NUMBER _____

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

INSTRUCTION NUMBER _____

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

Count 1 of the Indictment charges that on or about April 13, 2004, the defendant knowingly and intentionally manufactured and attempted to manufacture 5 grams or more of actual (pure) methamphetamine, a Schedule II controlled substance.

Count 2 of the Indictment charges that on or about April 13, 2004, the defendant did knowingly and intentionally possess pseudoephedrine, a list I chemical, knowing, intending and having reasonable cause to believe that the pseudoephedrine would be used to manufacture methamphetamine, a Schedule II controlled substance.

Count 3 of the Indictment charges that on or about April 13, 2004, the defendant, who was an unlawful user of controlled substances, that is methamphetamine, did knowingly possess one or more firearms in and affecting interstate commerce.

The defendant plead not guilty to each of these charges.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crimes charged.

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

There is no burden upon the defendant to prove that he is innocent. Accordingly, the fact that a defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NUMBER _____

Count 1 of the Indictment charges that on or about April 13, 2004, the defendant knowingly and intentionally manufactured and attempted to manufacture 5 grams or more of actual (pure) methamphetamine, a Schedule II controlled substance. The defendant may be found guilty of this “manufacturing” offense under one or both of the following two alternatives: (1) committing the offense as to 5 grams or more of actual (pure) methamphetamine; or (2) attempting to commit the offense as to 5 grams or more of actual (pure) methamphetamine.

First Alternative:

Manufacturing 5 Grams or More of Actual (Pure) Methamphetamine

The crime of manufacturing 5 grams or more of actual (pure) methamphetamine, as charged in Count 1 of the Indictment, has three essential elements, which are:

- One*, on or about April 13, 2004, the defendant manufactured actual (pure) methamphetamine;
- Two*, the defendant knew that he was, or intended to be, manufacturing a controlled substance; and
- Three*, the amount involved in the offense was a mixture or substance containing 5 grams or more of actual (pure) methamphetamine.

If all of the essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 1 under this alternative; otherwise you must find the defendant not guilty of manufacturing methamphetamine under this alternative and consider the second alternative.

(CONTINUED)

INSTRUCTION NUMBER ____ (Cont'd)

Second Alternative:

Attempting to Manufacture 5 Grams or More of Actual (Pure) Methamphetamine

The defendant may be found guilty of manufacturing methamphetamine, even if he attempts, but does not succeed, in manufacturing methamphetamine. For you to find the defendant guilty of manufacturing methamphetamine under this “attempt” alternative, the government must prove each of the following essential elements beyond a reasonable doubt:

- One,* on or about April 13, 2004, the defendant intended to manufacture a controlled substance;
- Two,* the defendant knew that the material he intended to manufacture was a controlled substance, i.e., methamphetamine;
- Three,* the defendant voluntarily and intentionally carried out some act that was a substantial step toward manufacturing methamphetamine; and
- Four,* the amount involved in the offense was a mixture or substance containing 5 grams or more of actual (pure) methamphetamine.

If all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 1 under this “attempt” alternative; otherwise you must find the defendant not guilty of attempting to manufacture methamphetamine under this alternative.

INSTRUCTION NUMBER ____

If your verdict under Instruction No. ____ as to the defendant is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict as to the defendant on Instruction No. ____, follow the directions on the verdict form and go on to consider whether the defendant is guilty of the crime of manufacturing or attempting to manufacture some lesser amount of actual (pure) methamphetamine.

The defendant may be found guilty of this lesser included offense under one or both of the following two alternatives: (1) committing the offense as to less than 5 grams of actual (pure) methamphetamine; or (2) attempting to commit the offense as to less than 5 grams of actual (pure) methamphetamine.

First Alternative:

Manufacturing Less than 5 Grams of Actual (Pure) Methamphetamine

The crime of manufacturing less than 5 grams of methamphetamine, as charged in this lesser included offense of Count 1 of the Indictment, has three essential elements, which are:

- One*, on or about April 13, 2004, the defendant manufactured actual (pure) methamphetamine;
- Two*, the defendant knew that he was, or intended to be, manufacturing a controlled substance; and
- Three*, the amount involved in the offense was a mixture or substance containing less than 5 grams of actual (pure) methamphetamine.

If all of the essential elements of this lesser included offense have been proved beyond a reasonable doubt, then you must find the defendant guilty of the lesser included

(CONTINUED)

INSTRUCTION NUMBER ____ (Cont'd)

offense charged under Count 1 under this alternative; otherwise you must find the defendant not guilty of manufacturing methamphetamine under this alternative and consider the second alternative.

Second Alternative:

Attempting to Manufacture Less than 5 Grams of Actual (Pure) Methamphetamine

The defendant may be found guilty of manufacturing methamphetamine, even if he attempts, but does not succeed, in manufacturing methamphetamine. For you to find the defendant guilty of manufacturing methamphetamine under this “attempt” alternative, the government must prove each of the following essential elements beyond a reasonable doubt:

- One,* on or about April 13, 2004, the defendant intended to manufacture a controlled substance;
- Two,* the defendant knew that the material he intended to manufacture was a controlled substance, i.e., methamphetamine;
- Three,* the defendant voluntarily and intentionally carried out some act that was a substantial step toward manufacturing methamphetamine; and
- Four,* the amount involved in the offense was a mixture or substance containing less than 5 grams of actual (pure) methamphetamine.

If all of these essential elements of this lesser included offense have been proved beyond a reasonable doubt, then you must find the defendant guilty of the lesser included offense charged under Count 1 under this “attempt” alternative; otherwise you must find the defendant not guilty of attempting to manufacture methamphetamine under this alternative.

INSTRUCTION NUMBER _____

In considering whether the government has met its burden of proving the crime charged in Count 1 of the Indictment, you are further instructed as follows:

In determining whether the defendant is guilty of manufacturing and attempting to manufacture methamphetamine as charged in Count 1, the government is not required to prove that the amount or quantity of the controlled substance was as charged in the Indictment. The government need only prove beyond a reasonable doubt that there was a measurable amount of the controlled substance.

However, if you find the defendant guilty of that offense, you will need to determine whether the quantity of methamphetamine involved in the offense was 5 grams or more, or less than 5 grams. The burden of proof is on the government to establish the quantity beyond a reasonable doubt.

When computing the amount of actual (pure) methamphetamine exclude from your calculation the weight of all the impurities, waste, byproducts, or cutting agents.

For your information, one gram contains 1,000 milligrams, one ounce equals 28.35 grams, one pound equals 453.6 grams, and one kilogram contains 1,000 grams.

INSTRUCTION NUMBER _____

You are instructed as a matter of law that methamphetamine is a Schedule II controlled substance. You must ascertain whether or not the substances in question were methamphetamine. In so doing, you may consider all the evidence in the case which may aid in the determination of those issues.

INSTRUCTION NUMBER _____

The crime of possessing pseudoephedrine, a list I chemical, knowing, intending and having reasonable cause to believe that the pseudoephedrine would be used to manufacture methamphetamine, a Schedule II controlled substance, as charged in Count 2 of the Indictment, has two essential elements, which are:

One, on or about April 13, 2004, the defendant knowingly possessed pseudoephedrine, a list I chemical; and

Two, the defendant knew or had reasonable cause to believe that the pseudoephedrine would be used to manufacture a controlled substance, to wit: methamphetamine.

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

INSTRUCTION NUMBER _____

The crime of being an unlawful user of controlled substances in possession of one or more firearms in and affecting interstate commerce, as charged in Count 3 of the Indictment, has three essential elements, which are:

- One*, on or about April 13, 2004, the defendant was an unlawful user of controlled substances;
- Two*, the defendant knowingly possessed one or more firearms while he was a user of a controlled substance; and
- Three*, the firearm was transported across a state line at some time during or before the defendant's possession of it.

If you have found beyond a reasonable doubt that the firearm in question was manufactured in a state other than Iowa and that the defendant possessed that firearm in the State of Iowa, then you may, but are not required to, find that the firearm was transported across a state line.

If all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 3; otherwise you must find the defendant not guilty of the crime charged under Count 3.

INSTRUCTION NUMBER _____

In considering whether the government has met its burden of proving the crime charged in Count 3 of the Indictment, you are further instructed as follows:

The term “firearm” means any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive.

The term “user of a controlled substance” means a person who uses a controlled substance in a manner other than as prescribed by a licensed physician.

The defendant must have been actively engaged in the use of a controlled substance during the period of time he possessed the firearm, but the law does not require that he used the controlled substance at the precise time he possessed the firearm. An inference that a person was a user of a controlled substance may be drawn from evidence of a pattern of use or possession of a controlled substance that reasonably covers the time the firearm was possessed.

INSTRUCTION NUMBER _____

“Possession” is an element of the offenses charged in Counts 2 and 3. The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Whenever the word “possession” has been used in these instructions it includes “actual” as well as “constructive” possession and also “sole” as well as “joint” possession.

INSTRUCTION NUMBER _____

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

INSTRUCTION NUMBER_____

An act is done “knowingly” if the defendant realized what he was doing and did not act through ignorance, mistake or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider the evidence of the defendant’s acts and words, along with all other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NUMBER _____

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

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

INSTRUCTION NUMBER _____

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

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

INSTRUCTION NUMBER _____

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

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

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

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

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

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

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

INSTRUCTION NUMBER _____

Attached to these instructions you will find the Verdict Forms. The Verdict Forms are simply the written notice of the decisions that you reach in this case. The answers to the Verdict Forms must be the unanimous decision of the jury.

You will take the Verdict Forms to the jury room, and when you have completed your deliberations and each of you has agreed on an answer to each Verdict Form, your foreperson will fill out each Form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdict as accords with the evidence and these instructions.

DATE

**LINDA R. READE
JUDGE, U. S. DISTRICT COURT**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

REX BERNARD BREITBACH,

Defendant.

No. CR 04-1015 LRR

VERDICT FORM - COUNT 1

***Part A. Manufacturing or Attempting to Manufacture 5 Grams or More
of Actual (Pure) Methamphetamine***

We, the Jury, find the defendant, Rex Bernard Breitbach, _____ of the
Not Guilty/Guilty
crime of manufacturing or attempting to manufacture 5 grams or more of actual (pure)
methamphetamine on or about April 13, 2004, as charged in Count 1 of the Indictment.

FOREPERSON

DATE

(CONTINUED)

Note: If you unanimously find the defendant guilty of the above crime, have your foreperson write “guilty” in the above blank space, and sign and date this verdict form. Do not consider the following Verdict Form regarding the lesser included offense charged under Count 1. Proceed to consider Count 2.

If you unanimously find the defendant not guilty of the above charge, have your foreperson write “not guilty” in the above blank space, and sign and date this verdict form. You then must consider whether the defendant is guilty of the lesser included offense of manufacturing or attempting to manufacture less than 5 grams of methamphetamine on the following Verdict Form.

If you are unable to reach a unanimous decision on the above charge, leave the space blank and decide whether the defendant is guilty of manufacturing or attempting to manufacture less than 5 grams of methamphetamine on the following Verdict Form.

(CONTINUED)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

REX BERNARD BREITBACH,

Defendant.

No. CR 04-0078 LRR

VERDICT FORM - COUNT 1

***Part B. Lesser Included Offense—Manufacturing or Attempting to Manufacture
Less Than 5 Grams of Actual (Pure) Methamphetamine***

We, the Jury, find the defendant, Rex Bernard Breitbach, _____ of the
Not Guilty/Guilty
crime of manufacturing or attempting to manufacture less than 5 grams of actual (pure)
methamphetamine on or about April 13, 2004, a lesser included offense of Count 1 of the
Indictment.

FOREPERSON

DATE

(CONTINUED)

Note: If you unanimously find the defendant guilty of the above crime, have your foreperson write “guilty” in the above blank space, and sign and date this Verdict Form. Proceed to consider Count 2.

If you unanimously find the defendant not guilty of the above charge, have your foreperson write “not guilty” in the above blank space, and sign and date this verdict form. Proceed to consider Count 2.

(CONTINUED)

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

REX BERNARD BREITBACH,

Defendant.

No. CR 04-1015 LRR

VERDICT FORM - COUNT 2

We, the Jury, find the defendant, Rex Bernard Breitbach, _____ of the
Not Guilty/Guilty
crime of possessing pseudoephedrine, a list I chemical knowing, intending and having
reasonable cause to believe that the pseudoephedrine would be used to manufacture
methamphetamine on or about April 13, 2004, as charged in Count 2 of the Indictment.

FOREPERSON

DATE

Note: If you unanimously find the defendant guilty of the above crime, have your foreperson write "guilty" in the above blank space and sign and date this Verdict Form. Proceed to consider Count 3.

If you unanimously find the defendant not guilty of the above crime, have your foreperson write "not guilty" in the above blank space and sign and date this Verdict Form. Proceed to consider Count 3.

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

REX BERNARD BREITBACH,

Defendant.

No. CR 04-1015 LRR

VERDICT FORM - COUNT 3

We, the Jury, find the defendant, Rex Bernard Breitbach, _____ of the
Not Guilty/Guilty
crime of being an unlawful user of controlled substances in possession of one or more
firearms on or about April 13, 2004, as charged in Count 3 of the Indictment.

FOREPERSON

DATE

Note: If you unanimously find the defendant guilty of the above crime, have your foreperson write "guilty" in the above blank space and sign and date this Verdict Form.

If you unanimously find the defendant not guilty of the above crime, have your foreperson write "not guilty" in the above blank space and sign and date this Verdict Form.