

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SCOTT MICHAEL HARRY,

Defendant.

No. CR17-1017-LTS

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

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No. 1 — INTRODUCTION

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

In an Indictment, a Grand Jury has charged Scott Michael Harry with the offense of possession with intent to distribute methamphetamine. An Indictment is simply an accusation—it is not evidence of anything. The defendant has pled not guilty to the offense charged against him, and he is presumed absolutely not guilty of the offense, unless and until the prosecution proves his guilt beyond a reasonable doubt.

You must decide during your deliberations whether or not the prosecution has proved the defendant's guilt on the offense charged against him 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, these instructions, and any additional oral or written instructions that I may give you.

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 Scott Michael Harry, and not anyone else, is on trial. Also, he is on trial *only* for the offense charged in the Indictment, and not for anything else.

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 charge, 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 of the 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 the charged offense 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 also 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 without hesitation in the most important of your own affairs
- Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt

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 offense charged in this case, I will explain some important terms.

Elements

The 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 the offense charged against the defendant for you to find him guilty of that offense.

Timing

The Indictment alleges an approximate time period or an approximate date for the offense.

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

Methamphetamine

The offense charged in this case allegedly involved methamphetamine. Methamphetamine is an illegal drug. An illegal drug is also referred to as a controlled substance. Two forms of methamphetamine are allegedly involved in this case:

- “methamphetamine mixture,” which is a mixture or substance containing a detectable amount of methamphetamine
- “actual (pure) methamphetamine,” which 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, or
 - control over a place in which it was concealed

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

Intent

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a determination of the defendant’s knowledge or intent.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

Distribution

A person distributed an illegal drug if the person transferred possession of the illegal drug to another person and, at the time of the distribution, the person knew that he or she was distributing an illegal drug.

The prosecution does not have to prove

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

Location

The prosecution must prove that the methamphetamine offense took place in the Northern District of Iowa. Dubuque County is in the Northern District of Iowa.

* * *

I will now give you the “elements” instruction on the charged offense. The “elements” themselves are set out in **bold**.

No. 4A – MERE PRESENCE

Mere presence or physical proximity to contraband is not enough to support a conviction for illegal possession unless you find beyond a reasonable doubt that the defendant not only knew of the presence of the methamphetamine but that he had the power or ability and the intention to control it.

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

I will now give you the “elements” instruction on the charged offense. The “elements” themselves are set out in **bold**.

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

The prosecution must prove beyond a reasonable doubt *all* of the following elements against the defendant:

***One*, on or about February 10, 2017, in the Northern District of Iowa, the defendant was in possession of methamphetamine.**

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

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

If the prosecution does not prove all of these elements beyond a reasonable doubt as to the defendant, then you must find him not guilty of the methamphetamine offense.

No. 6 — FORM AND QUANTITY OF METHAMPHETAMINE

If you find the defendant guilty of the methamphetamine offense, then you must determine beyond a reasonable doubt the form and quantity of any methamphetamine involved in the offense. The prosecution has the burden of proof to establish a quantity beyond a reasonable doubt.

Forms of Methamphetamine

The methamphetamine offense charged in the Indictment allegedly involved either or both “methamphetamine mixture” and “actual (pure) methamphetamine.”

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

Quantities of Methamphetamine

If you find that the methamphetamine offense involved “methamphetamine mixture,” then you must indicate in the Verdict Form whether the defendant 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 the methamphetamine offense involved “actual (pure) methamphetamine,” then you must indicate in the Verdict Form whether the defendant 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)

At the end of your deliberations, if you have found the defendant guilty of the methamphetamine offense, you will check the appropriate blanks in the Verdict Form for that offense to indicate

- the form or forms of methamphetamine, and
- the quantity of any form of methamphetamine involved in the offense for which you find the defendant is responsible.

No. 7 — 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 between 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. 8 — PRIOR ACTS

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

If you find this evidence has been proved, then you may consider it to help you decide whether defendant knowingly possessed methamphetamine and intended to distribute methamphetamine. You should give it the weight and value you believe it is entitled to receive. If you find that this evidence has not been proved, you must disregard it.

Remember, even if you find that the defendant may have committed similar acts in the past, this is not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed similar acts in the past. The defendant is on trial only for the crime charged, and you may consider the evidence of prior acts only on the issues stated above.

No. 8A — PRIOR ACTS OF ANOTHER

You have heard evidence that Dennis Thul previously committed acts involving methamphetamine. In deciding whether the prosecution has proven the defendant guilty beyond a reasonable doubt, you must consider the evidence of these acts together with all the other evidence. If you have a reasonable doubt that the defendant is the person who committed the charged offense, you must find the defendant not guilty.

No. 9 – TESTIMONY OF WITNESSES

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 says, only part of it or none of it.

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 may need to decide whether a contradiction is an innocent misrecollection or lapse of memory or, instead, an intentional falsehood. This may depend on whether the contradiction involves an important fact or only a small detail.

In deciding what testimony of any witness to believe, consider the witness' intelligence, the opportunity the witness had to see or hear the things he or she testifies about, the quality of the witness' memory, any motives the witness may have for testifying a certain way, the witness' demeanor, whether the witness said something different at an earlier time, the witness' drug or alcohol use or addiction, if any, the general reasonableness of the testimony, the extent to which the testimony is consistent with other evidence that you believe and any other factors that you find bear on believability or credibility.

You should not give any more or less weight to a witness' testimony just because the witness is a public official, a law enforcement officer or an expert.

You may give any witness' opinion whatever weight you think it deserves, but you should consider 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.

You may hear that a witness was once convicted of a crime. You may use that evidence only to help you decide whether to believe the witness and how much weight to give to the witness' testimony.

You must consider with greater caution and care the testimony, if any, of a witness who is testifying:

- that he or she participated in the charged offense, or
- that he or she was an informant who was paid or received some other benefit for providing information to law enforcement or the prosecution, or
- after a promise from the prosecution not to use that witness' testimony, to a grand jury or at this trial, against that witness in a criminal case, or
- pursuant to a plea agreement
 - 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' sentence

It is for you to decide:

- what weight you think the testimony of such a witness deserves, and
- whether or not such a witness' testimony has been influenced by
 - the desire to please the prosecution
 - any promises by the prosecution
 - any payment or other benefit provided by the prosecution, or
 - a plea agreement

If the defendant testifies, you should judge his testimony in the same way that you judge the testimony of any other witness.

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

No. 10 — 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. 11 — 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. 12 — 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 and these instructions 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. 13 — CONDUCT OF JURORS DURING TRIAL

You must decide this case *solely* on the evidence and the law in these Instructions and any additional written or oral instructions that I may give. 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, through social media—or in any other way conduct 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, in any “blog,” or through social media 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 “implicit biases.” Everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes—that is, “implicit biases”—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 and the instructions that I give you. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- A Verdict Form is attached to these Instructions. A Verdict Form is simply a written notice of your decision. After your deliberations, if 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.
- 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 let me know. I want you to be comfortable, so please do not hesitate to tell us about any problem.

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

No. 14 — 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 the charged offense, say so
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty of the 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 and the instructions that I give you
- 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. 15 — 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, 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.
- 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.

IT IS SO ORDERED.

DATED this 19th day of December, 2017.



Leonard T. Strand, Chief Judge

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SCOTT MICHAEL HARRY,

Defendant.

No. CR17-1017-LTS

VERDICT FORM

As to defendant Scott Michael Harry, we, the Jury, find as follows:

COUNT 1: THE ALLEGED METHAMPHETAMINE OFFENSE		VERDICT
Step 1: Verdict	On the methamphetamine offense, charged in Count 1 of the Indictment and explained in Instruction 5 , please mark your verdict. (<i>If you find the defendant "not guilty" of this offense, do not answer the questions in Step 2.</i>)	___ Not Guilty ___ Guilty
Step 2: Form and Quantity of Methamphetamine	<i>If you found the defendant "guilty" of the methamphetamine offense charged in Count 1 of the Indictment in Step 1, please indicate (a) which one or more forms of methamphetamine were involved and (b) the quantity of any form of methamphetamine for which he is responsible, as explained in Instruction 6. (When you have answered the questions in this step, please read the Certification below, sign this Verdict Form, and then notify the CSO that you have reached a verdict.)</i>	
(a)	___ methamphetamine mixture	___ actual (pure) methamphetamine
(b)	___ 500 grams or more	___ 50 grams or more
	___ 50 grams or more, but less than 500 grams	___ 5 grams or more, but less than 50 grams
	___ less than 50 grams	___ less than 5 grams

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 offense regardless of the defendant's race, color, religious beliefs, national origin, or sex.

Date

Foreperson

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror

Juror