

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 S. Potomac St. Centennial, Colorado 80112	▲ COURT USE ONLY ▲
PEOPLE OF THE STATE OF COLORADO v. JAMES EAGAN HOLMES, Defendant	Case No. 12CR1522 Division: 202
ORDER DISTRIBUTING SCRIPT OF COURT'S VIDEOTAPED REMARKS BEFORE INDIVIDUAL <i>VOIR DIRE</i> (C-162)	

Attached is the script of the Court's videotaped remarks that will be played for prospective jurors before individual questioning. The Court wants to be clear that the script is not a complete statement of the law. Rather, the Court has done its best to summarize for prospective jurors the information they need to know and understand before individual questioning.

The parties shall have until November 24 to share with each other any objections or suggested revisions to the script. Thereafter, the parties must confer and attempt to resolve any disagreements on any objections or proposed revisions. By no later than December 1, each party may submit a motion setting forth any objections to the script and any responses to the opposing party's objections or proposed revisions.

Dated this 20th day of November of 2014.

BY THE COURT:

Carlos A. Samour

Carlos A. Samour, Jr.
District Court Judge

ATTACHMENT

Order C-162

Videotaped Remarks Before Individual Voir Dire

Hello. You have been provided with a copy of these remarks so that you may read along as I go through them. A staff member will collect your copy of these remarks when your questioning is completed.

My name is Carlos Samour. I am the judge assigned to the case of *The People of the State of Colorado v. James Holmes*, Case No. 12CR1522. Once again, I wish to express my gratitude for your willingness to fulfill your civic duty. I readily acknowledge the inconvenience that you are experiencing, but I want to remind you that our criminal justice system depends on the participation of jurors. Without you, we could not have the system of justice we have.

You are here today for individual questioning. When you enter the courtroom later today, you can expect that I will start the questioning regarding your qualification as a juror and then an attorney for each party will have additional questions for you. Because we are questioning a lot of prospective jurors today, please be as forthcoming with information as possible.

The attorneys and I have a copy of your questionnaire and will likely ask you some questions about your answers. We will give you a copy of your questionnaire so that you may review your answers and refresh your memory. I suggest that you take time to do so after this video recording and before entering the courtroom for questioning.

You may be questioned about four areas today. First, we need to know whether serving as a juror in this case will cause you undue or unreasonable hardship. Under Colorado law, a potential juror can seek to be excused from jury service if serving for the anticipated length of the trial will cause him or her an undue hardship. Our best estimate is that sometime between May and June we will conduct the two-day group questioning of 100 to 120 prospective jurors selected from these individual sessions. The trial will start immediately after we have selected a jury in May or June. We estimate that the trial will last 4 to 5 months, which would take us into August or September, or perhaps October. Unfortunately, unexpected delays can occur, so your flexibility is greatly appreciated.

Second, we may question you about the extent to which, if at all, you have been exposed to the publicity this case has received. We need to know whether you can be a fair and impartial juror notwithstanding the media's coverage of the case.

Third, we may ask questions about mental health. As you know, Mr. Holmes has pled not guilty by reason of insanity, which includes the plea of not guilty. Under Colorado law, a person charged with certain crimes, including murder in the first degree, may plead not guilty by reason of insanity. Colorado has a legal test for insanity, which I will explain during the trial. If Mr. Holmes

presents some evidence of insanity at trial, the prosecution will have the burden of proving beyond a reasonable doubt that he was not insane at the time of the crimes charged. At the end of the trial, after all the evidence has been completed, the jury must decide whether the prosecution proved beyond a reasonable doubt every element of each crime charged, including that Mr. Holmes was not insane at the time of the commission of the act. As to every charge, Mr. Holmes may be found guilty, not guilty, or not guilty by reason of insanity.

Finally, we may ask questions surrounding the potential penalties of life imprisonment without the possibility of parole and death by lethal injection. The prosecution is seeking the death penalty against Mr. Holmes. Colorado law allows the prosecution to seek the death penalty under certain circumstances if a defendant is charged with murder in the first degree. In a case like this, where the death penalty is a potential punishment, if the jury finds the defendant guilty of a charge of murder in the first degree, the law requires that the same jury that determined the defendant's guilt also decide the appropriate punishment. In that situation, the law, in essence, provides for a two-part trial.

In the first part of the trial, the jury's responsibility would be to decide if the defendant is guilty, not guilty, or not guilty by reason of insanity. Only if the jury finds the defendant guilty of a charge of murder in the first degree would it then hear additional evidence in the second part of the trial in order to decide what

sentence to impose. In the second part of the trial, or the “sentencing hearing,” the jury would have two sentencing choices: the penalty of life imprisonment without the possibility of parole or the penalty of death by lethal injection.

Because the jury may have to decide Mr. Holmes’s sentence in this case, the law requires prospective jurors to answer questions regarding your thoughts, feelings, and opinions about the possible penalties. This is true even though the jury may find that Mr. Holmes is not guilty or not guilty by reason of insanity with respect to every charge of murder in the first degree, in which case there would be no need for the jury to make any sentencing decisions. It is very important that you not assume—from any of the questions in the questionnaire, from my comments today, or from the questions you are asked later—that Mr. Holmes will be, or should be, found guilty of any crime. The Court reminds you that Mr. Holmes is presumed innocent, and that presumption of innocence remains with him and must be given effect by the jury throughout the trial. It is equally important that you are aware that, even if Mr. Holmes is found guilty of a charge of murder in the first degree, the law never requires a death sentence.

The sentencing hearing, if necessary, may consist of up to three phases. You will be instructed further about these three phases, as well as other legal principles, if there is a sentencing hearing. However, it is important that you have a basic understanding of these phases before you are questioned today.

The jury will deliberate and reach a verdict at the end of Phase 1 of the sentencing hearing. Depending on the verdict, the sentencing hearing will either conclude or move to Phase 2. If there is a Phase 2, at the end of it, the jury will deliberate again and reach a verdict. Depending on that verdict, the sentencing hearing will either conclude or move to Phase 3. If there is a Phase 3, at the end of it, the jury will deliberate a final time and reach a final verdict. The sentencing hearing can be broken down as follows:

Phase 1. In Phase 1, the prosecution is given the opportunity to prove beyond a reasonable doubt the existence of at least one of the following statutory aggravating factors it has alleged in this case:

- (1) The prosecution alleges that the defendant unlawfully and intentionally, knowingly, or with universal malice manifesting extreme indifference to the value of human life generally, killed two or more persons during the commission of the same criminal episode.
- (2) The prosecution alleges that the defendant intentionally killed a child who had not yet attained twelve years of age.
- (3) The prosecution alleges that, in the commission of the offense of murder in the first degree, the defendant knowingly created a grave risk of death to another person in addition to the victim of the offense.
- (4) The prosecution alleges that the defendant committed the offense of murder in the first degree in an especially heinous, cruel, or depraved manner.

- (5) The prosecution alleges that the defendant committed the offense of murder in the first degree while lying in wait or from ambush.

At the end of Phase 1, the jury must deliberate. If the jury does not unanimously find that the prosecution has proven beyond a reasonable doubt the existence of at least one of these aggravating factors, the jury must render a verdict of life imprisonment without the possibility of parole, and the Court will sentence the defendant to life imprisonment without the possibility of parole.

On the other hand, if the jury unanimously finds that the prosecution has proven at least one of these aggravating factors beyond a reasonable doubt, the jury must render a verdict that reflects that finding, and the sentencing hearing will continue to Phase 2.

Phase 2. In Phase 2, Mr. Holmes may, but is not required to, present evidence of statutory mitigating factors. Mitigating factors are circumstances which do not constitute justification or excuse for the offenses in question, but which in fairness or mercy may be considered as extenuating or reducing the degree of the defendant's moral culpability. The prosecution will have the opportunity to rebut any evidence of mitigation presented by Mr. Holmes.

At the end of Phase 2, the jury must deliberate. The jury must first determine whether one or more mitigating factors exist. If the jury finds that no mitigating factors exist, it must return a verdict that reflects that finding, and the

sentencing hearing will move to Phase 3. On the other hand, if the jury finds that at least one mitigating factor exists, each juror must: (1) decide what weight to give each mitigating factor that the jury determined exists; and (2) weigh the mitigating factors that exist and the aggravating factors proven by the prosecution in Phase 1. The jury must then reach a verdict on whether sufficient mitigating factors exist to outweigh the aggravating factors. The jury must not be influenced by prejudice, bias, or public opinion. Rather, each juror must make a judgment based on an assessment and comparison of the weightiness of each of the mitigating factors and each of the aggravating factors.

If the jury unanimously finds beyond a reasonable doubt that the mitigating factors do not weigh more heavily in the balance than the aggravating factors, it must return a verdict that reflects that finding, and the sentencing hearing will move to Phase 3. Otherwise, the jury must render a verdict of life imprisonment without the possibility of parole, and the Court must sentence Mr. Holmes to life imprisonment without the possibility of parole.

Phase 3. In Phase 3, both the prosecution and the defense may present additional evidence. The jury must then deliberate in order to decide the appropriate sentence to impose: life imprisonment without the possibility of parole or a sentence to death.

During deliberations, each juror must individually determine, based on all the evidence and information presented during the first part of the trial and the sentencing hearing, whether he or she is convinced beyond a reasonable doubt that Mr. Holmes should be sentenced to death. The jury may only return a verdict of death if it unanimously finds beyond a reasonable doubt that death is the appropriate punishment. If the jury is not unanimously convinced beyond a reasonable doubt that death is the appropriate punishment, it must either: (1) return a unanimous verdict of life imprisonment without the possibility of parole, or (2) notify the Court that it is unable to reach a unanimous verdict. If the jury is unable to reach a unanimous verdict, it will be discharged, and the Court will sentence Mr. Holmes to life imprisonment without the possibility of parole.

In reaching a verdict in Phase 3, the jury must not be influenced by prejudice or bias. Further, the jury should not be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion, or public feeling. Nor should the jury's decision be the result of an arbitrary or emotional response. Rather, each juror must apply his or her reasoned judgment in deciding whether, in light of the totality of the circumstances present, the situation calls for life imprisonment without the possibility of parole or the imposition of the death penalty. The jury may consider mercy and sympathy for Mr. Holmes. But the jury must ultimately make a factual and moral assessment of whether death or life imprisonment

without parole is the appropriate punishment. The jury's verdict as to the appropriate sentence must be based on a profoundly moral evaluation of the defendant's character and crime.

Let me sum up the three phases of the sentencing hearing. For this part of the advisement, I ask that you please look at the chart on the screen. At the end of Phase 1, the jury must decide if the prosecution proved beyond a reasonable doubt at least one of the statutory aggravating factors alleged in this case. If the answer is "no," the jury must render a verdict of life imprisonment without the possibility of parole. If the answer is "yes," the sentencing hearing will continue to Phase 2.

If there is a Phase 2, at the end of it, the jury must decide whether one or more mitigating factors or circumstances exist. If the jury determines that at least one mitigating factor exists, each juror must decide what weight to give each mitigating factor and then weigh the mitigating factors and the aggravating factors. If the jury finds that the mitigating factors outweigh the aggravating factors, it must render a verdict of life imprisonment without the possibility of parole. On the other hand, if the jury finds that no mitigating factors exist or that the mitigating factors do not outweigh the aggravating factors, the sentencing hearing will move to Phase 3.

If there is a Phase 3, at the end of it, the jury must decide whether Mr. Holmes should be sentenced to death or life imprisonment without the possibility

of parole. If the jury is unanimously convinced beyond a reasonable doubt that death is the appropriate sentence, then it must return a verdict of death. Otherwise, the jury must either return a unanimous verdict of life imprisonment without the possibility of parole or inform the Court that it is unable to reach a unanimous verdict. In the event the jury is unable to reach a unanimous verdict, it will be discharged, and the Court will sentence Mr. Holmes to life imprisonment without the possibility of parole.

For your convenience, I have provided you a paper copy of the chart on the screen. You are welcome to review this chart and the rest of my comments before your individual questioning session. At this time, I invite you to resume reading along, starting in the middle of page 10, as I conclude my remarks.

Both Mr. Holmes and the prosecution deserve jurors who can be fair and impartial, who can keep an open mind throughout the trial, and who will follow the law provided by the Court regardless of their personal views or opinions. You previously took an oath to honestly answer all the questions from counsel and me about your service as a juror. We need you to be honest in your answers. Please remember that there are no right or wrong answers—only honest answers. You have every right to hold personal views and opinions on any subject. You are not here to be judged about your views or opinions, and you will not be criticized for holding any views or opinions. We are simply trying to select a fair and impartial

jury for this case. If there is any reason why you should not sit on this jury, it is very important that you inform us of that reason today.

At the end of your individual questioning session, you will be asked to step out of the courtroom so that the attorneys and I can discuss your potential jury service in this case. You will then be asked to return to the courtroom and I will inform you of my decision. If you are excused at that time, it should not be an embarrassment to you, and you should not construe it to mean that you cannot serve on any other jury in the future. If you are not excused, you will need to report back for group questioning sometime in May or June.

Please do not discuss this video or any aspect of this case, including your questionnaire, with anyone prior to coming into the courtroom. Also, please do not make any statements or ask any questions about this video advisement before coming into the courtroom. Additionally, please do not forget to review the answers on your questionnaire before returning to the courtroom. We will collect your questionnaire after you have been individually questioned.

Finally, since some time has passed since you were last here and heard the advisements that govern your conduct, please indulge me as I review them again.

(1) Please do not discuss any aspect of the case with other prospective jurors through any means—including in person, by telephone, text, email, over the internet, or by any social media service—until after you have heard all the evidence and I tell you that you may begin deliberating on a verdict.

(2) In addition to not being able to discuss the case with each other, you may not communicate about the case with anyone else through any means—including in person, by telephone, text, email, over the internet, or by any social media service—before you are released from jury service.

(3) Please do not talk with any witnesses, parties, or attorneys in the case about anything, whether related to the case or not.

(4) To make sure that witnesses, parties, and attorneys do not inadvertently talk to you, it is imperative that you wear your JUROR badge at all times in the courthouse and courthouse parking lot; it is equally imperative that your badge is visible to everyone around you.

(5) Please do not talk to any members of the media about anything (not just about the case) until the case is completed and you are discharged from your juror service.

(6) You must not read, view, or listen to any news or media reports that may refer to this case.

(7) You cannot visit any locations mentioned in the case or conduct your own investigation outside the courtroom.

Please remember that breaking any of these rules would violate the oath you took when you responded to your jury summons. If you violate any of these rules, you and your fellow prospective jurors might have to come back to court after this trial to testify under oath about your conduct. At the end of your individual questioning session, if you are asked to return, a staff member will give you a handout containing the advisements that govern your conduct as a prospective juror in this case, and contact information for the Jury Commissioner. Please make sure you abide by every advisement. Thank you for your time and attention.

Phase 1
The jury must decide if the prosecution proved beyond a reasonable doubt at least one of the statutory aggravating factors it has alleged in this case.

If "no," the jury must render a verdict of life imprisonment without the possibility of parole.

If "yes," the sentencing hearing will continue to Phase 2.

Phase 2
The jury must decide whether one or more mitigating factors or circumstances exist. If the jury determines that at least one mitigating factor exists, each juror must decide what weight to give each mitigating factor and then weigh the mitigating factors and the aggravating factors.

If the jury finds that the mitigating factors outweigh the aggravating factors, it must render a verdict of life imprisonment without the possibility of parole.

If the jury finds that no mitigating factors exist or that the mitigating factors do not outweigh the aggravating factors, the sentencing hearing will move to Phase 3.

Phase 3
The jury must decide whether Mr. Holmes should be sentenced to death or life imprisonment without the possibility of parole.

If the jury is unanimously convinced beyond a reasonable doubt that death is the appropriate sentence, then it must return a verdict of death.

If the jury is not unanimously convinced beyond a reasonable doubt that death is the appropriate sentence, the jury must either return a unanimous verdict of life imprisonment without the possibility of parole or inform the Court that it is unable to reach a unanimous verdict. In the event the jury is unable to reach a unanimous verdict, it will be discharged, and Mr. Holmes will be sentenced by the Court to life imprisonment without the possibility of parole.

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2014, a true and correct copy of the Court's **Order Distributing Script of Court's Videotaped Remarks Before Individual *Voir Dire* (C-162)** was served upon the following parties of record:

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