

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: 201
ORDER TRANSMITTING COURT'S UPDATED REMARKS FOR INTRODUCTORY JURY SELECTION SESSIONS AND UPDATED JUROR QUESTIONNAIRE (C-164)	

Attached are the updated remarks for the introductory jury selection sessions and the updated juror questionnaire. Pursuant to the prosecution's request at the November 18 motions hearing, and without objection, the remarks and questionnaire have been revised to reflect that opening statements may take place sometime in May or June 2015.

Dated this 1st day of December of 2014.

BY THE COURT:



 Carlos A. Samour, Jr.
 District Court Judge



ATTACHMENT 1

ORDER C-164

Judge's Introductory Remarks

Hello everyone. Welcome to division 201 of the Arapahoe County Justice Center. My name is Carlos Samour. I am the judge assigned to this division. Let me start off by thanking each of you for responding to your jury summons today. We realize what a sacrifice it is for you to put your lives on hold and respond to jury duty. We deeply appreciate your participation in this important aspect of our democratic society. Without you, we could not have jury trials or the system of justice our nation enjoys.

Let me first remind you that you may not use your phones or other electronic devices in the courtroom. Therefore, they must be turned off at all times.

Some of you may be wondering how long you will have to be here today. We anticipate that you will be done for the day in two to three hours.

Let me discuss the folder each of you has been provided. Please do not break the seal on your folder until I tell you to do so. Your folder contains the following: (1) a document titled "Judge's Introductory Remarks," which are the remarks I am making right now; (2) multiple copies of a yellow "JUROR QUESTION" form that allows you to ask questions while you're here; (3) a contact sheet for you to provide us with your best phone number and email address, in case we need to get in touch with you—this information will only be given to the Jury Commissioner's Office and will not be shared with the parties or

the attorneys, and will not be accessible to the public or the media; (4) a laminated card with contact information for the Jury Commissioner's Office, advisements related to your conduct starting right now, and instructions for how to find out whether you have to return, and, if so, when; and (5) additional "JUROR" stickers for you to wear if you are asked to return.

If you have a question while you're here—other than to ask for a Kleenex or about the location of the restrooms, or something along those lines—please write it down on one of the yellow "JUROR QUESTION" forms in your folder and hand it to a Court staff member. Your form must have your name and juror number.

Once my remarks are completed, we will take a 15-minute break. When you return from your break, a representative from the Jury Commissioner's Office will instruct you further and will play a short orientation video for you that generally introduces you to our criminal justice system. After watching the videotape, you will fill out a questionnaire. You may not take the questionnaire home with you. In fact, you cannot take the questionnaire outside this courtroom at any time.

At this time, you may open your folder and remove ONLY the first document, which is titled *Judge's Introductory Remarks*. If you would please turn to page 3. I will give you a moment to get there. At the very top of page 3, you will see a subheading in large font that reads:

YOU MAY FOLLOW ALONG STARTING HERE

You may now follow along as I read the rest of my remarks. You have been summoned for the case of *The People of the State of Colorado vs. James Eagan Holmes*; case number 12CR1522. This is a criminal case. Criminal cases in Colorado are always brought on behalf of the People of the State of Colorado either by a local District Attorney's Office or, much less frequently, by the Attorney General's Office. This case was filed by the Arapahoe County District Attorney's Office. We will sometimes refer to the District Attorney as "the Prosecution" or "the People." The People are represented today by the following attorneys—counsel, please stand up as I introduce you: Mr. Brauchler, Ms. Pearson, Mr. Orman, Mr. Edson, and Ms. Teesch-Maguire. The "Defendant" is James Eagan Holmes. Mr. Holmes is represented today by his attorneys—counsel, please stand up as I introduce you: Ms. Brady, Mr. King, Ms. Nelson, Ms. Higgs, and Ms. Spangler. We will sometimes refer to Mr. Holmes's attorneys as "the Defense." In front of me is my court reporter, who will be taking down everything that is said here today.

Mr. Holmes has been charged with the murders of 12 people and the attempted murders of 70 people at the Century 16 Theatres located at 14300 E. Alameda Ave., Aurora, Colorado, on July 20, 2012, during the premier of the Batman movie, *The Dark Knight Rises*. He has also been charged with

Possession of Explosive or Incendiary Devices at 1690 Paris St., Aurora, Colorado, on July 20, 2012.

The charges themselves are not evidence of anything. They are not proof that Mr. Holmes committed any crime. No one should assume that Mr. Holmes committed a crime just because he has been charged in this case. **Mr. Holmes is presumed innocent, and that presumption of innocence remains with him and must be given effect by the jury throughout the trial.** The prosecution, the party that filed the charges against Mr. Holmes, has the burden of proving, beyond a reasonable doubt, every element of each crime charged.

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.

In a case in which the defendant pleads not guilty by reason of insanity and presents some evidence of insanity at trial, the prosecution bears the burden of proving beyond a reasonable doubt that the defendant was not insane at the time of the commission of the act. Because Mr. Holmes has pled not guilty by reason of insanity, once he presents some evidence of insanity, the prosecution must prove beyond a reasonable doubt that he was not insane at the time of the commission of the act. 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 charge, 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.

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 is to decide if the defendant is guilty, not guilty, or not guilty by reason of insanity. Only if the jury returns a verdict of guilty on a charge of murder in the first degree will 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, the jury would have two sentencing choices: the penalty of life in prison 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 that prospective jurors, like you, 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 or from my comments today 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.

Let me next discuss what you should expect in this case. First, some of you may be wondering if the jury will be sequestered. In other words, whether you will have to sleep in a hotel overnight. The answer is “no.” You will get to go home every night. However, you will have to follow certain rules. I will explain those rules later.

Second, you may be curious about the next step in the proceedings. It is the selection of a jury. There will be 24 jurors, including 12 alternates. It is very difficult to estimate how long the process of selecting 24 jurors will take. Our best estimate is that it will take us until approximately May or June to select a jury.

After the attorneys and I review your answers to the questionnaire, I will determine which prospective jurors do not have to return for individual questioning and can be released from jury service. Those of you who are not released will be asked to return for **one day** between the beginning of February and the end of May for individual questioning by the lawyers and the Court about certain topics. Through individual questioning, we need to find approximately 100 to 120 individuals who can be fair and impartial jurors in this case and who are available to be in trial throughout the duration of this case. Once we find 100 to 120 eligible prospective jurors through individual questioning, we will ask them to report to this division a third time—for group questioning. During this part of the proceeding, which we hope will take place in May or June, all 100 to 120 prospective jurors will be questioned together by the Court and the attorneys for **two days** in this courtroom. Through the two-day group questioning session in May or June, we hope to select the jury of 24. And if you are chosen during group questioning as one of the 24 jurors, we will need you for the entire trial, which may take 4 or 5 months—between May or June and September or October. This estimate includes the possible second phase of the trial I mentioned earlier.

I must advise you that if you are instructed to return for individual questioning and you fail to appear, you may be found in contempt of court. Contempt of court can result in a fine or a jail sentence of up to six months. If you

need to reschedule your individual questioning session, please follow the instructions you will receive from the Jury Commissioner's Office.

For those of you asked to return for individual questioning, we have some flexibility in terms of the date and time you can come in. We will have two sessions each day: at 8:30 a.m. and at 1:00 p.m. between the beginning of February and the end of May. You should plan to spend a half day here. Although the actual questioning should take less than an hour, if you are not the first person called into the courtroom for individual questioning, you may have to wait up to a couple of hours. Please wear one of the JUROR stickers in your folder whenever you are asked to return to the courthouse.

Both individual and group questioning will take place in this courtroom. The parties, the attorneys, my staff, and I will all be present during individual and group questioning. Individual questioning of each prospective juror and the subsequent group questioning of 100 to 120 prospective jurors will be open to the public and the media. The same is true for the trial. Because it is important to me that your privacy is protected, I have ruled that we will only refer to you by juror number throughout the trial, including in jury selection. We will not refer to you by name. Your identity and contact information will not be accessible to the public or the media. Further, prospective jurors who genuinely believe that public questioning about very sensitive or private topics will prove embarrassing or

otherwise damaging may request to speak about that topic with the Court, the parties, and counsel outside the presence of the public and the media.

Let me briefly touch upon the schedule we will keep during trial. We will generally start at 8:30 and end at 5:00, with a 60 to 90 minute break for lunch, and at least one 15-minute break in the morning and one 15-minute break in the afternoon. To allow you to catch up on work or personal matters, we will take every other Friday off. We may need to adjust this schedule from time to time. The more flexible you can be, the better for all of us.

I mentioned earlier that there are certain rules you must follow starting right now. **THESE RULES ARE EXTREMELY IMPORTANT. LET ME REPEAT THAT. THESE RULES ARE EXTREMELY IMPORTANT. I WILL REPEAT IT A THIRD TIME: THESE RULES ARE EXTREMELY IMPORTANT.** I cannot emphasize this enough. Each and every one of you must follow each and every one of these rules. **A SINGLE VIOLATION OF THESE RULES MAY CREATE MAJOR PROBLEMS FOR THE TRIAL.**

There are two general rules that prospective jurors have to follow in every criminal trial:

1. You must not discuss **anything** related to the case among yourselves or with others, and you must not allow others to discuss **anything** related to the case around you.

2. You must not conduct any independent investigation or research about the case, or otherwise obtain or consider information about the case from an outside source; the jury must decide this case based **only** on the evidence presented in the courtroom and the law I will provide.

I will go over these rules in detail because they are critical. **If you violate any of these rules (even inadvertently) or if you learn that anyone has violated any of these rules (even inadvertently), do not discuss it with other prospective jurors and please report it immediately.** Whenever I mention in my remarks that you must report something immediately, you must do so by contacting the Jury Commissioner's Office at the email address listed in your folder or, if you are at the courthouse, by filling out and delivering to a Court staff member one of the yellow JUROR QUESTION forms in your folder.

(1) 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. I understand that you may be tempted to talk with each other about the case during breaks. That temptation may grow even stronger during the trial. You must resist the temptation to have any discussions whatsoever about the case. I encourage you to be friendly with one another and to talk to each other, but not about the case.

Talk about other subject matters—your job, your family, current events, sports, etc. Do not discuss the case. I mentioned that you will have a 15-minute break soon. You may not discuss **anything** related to this case—including my remarks, the folder, or the questionnaire—during the break.

(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. This means that, while the case is pending, you must not email, text, instant message, tweet, blog, or post information about this case, or about your experience as a juror in this case, on any website (including social media websites such as Facebook, My Space, LinkedIn, YouTube, Instagram, or Twitter), list serve, chat room, or blog. Until you are released from jury service, you simply cannot communicate any information about the case at all with **anyone**, including your spouse, significant other, family members, friends, acquaintances, Court staff, members of the media, and strangers.

What you can tell family members and friends is the following: (1) you have been summoned as a potential juror in a case; (2) the case is in Arapahoe County District Court, which is located in the Arapahoe County Justice Center; (3) it is in Division 201, Judge Samour's division; and (4) the schedule I discussed earlier.

You should not say anything else about any aspect of the case until the case is completed or you are released from jury service. You should not even mention that it is a criminal case.

Of course, I realize that family members may guess or figure out that you have been summoned for this particular case. If that occurs, please immediately explain to them that you have been ordered to refrain from discussing any aspect of the case with anyone through any means. Further, please advise them that you have been ordered to ask them to refrain from discussing any aspect of the case with you or from asking you any questions about the case or your jury service.

In my experience, the more you tell people about a case, the more they will want to know about it and the more questions they are likely to ask. Additionally, the more you tell people about a case, the more they are likely to give you their unsolicited opinions—including about the case. We want to avoid the risk that others will share thoughts, opinions, or comments with you that may influence you or may interfere with your ability to be a fair and impartial juror.

If someone insists on talking to you about the case over your objection, please immediately report that. Likewise, if, despite your best efforts, someone nevertheless says something to you about the case or you accidentally hear something about the case, please report it immediately.

Although you may not discuss the case with anyone, if you are asked to return for individual questioning, you are encouraged to inquire about your employer's policies regarding compensation for jury service. You should do so **IN ADVANCE** of your individual questioning session so that, if necessary, we can address any issues related to your employment.

(3) Do not talk with any witnesses, parties, or attorneys in the case about anything, whether related to the case or not. Do not say anything to these individuals and do not ask them any questions (including about where to go or what time to report back). You cannot talk to them and they cannot talk to you, even casually, about **anything**. Talking to one of these individuals about even something as trivial as the weather would create an appearance of impropriety. Think about how it would look to a stranger observing a prospective juror talking in the hallway with a witness, a party, or an attorney in the case. Witnesses, parties, and attorneys are aware of these instructions. Therefore, they may avoid getting in the elevator with you, opening a door for you, or even making eye contact with you. They are not being rude. They are simply being careful.

(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.

Wearing your JUROR badge at all times will alert people near you that they must stop talking about the case. Should you overhear people talking about the case, please remove yourself from that location immediately. In the event that you inadvertently hear anything about the case, please report that immediately.

Yet another benefit of your JUROR badge has to do with the enforcement of an Order I entered in this case, which prohibits members of the media from photographing or videotaping anyone with a JUROR badge. To allow the media to comply with my Order, your JUROR badge should be conspicuous. Some of the proceedings in the courtroom may be broadcast, but your image will not be captured by any camera. It is important to me to respect and protect your privacy.

(5) Do not talk to any members of the media about anything (not just the case) until the case is completed and you are discharged from your juror service. As you may know, this case has received media attention. It is anticipated that there will be media coverage of the trial. There may be some media coverage of jury selection too. Do not talk to any member of the media about **anything** while the case is pending. If a member of the media approaches you and tries to talk to you about anything, you must decline to do so. Should anyone insist on talking to you over your objection, please report that immediately.

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

available through any other electronic means. Do not watch or listen to any broadcasts about the case. At the first instance you realize that a medium may be broadcasting or reporting information about the case, you must stop reading, viewing, or listening to that medium. In other words, if you are watching TV, listening to the radio, browsing the internet, or reading the newspaper or a magazine, and you realize there is information about the case, you must immediately turn the channel, change the station, exit the screen or website, or turn the page. If, despite your best efforts, you inadvertently read, view, or listen to any information about the case, please report that immediately.

Given the intense media coverage the trial is anticipated to receive, this is likely to be a particularly **daunting challenge** that will require **GREAT EFFORT** on your part. Let me repeat that: this will require **GREAT EFFORT** on your part. I'll repeat it a third time: this will require **GREAT EFFORT** on your part. I cannot overemphasize how important it is that you do not obtain information about the case from any media source. Starting **right now**, you must be **EXTREMELY CAUTIOUS** when watching TV, listening to the radio, reading the paper, or using the internet. I am not prohibiting you from using any of these mediums. But in exchange for letting you use them, I ask that you be **EXCEEDINGLY VIGILANT** to ensure full compliance with this advisement.

(7) You cannot visit any locations mentioned in the case or conduct your own investigation outside the courtroom. Please do not attempt to gather any information about the case on your own. You cannot visit any places mentioned in the case or conduct any research, undertake any investigation, or otherwise obtain information about the case from an outside source, including the internet. Many of us routinely use the internet to research topics of interest. You may continue to use the internet, but not with respect to this case or in relation to this case. You may not use Google, Bing, Yahoo, or any other type of internet search engine to learn about any person, place, thing, or issue that is involved in this case. This includes Mr. Holmes, the witnesses, the attorneys, other prospective jurors, jurors (after we select a jury), the judge, and Court staff. This applies whether you are here, at home, or anywhere else. The law also prohibits you from consulting a dictionary, a treatise, any law book or legal publication, any science book or scientific publication, any religious book or religious publication, an encyclopedia, or any other outside source in relation to the case. Attempting to get information about the case outside the courtroom or consulting outside sources in relation to the case would be unfair to the parties and would be a direct and serious violation of the oath you will take in a moment.

Breaking any of these rules would violate the oath I will administer in a moment and may subject you to punishment for contempt of court. 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 about your conduct under oath.

At this time, please stand so that I can administer the following oath. Please answer, out loud, “I DO,” at the end of the oath to reflect your assent to the oath:

Do you solemnly swear or affirm under penalty of perjury to answer truthfully the questions in the questionnaire and all of the questions by the Court and counsel concerning your potential service as a juror in this case, as well as to comply with all of the advisements I have given you and will give you throughout this trial?

[PLEASE SAY “I DO” IF YOU ASSENT TO THE OATH].

PLEASE BE SEATED

You just took an oath to answer truthfully all of the questions related to your potential service as a juror in this case. I should caution you that the attorneys and their investigators may be interested in your background and may choose to research your internet presence, including postings and other activity on social media or other internet services. Further, if you are selected as a juror in this case, there is nothing that prevents them from continuing to pursue those research efforts throughout the trial. A lawyer has a duty to report any juror misconduct to the Court, whether or not it rises to the level of fraud or illegal conduct. If you needed an incentive to answer questions honestly and completely and to abide by my advisements, you have one.

My remarks are almost complete. After the break, you will be asked to complete the juror questionnaire. We realize that the questionnaire is lengthy and will take time to complete. However, **you significantly increase your chances of having to return if you do not answer the questions as completely and accurately as possible.**

The front page of the questionnaire contains important instructions. I will read most of those instructions to you now, but you should read them again on your own before you start filling out the questionnaire:

You have taken an oath to truthfully answer the questions in this questionnaire. Please answer each and every question as completely and accurately as possible. We need you to be completely honest. There are no right or wrong answers to the questions. There are only honest answers. The information you give in this questionnaire will be kept confidential. After a jury has been selected, all copies of this questionnaire will be returned to the Court and kept in confidence, under seal, not accessible to the public or the media.

The questions are intended to inquire into your beliefs and attitudes in an efficient manner. The purpose of the questionnaire is to encourage the full and candid expression of your views so that the Court and the parties may have a meaningful opportunity to select a fair and impartial jury in this case. Your full cooperation is necessary to achieve this extremely important objective.

Please read the explanations of law and the questions carefully, think about them, and take your time to ensure accuracy and completeness. There is no time limitation. Court staff cannot help you answer the questions. If you don't know the answer to a question, please indicate you don't know the answer. If you don't understand a question, please indicate you don't understand the question.

At the end of the questionnaire, there is a place for you to sign your name after you finish answering the questions. By signing, you are affirming under oath that you have answered every question truthfully and completely. This questionnaire is 18 pages long. If you need additional space to write your answers, there are blank

pages at the end of the questionnaire. Please do not write on the back of any of the pages of the questionnaire. At the top of each page, there is a space for you to indicate your name and juror number. Please fill that information in on every page.

After you leave today, you may not discuss any of the questions or answers in this questionnaire with anyone, including members of your immediate family. If someone attempts to learn about any aspect of this case from you, including the questions or your responses to the questions, you must explain that you are prohibited from sharing that information with anyone. If the person persists, you should report it to the Court immediately.

In conclusion, I want to express my gratitude again for your willingness to do your civic duty. Your appearance here and your commitment to follow all of the instructions I have given you today serve as an acknowledgement that we adhere to the rule of law in this country. Without the rule of law, our democracy could not thrive.

Thank you for your time and attention. At this time, we will take our 15-minute break. **PLEASE NOTE THAT WE WILL START ON TIME. ALSO, EVERYONE MUST EXIT THE COURTROOM DURING THE BREAK.**