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| District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112 | Filed JUL 30 2015 CLERK OF THE COMBINED COURTS ARAPAHOE COUNTY, COLORADO σ COURT USE ONLY σ |
| THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. JAMES HOLMES, Defendant | |
| DOUGLAS K. WILSON, Colorado State Public Defender Daniel King (No. 26129) Tamara A. Brady (No. 20728) Chief Trial Deputy State Public Defenders 1300 Broadway, Suite 400 Denver, Colorado 80203 Phone (303) 764-1400 Fax (303) 764-1478 E-mail: state.pubdef@coloradodefenders.us | Case No. 12CR1522 Division 201 |
| DEFENDANT'S SUBMISSION OF ADDITIONAL PROPOSED PENALTY PHASE INSTRUCTIONS FOR PHASE TWO (FINAL) [D-298] | |

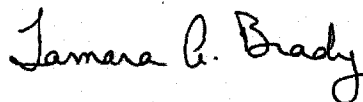
James Holmes submits the attached proposed penalty phase jury instructions. Pursuant to Mr. Holmes's state and federal constitutional rights to due process, a fair trial by an impartial jury, right to counsel, and the right to a fair and reliable sentencing proceeding as protected by the Fifth, Sixth, Eighth and Fourteenth Amendments and Colorado Constitution article II, sections 16, 18, 20, 23 and 25, defense counsel further states:

1. For purposes of the record, the defense has attached as Exhibit A defense proposed instructions 73a and 73b, which were tendered in open court on Thursday, July 30, 2015.
2. The defense has also attached a CD to this pleading containing a Word version of the submitted instructions. A copy of this disc has also been provided to the prosecution.
3. In submitting these instructions, Mr. Holmes incorporates by reference all applicable legal arguments made in conjunction with the tendering of the merits phase instructions in D-290 and at the charging conferences held on these instructions.

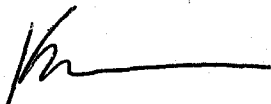
Mr. Holmes files this motion, and makes all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process Clause, the Right to a Fair Trial by an Impartial Jury, the Rights to Counsel, Equal Protection, Confrontation, and Compulsory Process, the Rights to Remain Silent and to Appeal, and the Right to be Free from Cruel and Unusual Punishment, pursuant to the Federal and Colorado Constitutions generally, and specifically, the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitutions, and Article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25 and 28 of the Colorado Constitution.



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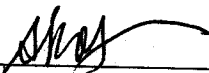
Dated: July 30, 2015

I hereby certify that on July 30, 2015, I

mailed, via the United States Mail,
 faxed, or
 hand-delivered

a true and correct copy of the above and foregoing document to:

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D-298

EXHIBIT A

(Defense Tendered Instruction 73a & 73b)

Defendant's Proposed Jury Instruction No. 73a

(Penalty Phase Two – Final Instructions)

The following is a list of mitigating factors defined by statute that Mr. Holmes has asserted in Phase Two of the sentencing hearing:

- (1) The age of the defendant at the time of the crime;
- (2) The defendant's capacity to appreciate wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution;
- (3) The emotional state of the defendant at the time the crime was committed;
- (4) The absence of any significant prior conviction;
- (5) The extent of the defendant's cooperation with law enforcement officers or agencies;
and
- (6) Any other evidence introduced that bears on the question of mitigation.

You may not in any fashion consider any of these types of factors as aggravation or reasons in favor of a death sentence.

Defendant's Proposed Jury Instruction No. 73b

(Penalty Phase Two – Final Instructions)

In addition to the mitigating factors listed in the previous instruction, you must consider any mitigating factors listed in this instruction, which you, as individual jurors, may decide exist, as a reason or reasons for a life sentence over a death sentence. You may not in any fashion consider these factors as reasons in favor of a death sentence.

1. All of the experts who have evaluated Mr. Holmes in this case agree that regardless of his specific diagnosis, Mr. Holmes suffers from a chronic and serious mental illness on the schizophrenia spectrum of disorders.

2. All of the experts in this case agree that Mr. Holmes is not malingering or faking his mental illness.

3. This chronic and serious mental illness was the cause of the events of July 20, 2012. Without this mental illness, and if Mr. Holmes's mind had remained healthy, these crimes would never have taken place.

4. Mr. Holmes was genetically loaded to develop a psychotic disorder. There is a history of significant mental illness on both sides of Mr. Holmes's family. Mr. Holmes's maternal grandfather suffered from a psychotic illness and was hospitalized. Mr. Holmes's paternal grandfather also suffered from a severe and disabling mental illness that required hospitalization. Mr. Holmes's aunt, Betty Holmes – the twin sister of his father, Robert Holmes – has schizoaffective disorder, which is the same illness with which Dr. Jeffrey Metzner and Dr. Jonathan Woodcock have diagnosed Mr. Holmes. Betty Holmes has been disabled from this disease since the age of 19. Betty Holmes has been hospitalized four times in a psychiatric hospital for auditory hallucinations, psychotic symptoms, and suicidal ideation. She has been on psychiatric medication since 1983.

5. Mr. Holmes was 24 years old on July 20, 2012. Colorado law states that the age of a defendant is a mitigating factor. Mr. Holmes's age of 24 falls within the age range during which males most frequently experience the onset of schizophrenia and related illnesses such as schizoaffective disorder.

6. Prior to the events of July 20, 2012, Mr. Holmes had never been arrested or convicted of a crime.

7. As a young boy, Mr. Holmes moved to the Salinas, California area and lived in a family-oriented neighborhood called Oak Hills. Mr. Holmes grew up in a loving home with his mother, Arlene, his father, Bob, and his younger sister, Chris. By all accounts, Bob and Arlene were caring, involved, and concerned parents. Mr. Holmes was loved and supported by his parents throughout his life, and they continue to love and support him.

8. Friends and neighbors from Oak Hills describe Mr. Holmes, whom they knew as "Jimmy," as good kid who was "sweet," a "gentleman," and never exhibited any sort of problem

behavior. They never saw him be rude or disrespectful. Mr. Holmes was part of a group of boys who played together in the neighborhood. He got along well with the other kids and was accepted into their group. He was fun to be around, and was a good friend. He mediated conflict, and did not initiate it. He appeared to be a happy child to those who knew him. Mr. Holmes's parents describe this as the happiest time of his life and describe him as a social and affectionate child.

9. Mr. Holmes participated in typical activities for an elementary school-aged child. He took piano lessons, and his piano teacher described him as a sweet boy who she enjoyed teaching. He participated in recitals and practiced to improve his skills. Mr. Holmes also began playing competitive group sports and enjoyed playing soccer, basketball, and Tae Kwon Do.

10. Mr. Holmes's younger sister, Chris, was born when he was 5 years old. Mr. Holmes was excited to have a little sister, and took a big sibling class at a local hospital to prepare to become a big brother. Mr. Holmes was gentle with Chris as a baby, and was a kind and patient big brother. He loved his sister very much, and she loved him. Mr. Holmes's sister continues to love and support her older brother.

11. Castroville Elementary School teachers describe Mr. Holmes as a bright child, who had high academic ability and was responsible and well-liked by the other students. He received awards regularly. Teachers and administrators never observed him being rude or mean to other students. To the contrary, Mr. Holmes served as an example to other children during this time in his life. Mr. Holmes's teachers cared about him and continue to care about him.

12. Mr. Holmes loved animals, and was good with them. He walked and bathed them, and liked to pet and cuddle them, and wrote of his sadness in his journal when his dog, Zoobie, died.

13. The Holmes family moved to the Rancho Penasquitos neighborhood of San Diego two weeks before the end of Sixth Grade. The move was difficult for Mr. Holmes. Once active and outgoing, beginning with middle school, Mr. Holmes became more subdued, and often preferred to stay in his room or play video games on the computer. His mother attempted to assist him in making friends with the other neighborhood boys, but he did not make friends as easily as he once did. Mrs. Holmes described her son around this time as not as "exuberantly joyful" as he once was. While Mr. Holmes's increasing isolation and withdrawn behavior coincided with the move, they were in fact early symptoms of his mental illness that occurred during what is known as the prodromal phase of schizophrenia and related illnesses such as schizoaffective disorder.

14. In 2001, when Mr. Holmes was 14, his parents sought family counseling from a social worker named Mel Lipsey in part out of concern that their son did not seem happy and had trouble making friends.

15. Unbeknownst to anyone else at the time, Mr. Holmes began having unwanted homicidal thoughts in middle school. These thoughts were also prodromal symptoms of his mental illness. It was around this time that Mr. Holmes began to believe that his mind was broken. However, as he told Dr. Reid, he did not share what was happening internally with anyone because he did not want to appear weak or be a burden to his family. As Arlene Holmes

testified, the Holmes's family culture was to be stoic, not to complain, to be grateful, responsible, and strong, not weak.

16. Mr. Holmes still excelled academically at Mesa Verde Middle School, and joined the band and played trumpet for both 7th and 8th grade. He also played soccer. He never caused any trouble in his classes, and got an outstanding citizenship grade.

17. By the time he entered Westview High School, Mr. Holmes worked hard to avoid attention. His high school teachers describe Mr. Holmes as a quiet, good student who was a "by himself kind of guy" who was "pretty invisible" in class and never did anything to stand out. No one ever complained about Mr. Holmes being mean or disrespectful. He never got in trouble, and teachers have no negative memories of him at all. Still, he did not seem like a happy teenager to his teachers. He joined the cross country team, but never talked to anyone and was not part of the group. His mother describes picking him up once and observing him staring off into space. His cross-country coach, Lori Godwin, described him as a "shadow-type figure." He was always on the outside, and stood out to her as different. As a special education teacher, Ms. Godwin's observations of Mr. Holmes's behavior made her wonder whether he had a learning disability. He appeared extremely anxious and uncomfortable when spoken to. He was quieter than even the quietest kids, and even had trouble being close enough to people to participate in the team yearbook photo. Ms. Godwin never saw him smile. Yet, he consistently showed up to practice. Mr. Holmes was not a particularly good runner, but he never reacted badly to losing. He was never a "problem boy," never bullied anyone, and was never violent. These behaviors Mr. Holmes exhibited in high school were more early prodromal negative symptoms of Mr. Holmes's mental illness.

18. Mr. Holmes played soccer throughout junior high and high school. Former teammate Patrick Silva remembers him as a "very sweet, quiet kid" who flew under the radar and didn't cause a lot of trouble. Mr. Silva remembers Mr. Holmes as being a great team player who was never mean to anyone.

19. During this time in his life, despite the presence of unwanted homicidal thoughts, an increasing amount of social anxiety, difficulty speaking and interacting with others, and other prodromal symptoms of his illness that others mistook for mere shyness and awkwardness, Mr. Holmes strived to be a good student, son, brother, friend, and neighbor. He was a kid who wanted to please everyone.

20. Mr. Holmes was baptized at Rancho Bernardo Community Presbyterian Church in 1994. Growing up, Mr. Holmes attended church with his family at the Penasquitos Lutheran Church and became a member in 2002. He participated in the annual church clean up with his family, and volunteered to work with youth during the cross of victory celebration week.

21. Mr. Holmes was the type of young person who helped his family and friends. He helped his Uncle Dexter with gardening. He took care of neighbor Barbara Martin's pets, and helped her with a landscaping project. He helped an elderly woman in the neighborhood by picking up groceries for her and taking out the trash, and volunteered at the Red Cross. Ms. Martin, the neighbor, recalls Mr. Holmes as "pretty much a model child."

22. During his undergraduate years at the University of California at Riverside, Mr. Holmes continued to keep to himself. He eventually engaged in social gatherings that others in the honors dorm participated in but only after receiving much encouragement. He continued to be very studious, and excelled academically. Arlene Holmes described her son as very studious, self-motivated, and independent.

23. College friends never recall him being mean or disrespectful. College friend Ryan LaCroix described him as "fairly passive." Earl Domingo likewise described Mr. Holmes as "very mellow." Soren Carr characterized him as "introverted" and "easy-going." These friends continue to support Mr. Holmes.

24. In the summer of 2008, while he was an undergraduate, Mr. Holmes worked as a camp counselor at Camp Max Straus in Glendale, California. The camp was a sleep-away camp for inner city children ages 7 through 12, many of whom were emotionally disturbed. Camp counselors remember Mr. Holmes as reserved and shy, but good with the kids. The other counselors never saw Mr. Holmes act frustrated or upset with any of the campers. Children liked Mr. Holmes, and tended to gravitate towards him.

25. During college, Mr. Holmes also took a number of bus trips to orphanages in Tijuana, Mexico through an organization called Corazon De Vida. Mr. Holmes took these trips once every three months and participated in bringing supplies to the children there, played with them, and made meals for them.

26. In the fall of his senior year of college in 2009, Mr. Holmes applied to a number of graduate schools. Despite having stellar academic credentials, he was not accepted and upon graduating in the spring of 2010 at the age of 22, he moved back home to San Diego where he slept, watched television, and played video games for months. This lack of motivation was another prodromal, negative symptom of Mr. Holmes's emerging illness.

27. In October 2010, his mother became frustrated with his lack of motivation, and told him to get a job. Mr. Holmes obtained a job through a temp agency at MeriCal, a pill coating factory in Orange, California. Co-workers describe Mr. Holmes as "to himself" and not social at all during this time period. He was never rude or disrespectful to the other employees there, but communicated with short, one-word answers to questions. Tara Fournier testified that Mr. Holmes reminded her of her children who have Asperger's Syndrome and autism and described him as "in another place." Jose Sanchez Lopez testified that he once observed Mr. Holmes staring at the wall like someone was talking to him.

28. Mr. Holmes applied to graduate schools for a second time in the fall of 2010. This time, he was granted interviews at several schools, and was accepted at the University of Colorado Denver, where he ultimately chose to attend. Mr. Holmes decided from the age of 14 that he wanted to pursue a degree and career in neuroscience in part because he privately hoped the knowledge he gained in graduate school would help him learn how to fix his broken mind.

29. Mr. Holmes moved to Colorado in the summer of 2011 and began his studies. He made a few friends and by October 2011, even began dating another graduate student. However, graduate school did not come as easily for Mr. Holmes as his academic endeavors in high school and college. Mr. Holmes obtained satisfactory grades in his lecture classes, but his overall

performance was significantly poorer than in the past. He also struggled, to varying degrees, in all of his research lab rotations. Research assistants recall that Mr. Holmes appeared disinterested or distracted from his work and that he appeared to lack motivation. Classmates perceived him as awkward and difficult to engage in social interaction. They described Mr. Holmes as making great effort to avoid social interaction with them and he would often leave class immediately to avoid sharing elevators with fellow students. These behaviors were the signs of increasingly prominent negative symptoms as Mr. Holmes's mental illness progressed. However, the signs were largely missed by the people who knew him in the graduate program, most of whom had only met him recently and had limited interaction with him that revolved around school. Most, if not all, of these individuals mistook Mr. Holmes's awkwardness and shyness as characteristics that were not uncommon for scientists.

30. Mr. Holmes's mental illness began to worsen during the winter of 2011 and spring of 2012. His girlfriend broke up with him, and Mr. Holmes began to experience an increase in homicidal thoughts and feelings of depression and worthlessness. In early 2012, these thoughts began to develop into a delusional belief that he could increase his self-worth by gaining "human capital" and killing people. This thought process, as well as the contents of Mr. Holmes's thoughts, were not the product of a healthy mind.

31. Mr. Holmes expressed these delusional beliefs for the first time in a g-mail chat with his former girlfriend in late March of 2012.

32. In mid-March 2012, Mr. Holmes sought help from student mental health services. He spoke with a social worker named Margaret Roath, and immediately volunteered that he was having thoughts of killing people. Ms. Roath referred Mr. Holmes to Dr. Lynne Fenton, and told Dr. Fenton that Mr. Holmes was one of the most anxious patients she had ever seen.

33. Dr. Fenton first met with Mr. Holmes on March 21, 2012. Mr. Holmes volunteered to her during this first visit that he was having thoughts of killing people. Dr. Fenton suspected during her first meeting with Mr. Holmes that he had psychotic level thinking.

34. After this first visit, Dr. Fenton sent Mr. Holmes home to his apartment, where he lived alone, with a prescription for sertraline, an SSRI, for Mr. Holmes's reported anxiety. An SSRI can cause an individual who has a mental illness with a bipolar component such as schizoaffective disorder to experience mania. Dr. Jeffrey Metzner has diagnosed Mr. Holmes with schizoaffective disorder. Mr. Holmes reported in his notebook and later to psychiatrists that he experienced manic symptoms while on the sertraline. Dr. Metzner testified that while the sertraline did not cause Mr. Holmes's mental illness or delusional thinking, the sertraline could have contributed to an increase in Mr. Holmes's symptoms. Dr. Fenton increased Mr. Holmes's dosage of sertraline several times during the course of her treatment.

35. Mr. Holmes attended a total of 7 sessions with Dr. Fenton between the months of March 2012 and June 2012. He always came to his appointments, and never disavowed his homicidal thinking, although he denied specific plans or targets. Mr. Holmes later expressed ambivalence about wanting help for his delusional thinking. On the one hand, he wanted to be stopped. Yet on the other hand, he wanted help and treatment. This type of ambivalence is often part of the psychotic process, and it can be difficult for people with psychotic illnesses to voluntarily seek help and participate fully in the treatment process.

36. Over the course of these months, Dr. Fenton's notes reflect that Mr. Holmes's mental health was in decline. Her notes reflect that she repeatedly suspected psychosis. Following her last meeting with Mr. Holmes on June 11, 2012, Dr. Fenton's notes express "significant worries" about "the dangerousness of this student." She observed that Mr. Holmes "is intermittently functioning at a psychotic level" and questioned whether he was "shifting insidiously into a frank psychotic disorder such as schizophrenia." She noted that Mr. Holmes's attitude was "evasive," "guarded," "hostile," "suspicious," and "uncooperative." She noted that his affect was "inappropriate," "odd" and "bizarre," and that his thought content contained "paranoid delusions" and "preoccupation." She noted that he glanced around the room in an odd way. She testified that she thought some of the odd statements he made were perhaps a reflection of disorganized thinking. Dr. Fenton became so concerned about his homicidal thoughts that she asked her superior, Dr. Robert Feinstein, to attend several of her sessions with Mr. Holmes to consult.

37. Dr. Feinstein testified that his primary concern was that Mr. Holmes was in the throes of a psychotic episode.

38. Dr. Fenton could have hospitalized Mr. Holmes against his will on a 72-hour mental health hold, but decided not to do so.

39. Dr. Fenton also called Mr. Holmes's mother, Arlene, in violation of HIPAA. However, even though Mr. Holmes's potential dangerousness was Dr. Fenton's primary concern, she never told Mrs. Holmes that her son was having homicidal thoughts 3 to 4 times a day. Nor did Dr. Fenton ask Mr. Holmes's mother whether she was aware of Mr. Holmes having any sort of homicidal thoughts in the past. Mrs. Holmes told Dr. Fenton that her son had always been very shy and socially awkward, and had some social anxiety. The Holmeses later attempted to follow up with Dr. Fenton and left a voicemail for her expressing concern that their son may have Asperger's Syndrome, but Dr. Fenton never returned their call.

40. During the months Mr. Holmes was in treatment with Dr. Fenton, his delusional, psychotic thinking began to intensify and his illness worsened. Mr. Holmes cut himself off from his friends, stopped studying, and – despite no prior interest in weapons, guns, or violence whatsoever – began amassing startling quantities of firearms, ammunition and other gear, and began frequenting a shooting range. He built improvised explosive devices in his apartment, dyed his hair orange, signed up for motorcycle lessons, joined adult dating websites with the tagline "Will you visit me in prison?" All of this behavior was completely out of character for the person Mr. Holmes had been his entire life, and was fueled by his psychotic, delusional thinking borne of his mental illness.

41. During this time, Mr. Holmes also began writing the notebook he ultimately mailed to his psychiatrist. The notebook not only contains Mr. Holmes's plans to commit the theater shooting, it exhibits psychotic thinking and expresses many bizarre concepts. Mr. Holmes's mind became dominated by psychotic thoughts of life, death, purpose, value and worth. In the notebook, Mr. Holmes also describes all of the symptoms of his "broken mind," and explains that he made it his "sole conviction" to try to fix his broken mind, but "using something that's broken to fix itself proved insurmountable."

42. At earlier points during the course of his mental illness, Mr. Holmes was able to use coping mechanisms to manage the symptoms he was experiencing. As his mental illness worsened and his delusional beliefs began to overwhelm him, he was unable to successfully keep them at bay. In Mr. Holmes's final text messages to Hillary Allen on July 8, 2012, he told her he believed he was experiencing "dysphoric mania." He told Ms. Allen that while his condition used to be manageable, it was "floodgates open now."

43. Immediately after the shooting, Mr. Holmes did not resist arrest and was cooperative with police. Mr. Holmes told the officers at the scene, truthfully, that he was the only person involved in committing the shooting, and voluntarily disclosed that he had improvised explosive devices at his apartment.

44. In the interrogation room at the jail, Mr. Holmes engaged in odd behaviors consistent with mental illness and psychosis. He manically fidgeted under the table, and then became still and stared off blankly into space for long periods of time. He appears disoriented at times. When jail staff came into the room to bag Mr. Holmes's hands, Mr. Holmes asked if the paper bags are "because of..." but didn't complete the sentence. When the staff asked him what he thought the bags were for, he stated that he was asking staff what they were for. The staff asked him "What?" and Mr. Holmes repeated "What?" Jail staff asked him "Huh?" and Mr. Holmes repeated "Huh?" This behavior is called echolalia – a meaningless repetition of another person's spoken words that are a symptom of a psychiatric disorder. The staff then asked Mr. Holmes again what he believed the bags were for and Mr. Holmes responded, "Popcorn?" Mr. Holmes then began to make rhythmic noises with the paper bags on his hands. This bizarre behavior is consistent with a person suffering from psychosis.

45. Mr. Holmes was subsequently interviewed by law enforcement about the devices in his apartment. Mr. Holmes gave the police accurate information and answered every question that was asked of him. He made no attempt to mislead law enforcement. He asked for nothing in exchange for this information, and received nothing in exchange for this information.

46. Mr. Holmes remained psychotic in the jail between July and November 2012. He wrote the "Galactic Colonization" writings during this time period, which exhibit psychotic thinking.

47. In November 2012, while he was in the custody of the Arapahoe County Jail, Mr. Holmes became floridly psychotic. He stood on his bed and appeared to fall backwards onto the floor of his cell, and was nonresponsive at first to the deputies who responded to the fall. Soon thereafter, Mr. Holmes was moved to a cell in the Behavioral Control Unit for his own safety, and was put in a suicide gown. Mr. Holmes began exhibiting increasingly bizarre and disorganized behavior, including lying naked and catatonic in a frozen position on the floor on his stomach with his arms twisted up and his legs bent up in the air, smearing feces, licking the walls, speaking gibberish, eating paper cups, and attempting to do a backwards summersault with a cup on his penis. He seemed disoriented, confused, and at times, fearful and emotional. He was eventually moved to a different cell because his room was full of feces. He was unresponsive when deputies tried to move him, so he was dragged to another cell on a blanket.

48. Mr. Holmes was ultimately transported to Denver Health Medical Center. Paramedics observed that he appeared flat, disheveled, and parched. In the ambulance, he was

unable to hold a conversation. After he was asked to repeat the phrase "You can't teach an old dog new tricks" once, Mr. Holmes continued to repeat this phrase for an hour and a half, again exhibiting echolalia.

49. Every doctor who came into contact with Mr. Holmes at Denver Health Medical Center was of the opinion that he was suffering from psychosis and delirium. The delirium was caused by Mr. Holmes's refusal to eat and drink in the jail because he believed his food was being poisoned. In other words, Mr. Holmes's paranoid psychosis precipitated his delirium, not the other way around.

50. DHMC staff observed that Mr. Holmes exhibited many signs and symptoms consistent with psychosis, including catatonia, disorganized and nonsensical speech, and experiencing auditory hallucinations and visual hallucinations. Mr. Holmes told Dr. Philippe Weintraub that he had been seeing shadows at night. The video footage of the security camera in the hospital room shows Mr. Holmes fitfully trying to hide under blankets while in restraints in his hospital bed at night.

51. Mr. Holmes was administered the antipsychotic medication Haldol, which was switched to Risperdal/risperidone shortly thereafter. Mr. Holmes's condition improved with the antipsychotic medication and there was less suffering for him. Mr. Holmes remains on the antipsychotic Risperdal/risperidone to this day. Antipsychotic medication primarily treats positive symptoms of schizophrenia and related illnesses such as schizoaffective disorder, although delusions are more difficult to treat. It does not impact negative symptoms, and it is not a cure for schizophrenia or schizoaffective disorder.

52. Mr. Holmes values his medications and continues to take them regularly, as prescribed, and without opposition or incident. Mr. Holmes has expressed that the medications he is taking help him manage his psychotic and depressive symptoms.

53. Schizophrenia and related disorders such as schizoaffective disorder are debilitating, life-long brain diseases. There is no cure for schizophrenia or schizoaffective disorder. Schizophrenia and schizoaffective disorder in general are characterized by progressive changes in the brain and a decline in functioning over time.

54. Experts in this case have identified statistically significant changes in Mr. Holmes's brain consistent with those found in individuals diagnosed with schizophrenia and related illnesses such as schizoaffective disorder.

55. Schizophrenia and related disorders such as schizoaffective disorder are not caused by bad behavior or character flaws.

56. Just as an individual does not choose to get cancer, Mr. Holmes did not choose to develop his mental illness. Nor did Mr. Holmes choose the nature and content of his delusions. Mr. Holmes still struggles to explain, even years later, why his "mission" took such irrevocable hold of his mind, telling Dr. Reid, "I don't know why it dominated, but it did."

57. It is court-appointed psychiatrist Dr. Jeffrey Metzner's expert opinion that Mr. Holmes's ability to appreciate the wrongfulness of his actions and conform his conduct to the

law was significantly impaired by his psychosis, and that Mr. Holmes's mental illness is the sole cause of the shootings.

58. Mr. Holmes offered to plead guilty to all charges in this case if the prosecution would agree not to seek the death penalty against him, but the prosecution rejected this offer.

59. Suffering from a mental illness is not a pleasurable or pleasant experience for Mr. Holmes. To the contrary, it was, and continues to be, very disturbing and distressing to him.

60. Although he felt compelled to complete his "mission," which was the product of his psychotic thinking, committing the shooting itself was not an act that Mr. Holmes enjoyed or took pleasure in.

61. Other than the events of this case, Mr. Holmes has absolutely no history whatsoever of being cruel or mean to people or animals, or of hurting anyone in any way.

62. None of Mr. Holmes's neighbors, friends, fellow students, teachers, professors, co-workers, or family identified Mr. Holmes as emotionally reactive, self-important, mean-spirited, attention-seeking, or overly sensitive in the face of rejection. They all testified to that to the contrary, Mr. Holmes was self-deprecating, calm, sweet, and kind. He was never a poor loser, selfish, or self-centered. He handled rejection and disappointments in his life by withdrawing inward, and was a person who avoided the limelight.

63. Despite the tragedies of this crime, Mr. Holmes has numerous family, friends, neighbors, teachers, fellow volunteers, church members, and co-workers who love and support him and will continue to do so in the future.

Source:

"An instruction detailing the various grounds of mitigation asserted by the defendant is appropriate as a type of theory of the case instruction The instruction, however, should not assume facts not supported in some manner by the record." *People v. Tenneson*, 788 P.2d 786, 798-99 (Colo. 1990) (citations omitted).

"The court, therefore, should instruct the jury as to the defendant's theory of mitigation if the defendant requests such an instruction and if there is any evidence to support it, but should cast the instruction in neutral terms to avoid any implication that the court regards the facts as established or that, if established, they necessarily must be viewed by the jury as mitigating." *People v. Tenneson*, 788 P.2d 786, 799 (Colo. 1990)