

DISTRICT COURT
ARAPAHOE COUNTY, COLORADO
Court Address: Arapahoe County Justice Center
7325 South Potomac Street, Centennial, CO 80112

THE PEOPLE OF THE STATE OF COLORADO

v.

JAMES EAGAN HOLMES,
Defendant

COURT USE ONLY

Case Number:
12CR1522

Division:
201

JURY INSTRUCTIONS—PHASE 3 OF SENTENCING HEARING

Instruction Nos. 1 through 23 given by the Court this 6th day of August of 2015.

BY THE COURT:



Carlos A. Samour, Jr.
District Court Judge

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 1

Members of the jury, Phase 3 of the sentencing hearing has been completed. During the course of the trial and the sentencing hearing, you have received all of the evidence that you may properly consider in exercising your individual reasoned moral judgment to reach your final sentencing verdicts. I remind you that when I have made any references to the “evidence and information” presented in the courtroom during the proceedings, I simply meant the evidence presented in the courtroom during the proceedings.

In a moment, I will read to you jury instructions that contain the rules of law you must apply to reach your final sentencing verdicts. You will have copies of what I read to take with you to the jury room. But first, I want to mention some things you need to keep in mind when you are discussing this case in the jury room.

In these instructions, I refer to the first part of the proceedings as “the trial” and to the present part of the proceedings as the “sentencing hearing” or, more specifically, as “Phase 3” of the sentencing hearing. If I refer to the “proceedings,” I am referring to the trial and Phases 1, 2, and 3 of the sentencing hearing.

Until you have returned your final sentencing verdicts, you must follow all of the following admonishments.

- You must reach your final sentencing verdicts based only on the evidence presented during the trial, the evidence presented during the sentencing hearing, and the instructions provided by the Court (which, among other things, inform you that in reaching each final sentencing verdict, you must exercise your individual reasoned moral judgment). However, to the extent that I tell you or have told you that you may only consider certain evidence for a limited purpose, you must only consider such evidence for the limited purpose that I tell you or have told you it may be considered.

- Do not communicate about the case with anyone else in any way, including in person, by telephone, cell phone, smart phone, iPhone, Blackberry, computer, the internet, or any internet service. This means that you must not e-mail, text, instant message, Tweet, blog, or post information about this case, or about your experience as a juror in this case, on any website, list serve, chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube, or Twitter. You must not communicate in any way with anyone else about this case or this kind of case. This includes your family members and friends. You must not read, review, or accept any communications in any form from anyone regarding this case or a case like this one. All you can tell family members, friends, acquaintances, and strangers is that you are a juror in Arapahoe County and that we anticipate that the proceedings will be completed by the end of August.

- If you notice that people are discussing the case, remove yourself from that location immediately.

- Do not attempt to gather any information on your own about this case or any case like it. You must not read or conduct any research about this case or this kind of case using any source, including dictionaries, reference materials, the internet, or any other electronic means. Many of us routinely use the internet to research topics of interest, but you may not do that 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, or thing that is involved in this case. This includes the defendant, the attorneys, the witnesses, your fellow jurors, court personnel, and me. This applies whether you are here, at home, or anywhere else.

- Do not read about this case or any case like it in the newspapers or on the internet; do not listen to any radio broadcasts about the case or any case like it; and do not watch any television news reports regarding the case or any case like it. You should do your utmost to avoid all news reports.

- Do not attempt to visit any places mentioned in this case.
- Do not in any other way learn about this case or this kind of case outside the courtroom.

- Do not talk to the witnesses, parties, and attorneys about anything.

- Do not talk to any members of the media about anything.

- Do not have any contact (through any means, including in person, by telephone, text, or email) with any jurors who have been discharged. You also should not have any contact (through any means, including in person, by telephone, text, or email) with any of the alternate jurors.

- Make sure you wear your juror badge whenever you are on the courthouse grounds, and that your juror badge is visible to those around you.

- If you have a cell phone or other electronic device, you must temporarily surrender it to my staff. You are not allowed to have a cell phone or other electronic device in the jury room during your deliberations. You will get your electronic devices at the end of the day before you go home.

- Lastly, although you may start deliberating when I tell you that you may do so, you may discuss this case only when you are all present and only when you are in the jury room. No juror should attempt to discuss this case with another juror or other jurors except when all the jurors are present in the jury room. All deliberations must occur in the jury room when all 12 jurors are present.

It is my job to decide what rules of law apply to the case. While the attorneys may comment on some of these rules, you must follow the instructions I give you. Even if you disagree with or do not understand the reasons for some of the rules of law, you must follow them. No single instruction describes all the law which must be applied; the instructions must be considered together as a whole.

At times during the proceedings, the attorneys have made objections. Do not draw any conclusions from the objections or from my rulings on the objections. These only related to legal questions I had to decide and should not influence your thinking. If I told you not to consider a particular statement during the proceedings, you must not consider it in your deliberations. Similarly, if, during the proceedings, I sustained an objection to a question after a witness had already provided an answer or partial answer, you must not consider any part of that answer in your deliberations.

I may have asked questions of witnesses during the proceedings. That did not mean I had any opinion about the facts in the case.

Remarks and rulings I have made during the proceedings should not be understood by you as suggesting any opinion or feeling on my part as to what has or has not been proven in this case. Likewise, remarks and rulings I have made during the proceedings should not be understood by you as suggesting any opinion or feeling on my part as to what final sentencing verdicts you should reach. Finally, the Court's instructions of law are not intended as an expression of any opinion or desire concerning the final sentencing verdicts you should reach. I remind you that I am neutral in these proceedings.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 2

Each of you must fully appreciate your obligation to carefully and fairly consider the decisions you have been called upon to make in this final phase of the sentencing hearing. These decisions may well be the most important and serious decisions you will ever be asked to make.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 3

Your final sentencing verdicts are not dictated by law. Further, none of your earlier decisions in these proceedings dictates what your final sentencing verdicts should be. The outcome of your deliberations at the end of the trial, at the end of Phase 1 of the sentencing hearing, and at the end of Phase 2 of the sentencing hearing do not govern the ultimate determination that you must make now as to whether the defendant should be sentenced to life imprisonment without the possibility of parole or death. In order to reach your final sentencing verdicts, each of you will be called upon to deliberate and to make decisions based on your individual reasoned moral judgment.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 4

You must now consider whether the defendant should be sentenced to life imprisonment without the possibility of parole or death on each count of Murder in the First Degree. This is a decision left exclusively to each of you. Each of you personally will determine whether the defendant will be sentenced to life imprisonment without the possibility of parole or death on each count.

In reaching your final sentencing verdict on each count, each of you must exercise your individual reasoned moral judgment. The exercise of your individual reasoned moral judgment must be based on the evidence presented in the courtroom during these proceedings. Each juror's sentencing decision must reflect a profoundly reasoned moral response to the defendant's background, character, history, and crimes.

With respect to each count, each of you must individually decide, based upon your reasoned moral judgment, whether or not you are convinced beyond a reasonable doubt that death is the appropriate sentence. No juror may ever decide that the defendant should be sentenced to death unless the juror is convinced beyond a reasonable doubt that death is the appropriate sentence. Further, the jury may only return a sentence of death on a count if every juror is convinced beyond a reasonable doubt that death is the appropriate sentence on that count. If one or more jurors are not convinced beyond a reasonable doubt that death is the

appropriate sentence on a count, the defendant will be sentenced to life imprisonment without the possibility of parole on that count. A juror need not be convinced beyond a reasonable doubt that life imprisonment without the possibility of parole is the appropriate sentence in order to make a decision that will result in a sentence of life imprisonment without the possibility of parole.

None of you individually, nor the jury collectively, is ever required to impose a sentence of death. The law never requires a death sentence. If any of you is not convinced beyond a reasonable doubt that death is the appropriate sentence on a particular count, that ends the inquiry with respect to that count because, in that situation, the law requires that the defendant be sentenced to life imprisonment without the possibility of parole. Even if you are convinced beyond a reasonable doubt that the mitigating factors that exist do not outweigh the proven aggravating factors, you must still individually make a profoundly moral assessment or evaluation of the defendant's character and his crimes of Murder in the First Degree in order to determine whether or not you are convinced beyond a reasonable doubt that death is the appropriate sentence. Phase 3 is separate and distinct from Phase 2.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 5

Based upon your verdicts at the end of the trial, the defendant has been found guilty of 24 counts of Murder in the First Degree. As you know, there are two guilty verdicts for Murder in the First Degree with respect to each deceased victim because the prosecution pursued two theories of liability as to each deceased victim: Murder in the First Degree—After Deliberation and Murder in the First Degree—Extreme Indifference. The two guilty verdicts for each deceased victim will eventually merge into a single conviction for Murder in the First Degree, and, based solely on the jury's final sentencing verdicts, the defendant will receive a single sentence for that conviction. Accordingly, the defendant will stand convicted of 12 Murders in the First Degree, and the jury's final sentencing verdicts, alone, will determine the sentences for those crimes.

In Phase 1 of the sentencing hearing, you determined that the prosecution proved beyond a reasonable doubt four aggravating factors with respect to each count of Murder in the First Degree. In Phase 2 of the sentencing hearing, you determined that, with respect to each count, the mitigating factors that exist do not outweigh the aggravating factors proven by the prosecution beyond a reasonable doubt. You must again make 24 separate determinations. This time, as to each of the 24 counts of Murder in the First Degree, you must decide whether or not, based

on each juror's individual reasoned moral judgment, you are unanimously convinced beyond a reasonable doubt that death is the appropriate sentence.

If you decide that a death sentence is the appropriate sentence on one or more counts, that sentence will be enforced regardless of the final sentencing verdicts on the remaining counts and regardless of the lack of a unanimous final sentencing verdict on any count. This is the case even if you impose different sentences on two counts that relate to the same victim, and even if you impose a death sentence on one count related to a victim and do not reach a unanimous final sentencing verdict on the other count related to that victim.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 6

In Phase 3 of the sentencing hearing, there is no burden of proof. Therefore, neither party has the burden to prove anything to you. This rule applies regardless of whether a party chose to present evidence or not to present evidence in Phase 3.

The defendant has presented evidence in these proceedings. You are instructed that the presentation of evidence by the defendant at any point in these proceedings does not place the burden on him to prove or disprove anything. A defendant never has any burden to convince the jury that the sentence of life imprisonment without the possibility of parole is the appropriate sentence or that a death sentence is not the appropriate sentence.

While neither party has a burden of proof in Phase 3, the degree of certainty that is defined as “beyond a reasonable doubt” nevertheless applies in this phase of the sentencing hearing. A juror may not determine that a death sentence is appropriate on any count unless he or she is convinced beyond a reasonable doubt that death is the appropriate sentence. Thus, in Phase 3, the use of the term “beyond a reasonable doubt” refers to the degree of moral certainty that an individual juror is required to have before he or she may decide, based on his or her individual reasoned moral judgment, that death is the appropriate sentence. An individual juror is not required to have the degree of certainty defined by “beyond a reasonable doubt” before he or she may decide, based on his or her individual

reasoned moral judgment, that a life sentence without the possibility of parole is the appropriate sentence.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 7

Reasonable doubt, as used in these instructions, means a doubt based upon reason and common sense which arises from a fair and rational consideration of the evidence, or the lack of evidence, in the proceedings. It is a doubt which is not a vague, speculative or imaginary doubt, but such a doubt as would cause reasonable people to hesitate to act in matters of importance to themselves.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 8

There is no requirement that you explain or justify to your fellow jurors why your individual reasoned moral judgment leads you to a particular decision on a count. Nevertheless, it is your duty as jurors to consult with one another and to deliberate on all the counts.

While you are not required to agree with the determinations, opinions, feelings, or thoughts of other jurors, you must deliberate with your fellow jurors. After deliberating, if a juror disagrees with the rest of the jurors, that disagreement must be respected by the other jurors and will be respected by the Court. Ultimately, each of you must deliberate and decide for yourself the appropriate sentence based on your individual reasoned moral judgment.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 9

In reaching your final sentencing verdicts, you may consider mercy and sympathy for the defendant. Your exercise of mercy and sympathy must be based upon the evidence presented during the proceedings.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 10

Under Colorado law, when a person is sentenced to life imprisonment without the possibility of parole, it means that the person must spend the rest of his natural life in prison. A person who has been sentenced to life in prison without the possibility of parole cannot ever apply for parole and cannot ever be paroled.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 11

Under Colorado law, the manner of enforcing a sentence of death is by the administration of a lethal injection. You must assume that a death sentence will be carried out if the jury determines beyond a reasonable doubt that it is the appropriate sentence.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 12

You are instructed that the fact that the prosecution seeks the death penalty in this case is entitled to no weight whatsoever in your decisions. No juror should allow himself or herself to be influenced or prejudiced against the defendant because of the fact that the prosecution seeks the death penalty.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 13

In reaching your final sentencing verdicts, you must treat the defendant as a uniquely individual human being. Further, you must not be influenced by prejudice or bias of any sort against the defendant or the prosecution, and you must not consider any public opinion or community sentiment for or against the defendant or the prosecution. Your decisions may not be the result of any irrational or arbitrary emotional response. Rather, each of your final sentencing verdicts must reflect your individual reasoned moral determination.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 14

In Phase 3, you received victim impact evidence, which is evidence of any matters relating to the personal characteristics of the deceased victims and the impact of the crimes of Murder in the First Degree on each victim's family. The purpose of such evidence is to inform you about the harm caused by the crimes of Murder in the First Degree. You may consider this evidence in reaching your final sentencing verdicts. However, your consideration must be limited to a moral inquiry into the culpability of the defendant, not an emotional response to the evidence presented.

You are never permitted to make a comparative judgment between the defendant and the victims.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 15

The Court reminds you that the number of witnesses testifying for or against a certain fact during the proceedings does not, by itself, prove or disprove that fact.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 16

The Court reminds you that you are the sole judges of the credibility of each witness who testified in these proceedings and the weight to be given to each witness's testimony. You should carefully consider all of the testimony given and the circumstances under which each witness has testified.

For each witness, consider that person's knowledge, motive, state of mind, demeanor, and manner while testifying. Consider the witness's ability to observe, the strength of that person's memory, and how that person obtained his or her knowledge. Consider any relationship the witness may have to either side of the case, and how each witness might be affected by the verdict. Consider how the testimony of the witness is supported or contradicted by other evidence in the case. You should consider all facts and circumstances shown by the evidence when you evaluate each witness's testimony.

You may believe all of the testimony of a witness, part of it, or none of it.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 17

The Court reminds you that you are not bound by the testimony of witnesses who testified as experts; the credibility of an expert's testimony is to be considered as that of any other witness. You may believe all of an expert witness's testimony, part of it, or none of it.

The weight you give the testimony is entirely your decision.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 18

In reaching your final sentencing verdicts, you may consider all of the evidence admitted during the proceedings. Dr. Jeffrey Metzner's testimony during Phase 2 of the sentencing hearing, which was admitted for the limited purpose of determining the existence or absence of any mitigating factor, may only be considered for that limited purpose. Additionally, the evidence admitted during the trial for the limited purpose of considering the issues raised by the defendant's plea of not guilty by reason of insanity may only be considered for the limited purpose of determining the existence or absence of any mitigating factor. Finally, any **other** evidence that the Court instructed you throughout the proceedings could only be considered for a limited purpose may only be considered for that limited purpose.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 19

Every person charged with a crime or convicted of Murder in the First Degree has the constitutional right not to testify. The defendant did not testify during the trial or during the sentencing hearing, as was his right. You shall not draw any negative inference from his choice as to the punishment to be imposed or any other matter. You shall not allow his choice to prejudice him in any way. His decision not to testify cannot be used as a reason to support or impose the death penalty. You must not discuss the defendant's choice not to testify or permit it to enter into your deliberations in any way.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 20

You were permitted to submit written questions to witnesses throughout the proceedings. If a particular question was not asked, do not guess why the question was not asked or what the answer might have been. My decision not to ask a question submitted by a juror was not a reflection on the person asking it, and you should not attach any significance to the failure to ask a question. By making legal rulings on the admissibility of questions, I did not intend to suggest or express any opinion about the question. My decision whether or not to allow a question was based on the applicable rules of evidence and other rules of law, and not on the facts of this particular case. It is my responsibility to assure that all parties receive a fair trial according to the law and the rules of evidence.

The fact that certain questions were not asked must not affect your consideration of the evidence in any way. Do not give greater weight to questions, or answers to questions, that were submitted by yourself or your fellow jurors.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 21

You have been allowed to take notes. Whether or not you took notes, you should rely on your memory as much as possible. The notes you took are to refresh your own memory. You should not give additional weight to the comments of any juror based upon the quantity or quality of his or her note-taking.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 22

Once you begin your deliberations, if you have a question, your Foreperson should write it on a piece of paper, sign it, and give it to one of the bailiffs, who will bring it to me.

The Court will then determine the appropriate way to answer the question.

However, there may be some questions that, under the law, the Court is not permitted to answer. Please do not speculate about what the answer to your question might have been or why the Court is not able to answer a particular question.

Finally, please be sure to keep the original question and response. Do not destroy them, as they are part of the official record in this case, and must be returned to me when you return the instructions and Final Sentencing Verdict Forms.

SENTENCING HEARING PHASE 3 INSTRUCTION NO. 23

Following the attorneys' closing arguments, the bailiffs will escort you to the jury room so that you may deliberate. Your Foreperson will preside over your deliberations.

You will be given 24 separate Final Sentencing Verdict Forms—one for each count of Murder in the First Degree. Each verdict form has three Sections: I, II, and III. Your final sentencing verdict on each count must be reflected in Section I, Section II, or Section III of the verdict form. As to each of the 24 counts of Murder in the First Degree, you must decide whether or not, based on each juror's individual reasoned moral judgment, you are unanimously convinced beyond a reasonable doubt that death is the appropriate sentence.

If the jury is unanimously convinced beyond a reasonable doubt that a death sentence is the appropriate sentence on a count, the Foreperson and the other 11 jurors should sign on the designated lines in Section I of the Final Sentencing Verdict Form for that count. In that event, the defendant will receive a death sentence on that count and that sentence will be carried out regardless of the final sentencing verdicts on the remaining counts and regardless of the lack of a unanimous final sentencing verdict on any count.

If the jury is not unanimously convinced beyond a reasonable doubt that a death sentence is the appropriate sentence on a count, and the jury unanimously

agrees that the defendant should be sentenced to life imprisonment without the possibility of parole on that count, the Foreperson should sign on the designated line in Section II of the verdict form for that count. In that event, the defendant will receive a sentence of life imprisonment without the possibility of parole on that count.

If the jury does not reach a unanimous final sentencing verdict on a count because it is neither unanimously convinced beyond a reasonable doubt that death is the appropriate sentence nor in unanimous agreement that the defendant should be sentenced to life imprisonment without the possibility of parole, the Foreperson should sign on the designated line in Section III of this verdict form to indicate that the jury does not have a unanimous final sentencing verdict on that count. In that event, the Court will be required by law to sentence the defendant to life imprisonment without the possibility of parole on that count.

Only one Section (Section I, Section II, or Section III) shall be completed on each verdict form.

The Final Sentencing Verdict Forms and these instructions shall remain in the possession of your Foreperson until I call for them in open court. Upon reaching your final sentencing verdicts, you will inform the bailiffs that you have completed all of the Final Sentencing Verdict Forms, and the bailiffs, in turn, will notify me; you will then remain in your jury room until called into the courtroom.

In your communication, please do not indicate whether you have reached a unanimous verdict on any count or counts; simply indicate that you have completed all of the Final Sentencing Verdict Forms.

I will now read a sample Final Sentencing Verdict Form. You must not draw any inferences based on the verdict form I have selected to read to you.