

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

Instruction Nos. 1 through 30 given by the Court this 24th day of
July of 2015.

BY THE COURT:

Carlos A. Samour, Jr.

Carlos A. Samour, Jr.
District Court Judge

INSTRUCTION NO. 1

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

Until you have returned your verdicts, you must follow all of the admonishments that I will read to you in a moment. Because you will deliberate soon (when I tell you that you may start deliberating), these are similar, but not identical, to the admonishments I have been giving you throughout the trial with respect to your conduct when you are not in the courtroom.

- You must decide this case based only on the evidence presented in the courtroom and the instructions of law provided by the Court.
- 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 on a jury in Arapahoe County that is anticipated to be completed at the latest 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. 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 in the newspapers or on the internet; do not listen to any radio broadcasts about the trial; and do not watch any television news reports regarding the trial.

- Do not attempt to visit any places mentioned in this case.

- Do not in any other way try to 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 device 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.

During the trial, you received all of the evidence that you may properly consider in deciding the case. Your decision must be made by applying the rules of law that I give you to the evidence presented at trial. Remember, you must not be influenced by sympathy, bias, or prejudice in reaching your decisions.

In making your decisions, you must not consider punishment at all. At times during the trial, the attorneys 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 that was made during the trial, you must not consider it in your deliberations. Similarly, if 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 have asked questions of witnesses during the trial. That did not mean I had any opinion about the facts in the case.

Finally, you should consider all the evidence in light of your experience in life.

INSTRUCTION NO. 2

The charges against the defendant are not evidence. The charges against the defendant are just accusations. The fact that the defendant has been accused is not evidence that the defendant committed any crime.

The defendant is charged with 12 counts of Murder in the First Degree—After Deliberation, 12 counts of Murder in the First Degree—Extreme Indifference, 70 counts of Attempt to Commit Murder in the First Degree—After Deliberation, 70 counts of Attempt to Commit Murder in the First Degree—Extreme Indifference, and one count of Possession or Control of an Explosive or Incendiary Device, in Colorado, on or about July 20, 2012. The defendant has pled not guilty by reason of insanity, which includes the plea of not guilty.

INSTRUCTION NO. 3

Every person charged with a crime is presumed innocent. This presumption of innocence remains with the defendant throughout the trial and should be given effect by you unless, after considering all of the evidence, you are then convinced that the defendant is guilty beyond a reasonable doubt.

The burden of proof is upon the prosecution to prove to the satisfaction of the jury beyond a reasonable doubt the existence of all of the elements necessary to constitute each crime charged.

Reasonable doubt means a doubt based upon reason and common sense which arises from a fair and rational consideration of all of the evidence, or the lack of evidence, in the case. 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.

If you find from the evidence that each and every element of a crime has been proven beyond a reasonable doubt, you should find the defendant guilty of that crime. If you find from the evidence that the prosecution has failed to prove any one or more of the elements of a crime beyond a reasonable doubt, you should find the defendant not guilty of that crime.

INSTRUCTION NO. 4

The number of witnesses testifying for or against a certain fact does not, by itself, prove or disprove that fact.

INSTRUCTION NO. 5

You are the sole judges of the credibility of each witness and the weight to be given to the 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.

INSTRUCTION NO. 6

You are not bound by the testimony of witnesses who have 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.

INSTRUCTION NO. 7

A fact may be proven by either direct or circumstantial evidence. Under the law, both are acceptable ways to prove something. Neither is necessarily more reliable than the other.

Direct evidence is based on first-hand observation of the fact in question. For example, a witness's testimony that he or she looked out a window and saw snow falling might be offered as direct evidence that it had snowed.

Circumstantial evidence is indirect. It is based on observations of related facts that may lead you to reach a conclusion about the fact in question. For example, a witness's testimony that he or she looked out a window and saw snow covering the ground might be offered as circumstantial evidence that it had snowed.

INSTRUCTION NO. 8

The Court admitted certain evidence for a limited purpose.

You are again instructed that you cannot consider that evidence except for the limited purpose I told you about when it was admitted.

INSTRUCTION NO. 9

Every defendant has a constitutional right not to testify. The decision not to testify cannot be used as an inference of guilt and cannot prejudice the defendant. It is not evidence, does not prove anything, and must not be considered for any purpose.

INSTRUCTION NO. 10

In this case a separate offense is charged against the defendant in each count. Each count charges a separate and distinct offense, and the evidence and the law applicable to each count should be considered separately, uninfluenced by your decision as to any other count. The fact that you may find the defendant guilty, not guilty, or not guilty by reason of insanity of one of the charged offenses should not control your verdict as to any other charged offense against the defendant.

The defendant may be found guilty, not guilty, or not guilty by reason of insanity of any one or all of the charged offenses.

INSTRUCTION NO. 11

The defendant is charged with Murder in the First Degree—After
Deliberation in each of the following counts:

Count 1 (Jonathan Blunk)
Count 2 (Alexander Boik)
Count 3 (Jesse Childress)
Count 4 (Gordon Cowden)
Count 5 (Jessica Ghawi)
Count 6 (John Larimer)
Count 7 (Matthew McQuinn)
Count 8 (Micayla Medek)
Count 9 (Veronica Moser-Sullivan)
Count 10 (Alex Sullivan)
Count 11 (Alexander Teves)
Count 12 (Rebecca Wingo)

The elements of the crime of Murder in the First Degree—After
Deliberation, as charged in each of these counts, are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. after deliberation, and
4. with the intent,
5. to cause the death of a person other than himself,
6. caused the death of that person or of another person,
7. and that the defendant was not insane, as defined in Instruction 23.

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt with respect to a count listed earlier in this instruction, you should find the defendant guilty of that count of Murder in the First Degree—After Deliberation, and you should so state in Part A of the verdict form for that count.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt with respect to a count listed earlier in this instruction, you should find the defendant not guilty of that count of Murder in the First Degree—After Deliberation, and you should so state in Part A of the verdict form for that count.

INSTRUCTION NO. 12

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the charged offense in a count listed in Instruction 11, he may, however, be found guilty of any lesser offense, the commission of which is necessarily included in the charged offense if the evidence is sufficient to establish his guilt of the lesser offense beyond a reasonable doubt.

The offense of Murder in the First Degree—After Deliberation, as charged in each of the counts listed in Instruction 11, necessarily includes the lesser offenses of Murder in the Second Degree and Manslaughter.

The elements of the crime of Murder in the Second Degree are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. caused the death of another person,
5. and that the defendant was not insane, as defined in Instruction 23.

The elements of the crime of Manslaughter are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. recklessly,
4. caused the death of another person,
5. and that the defendant was not insane, as defined in Instruction 23.

You should bear in mind that the burden is always upon the prosecution to prove beyond a reasonable doubt each and every element of any lesser offense which is necessarily included in any charged offense; the law never imposes upon a defendant in a criminal case the burden of calling any witnesses or producing any evidence.

After considering all the evidence, if you decide that the prosecution has proven each of the elements of a charged offense or of a lesser-included offense, you should find the defendant guilty of the offense proven, and you should so state in Part A of the verdict form for that count.

After considering all the evidence, if you decide that the prosecution has failed to prove one or more of the elements of a charged offense and one or more of the elements of each of its lesser-included offenses, you should find the defendant not guilty of these offenses, and you should so state in Part A of the verdict form for that count.

While you may find the defendant not guilty of each charged offense and its lesser-included offenses, you may not find the defendant guilty of more than one of the following offenses in the same count:

Murder in the First Degree—After Deliberation

Murder in the Second Degree

Manslaughter

INSTRUCTION NO. 13

The defendant is charged with Murder in the First Degree—Extreme Indifference in each of the following counts:

Count 13 (Jonathan Blunk)
Count 14 (Alexander Boik)
Count 15 (Jesse Childress)
Count 16 (Gordon Cowden)
Count 17 (Jessica Ghawi)
Count 18 (John Larimer)
Count 19 (Matthew McQuinn)
Count 20 (Micayla Medek)
Count 21 (Veronica Moser-Sullivan)
Count 22 (Alex Sullivan)
Count 23 (Alexander Teves)
Count 24 (Rebecca Wingo)

The elements of the crime of Murder in the First Degree—Extreme Indifference, as charged in each of these counts, are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. under circumstances evidencing an attitude of universal malice manifesting extreme indifference to the value of human life generally,
5. engaged in conduct which created a grave risk of death to a person, or persons, other than himself, and
6. thereby caused the death of another,
7. and that the defendant was not insane, as defined in Instruction 23.

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt with respect to a count listed earlier in this instruction, you should find the defendant guilty of that count of Murder in the First Degree—Extreme Indifference, and you should so state in Part A of the verdict form for that count.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt with respect to a count listed earlier in this instruction, you should find the defendant not guilty of that count of Murder in the First Degree—Extreme Indifference, and you should so state in Part A of the verdict form for that count.

INSTRUCTION NO. 14

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the charged offense in a count listed in Instruction 13, he may, however, be found guilty of any lesser offense, the commission of which is necessarily included in the charged offense if the evidence is sufficient to establish his guilt of the lesser offense beyond a reasonable doubt.

The offense of Murder in the First Degree—Extreme Indifference, as charged in each of the counts listed in Instruction 13, necessarily includes the lesser offenses of Murder in the Second Degree and Manslaughter.

The elements of the crime of Murder in the Second Degree are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. caused the death of another person,
5. and that the defendant was not insane, as defined in Instruction 23.

The elements of the crime of Manslaughter are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. recklessly,
4. caused the death of another person,
5. and that the defendant was not insane, as defined in Instruction 23.

You should bear in mind that the burden is always upon the prosecution to prove beyond a reasonable doubt each and every element of any lesser offense which is necessarily included in any charged offense; the law never imposes upon a defendant in a criminal case the burden of calling any witnesses or producing any evidence.

After considering all the evidence, if you decide that the prosecution has proven each of the elements of a charged offense or of a lesser-included offense, you should find the defendant guilty of the offense proven, and you should so state in Part A of the verdict form for that count.

After considering all the evidence, if you decide that the prosecution has failed to prove one or more of the elements of a charged offense and one or more of the elements of each of its lesser-included offenses, you should find the defendant not guilty of these offenses, and you should so state in Part A of the verdict form for that count.

While you may find the defendant not guilty of each charged offense and its lesser-included offenses, you may not find the defendant guilty of more than one of the following offenses in the same count:

Murder in the First Degree—Extreme Indifference

Murder in the Second Degree

Manslaughter

INSTRUCTION NO. 15

The defendant is charged with Attempt to Commit Murder in the First Degree—After Deliberation in each of the following counts:

- Count 25 (Petra Hogan)
- Count 26 (Adan Avila Arredondo)
- Count 27 (Brandon Axelrod)
- Count 28 (Toni Billapando)
- Count 29 (Christina Blache)
- Count 30 (Maria Carbonell)
- Count 31 (Alejandra Cardona Lamas)
- Count 32 (Louis Duran)
- Count 33 (Craig Enlund)
- Count 34 (Alex Espinoza)
- Count 35 (Jacqueline Fry)
- Count 36 (Yousef Gharbi)
- Count 37 (Zackary Golditch)
- Count 38 (Munirih Gravelly)
- Count 39 (Eugene Han)
- Count 40 (Kirstin “K.C.” Han)
- Count 41 (Katie Medley)
- Count 42 (Jasmine Kennedy)
- Count 43 (Marcus Kizzar)
- Count 44 (Patricia Legarreta Rohrs)
- Count 45 (Brenton Lowak)
- Count 46 (Ryan Lumba)
- Count 47 (Caleb Medley)
- Count 48 (Ashley Moser)
- Count 49 (Stefan Moton)
- Count 50 (Joshua Nowlan)
- Count 51 (Pierce O’Farrill)
- Count 52 (Prodeo Patria)
- Count 53 (Rita Paulina)

Count 54 (Christopher Rapoza)
Count 55 (Carli Richards)
Count 56 (Dion Rosborough)
Count 57 (Carey Rottman)
Count 58 (Lucas Smith)
Count 59 (Heather Snyder)
Count 60 (Farrah Soudani)
Count 61 (Catherine Streib)
Count 62 (Jamison Toews)
Count 63 (Denise Axelrod)
Count 64 (Mark “Marcus” Weaver)
Count 65 (Michael White)
Count 66 (David Williams)
Count 67 (Alleen Young)
Count 68 (Jansen Young)
Count 69 (Samantha Yowler)
Count 70 (Gage Hankins)
Count 71 (McKayla Hicks)
Count 72 (Stephen Barton)
Count 73 (Nickelas Gallup)
Count 74 (Evan Farris)
Count 75 (Jennifer Avila Arredondo)
Count 76 (Jarell Brooks)
Count 77 (Amanda Hernandez-Memije)
Count 78 (Kelly Lewis)
Count 79 (Bonnie Kathleen Pourciau Zoghbi)
Count 80 (Anggiat Mora)
Count 81 (Ethan Rohrs)
Count 82 (Nathan Juranek)
Count 143 (Corbin Dates)
Count 145 (Lauren Shuler)
Count 147 (Jamie Rohrs)
Count 149 (Evan Morrison)
Count 151 (Richelle Hill)
Count 153 (Kaylan Bailey)

Count 155 (Kelly Bowen)
Count 157 (Shirley Clark)
Count 159 (Hailee Hensley)
Count 161 (Victor Edgar Nava Hernandez)
Count 163 (Daybra Thomas-Kizzar)
Count 165 (Caitlin Peddicord)

The elements of the crime of Attempt to Commit Murder in the First Degree—After Deliberation, as charged in each of these counts, are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. after deliberation, and
4. with the intent,
5. to cause the death of a person other than himself,
6. engaged in conduct constituting a substantial step toward the commission of Murder in the First Degree—After Deliberation, as defined in Instruction 11.
7. and that the defendant was not insane, as defined in Instruction 23.

A “substantial step” is any conduct, whether act, omission, or possession, which is strongly corroborative of the firmness of the actor’s purpose to complete the commission of the offense.

After considering all the evidence, if you decide the prosecution has proven each of the elements with respect to a count listed earlier in this instruction, you should find the defendant guilty of that count of Attempt to Commit Murder in the First Degree—After Deliberation, and you should so state in Part A of the verdict form for that count.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt with respect to a count listed earlier in this instruction, you should find the defendant not guilty of that count of Attempt to Commit Murder in the First Degree—After Deliberation, and you should so state in Part A of the verdict form for that count.

INSTRUCTION NO. 16

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the charged offense in a count listed in Instruction 15, he may, however, be found guilty of any lesser offense, the commission of which is necessarily included in the charged offense if the evidence is sufficient to establish his guilt of the lesser offense beyond a reasonable doubt.

The offense of Attempt to Commit Murder in the First Degree—After Deliberation, as charged in each of the counts listed in Instruction 15, necessarily includes the lesser offenses of Attempt to Commit Murder in the Second Degree and Attempt to Commit Manslaughter.

The elements of the crime of Attempt to Commit Murder in the Second Degree are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. engaged in conduct constituting a substantial step toward the commission of Murder in the Second Degree, as defined in Instruction 12,
5. and that the defendant was not insane, as defined in Instruction 23.

The elements of the crime of Attempt to Commit Manslaughter are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. recklessly,
4. engaged in conduct constituting a substantial step toward the commission of Manslaughter, as defined in Instruction 12,
5. and that the defendant was not insane, as defined in Instruction 23.

A “substantial step,” as used in the elements of the two lesser-included offenses defined in this instruction, is any conduct, whether act, omission, or possession, which is strongly corroborative of the firmness of the actor’s purpose to complete the commission of the offense.

You should bear in mind that the burden is always upon the prosecution to prove beyond a reasonable doubt each and every element of any lesser offense which is necessarily included in any charged offense; the law never imposes upon a defendant in a criminal case the burden of calling any witnesses or producing any evidence.

After considering all the evidence, if you decide that the prosecution has proven each of the elements of a charged offense or of a lesser-included offense, you should find the defendant guilty of the offense proven, and you should so state in Part A of the verdict form for that count.

After considering all the evidence, if you decide that the prosecution has failed to prove one or more of the elements of a charged offense and one or more of the elements of each of its lesser-included offenses, you should find the defendant not guilty of these offenses, and you should so state in Part A of the verdict form for that count.

While you may find the defendant not guilty of each charged offense and its lesser-included offenses, you may not find the defendant guilty of more than one of the following offenses in the same count:

Attempt to Commit Murder in the First Degree—After Deliberation

Attempt to Commit Murder in the Second Degree

Attempt to Commit Manslaughter

INSTRUCTION NO. 17

The defendant is charged with Attempt to Commit Murder in the First Degree—Extreme Indifference in each of the following counts:

- Count 83 (Petra Hogan)
- Count 84 (Adan Avila Arredondo)
- Count 85 (Brandon Axelrod)
- Count 86 (Toni Billapando)
- Count 87 (Christina Blache)
- Count 88 (Maria Carbonell)
- Count 89 (Alejandra Cardona Lamas)
- Count 90 (Louis Duran)
- Count 91 (Craig Enlund)
- Count 92 (Alex Espinoza)
- Count 93 (Jacqueline Fry)
- Count 94 (Yousef Gharbi)
- Count 95 (Zackary Golditch)
- Count 96 (Munirih Gravelly)
- Count 97 (Eugene Han)
- Count 98 (Kirstin “K.C.” Han)
- Count 99 (Katie Medley)
- Count 100 (Jasmine Kennedy)
- Count 101 (Marcus Kizzar)
- Count 102 (Patricia Legarreta Rohrs)
- Count 103 (Brenton Lowak)
- Count 104 (Ryan Lumba)
- Count 105 (Caleb Medley)
- Count 106 (Ashley Moser)
- Count 107 (Stefan Moton)
- Count 108 (Joshua Nowlan)
- Count 109 (Pierce O’Farrill)
- Count 110 (Prodeo Patria)
- Count 111 (Rita Paulina)
- Count 112 (Christopher Rapoza)

Count 113 (Carli Richards)
Count 114 (Dion Rosborough)
Count 115 (Carey Rottman)
Count 116 (Lucas Smith)
Count 117 (Heather Snyder)
Count 118 (Farrah Soudani)
Count 119 (Catherine Streib)
Count 120 (Jamison Toews)
Count 121 (Denise Axelrod)
Count 122 (Mark “Marcus” Weaver)
Count 123 (Michael White)
Count 124 (David Williams)
Count 125 (Alleen Young)
Count 126 (Jansen Young)
Count 127 (Samantha Yowler)
Count 128 (Gage Hankins)
Count 129 (McKayla Hicks)
Count 130 (Stephen Barton)
Count 131 (Jennifer Avila Arredondo)
Count 132 (Jarrell Brooks)
Count 133 (Amanda Hernandez-Memije)
Count 134 (Nathan Juranek)
Count 135 (Kelly Lewis)
Count 136 (Anggiat Mora)
Count 137 (Bonnie Kathleen Pourciau Zoghbi)
Count 138 (Ethan Rohrs)
Count 139 (Nickelas Gallup)
Count 140 (Evan Farris)
Count 144 (Corbin Dates)
Count 146 (Lauren Shuler)
Count 148 (Jamie Rohrs)
Count 150 (Evan Morrison)
Count 152 (Richelle Hill)
Count 154 (Kaylan Bailey)
Count 156 (Kelly Bowen)

Count 158 (Shirley Clark)
Count 160 (Hailee Hensley)
Count 162 (Victor Edgar Nava Hernandez)
Count 164 (Daybra Thomas-Kizzar)
Count 166 (Caitlin Peddicord)

The elements of the crime of Attempt to Commit Murder in the First Degree—Extreme Indifference, as charged in each of these counts, are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. engaged in conduct constituting a substantial step toward the commission of Murder in the First Degree—Extreme Indifference, as defined in Instruction 13,
5. and that the defendant was not insane, as defined in Instruction 23.

A “substantial step” is any conduct, whether act, omission, or possession, which is strongly corroborative of the firmness of the actor’s purpose to complete the commission of the offense.

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt with respect to a count listed earlier in this instruction, you should find the defendant guilty of that count of Attempt to Commit Murder in the First Degree—Extreme Indifference, and you should so state in Part A of the verdict form for that count.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt with respect to a count listed earlier in this instruction, you should find the defendant not guilty of that count of Attempt to Commit Murder in the First Degree—Extreme Indifference, and you should so state in Part A of the verdict form for that count.

INSTRUCTION NO. 18

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the charged offense in a count listed in Instruction 17, he may, however, be found guilty of any lesser offense, the commission of which is necessarily included in the charged offense if the evidence is sufficient to establish his guilt of the lesser offense beyond a reasonable doubt.

The offense of Attempt to Commit Murder in the First Degree—Extreme Indifference, as charged in each of the counts listed in Instruction 17, necessarily includes the lesser offenses of Attempt to Commit Murder in the Second Degree and Attempt to Commit Manslaughter.

The elements of the crime of Attempt to Commit Murder in the Second Degree are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. engaged in conduct constituting a substantial step toward the commission of Murder in the Second Degree, as defined in Instruction 14,
5. and that the defendant was not insane, as defined in Instruction 23.

The elements of the crime of Attempt to Commit Manslaughter are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. recklessly,
4. engaged in conduct constituting a substantial step toward the commission of Manslaughter, as defined in Instruction 14,
5. and that the defendant was not insane, as defined in Instruction 23.

A “substantial step,” as used in the elements of the two lesser-included offenses defined in this instruction, is any conduct, whether act, omission, or possession, which is strongly corroborative of the firmness of the actor’s purpose to complete the commission of the offense.

You should bear in mind that the burden is always upon the prosecution to prove beyond a reasonable doubt each and every element of any lesser offense which is necessarily included in any charged offense; the law never imposes upon a defendant in a criminal case the burden of calling any witnesses or producing any evidence.

After considering all the evidence, if you decide that the prosecution has proven each of the elements of a charged offense or of a lesser-included offense, you should find the defendant guilty of the offense proven, and you should so state in Part A of the verdict form for that count.

After considering all the evidence, if you decide that the prosecution has failed to prove one or more of the elements of a charged offense and one or more of the elements of each of its lesser-included offenses, you should find the defendant not guilty of these offenses, and you should so state in Part A of the verdict form for that count.

While you may find the defendant not guilty of each charged offense and its lesser-included offenses, you may not find the defendant guilty of more than one of the following offenses in the same count:

Attempt to Commit Murder in the First Degree—Extreme Indifference

Attempt to Commit Murder in the Second Degree

Attempt to Commit Manslaughter

INSTRUCTION NO. 19

In Count 141, the defendant is charged with Possession or Control of an Explosive or Incendiary Device. The elements of the crime of Possession or Control of an Explosive or Incendiary Device are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. knowingly,
4. possessed, controlled, manufactured, gave, mailed, sent, or caused to be sent,
5. an explosive or incendiary device.
6. and that the defendant was not insane, as defined in Instruction 23.

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of Possession or Control of an Explosive or Incendiary Device, and you should so state in Part A of the verdict form for that count.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of Possession or Control of an Explosive or Incendiary Device, and you should so state in Part A of the verdict form for that count.

INSTRUCTION NO. 20

A crime is committed when the defendant has committed a voluntary act prohibited by law, together with a culpable mental state. “Voluntary act” means an act performed consciously as a result of effort or determination, and includes the possession of property if the actor was aware of his physical possession or control thereof for a sufficient period to have been able to terminate it.

Proof of the voluntary act alone is insufficient to prove that the defendant had the required culpable mental state.

The culpable mental state is as much an element of the crime as the act itself and must be proven beyond a reasonable doubt, either by direct or circumstantial evidence.

In this case, the applicable culpable mental states are explained below:

- The term “after deliberation” means not only intentionally, but also that the decision to commit the act has been made after the exercise of reflection and judgment concerning the act. An act committed after deliberation is never one which has been committed in a hasty or impulsive manner.
- A person acts “intentionally” or “with intent” when his conscious objective is to cause the specific result proscribed by the statute defining the offense. It is immaterial whether or not the result actually occurred.

- A person acts “knowingly” or “willfully” with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such a circumstance exists. A person acts “knowingly” or “willfully,” with respect to a result of his conduct, when he is aware that his conduct is practically certain to cause the result.
- A person acts “recklessly” when he consciously disregards a substantial and unjustifiable risk that a result will occur or that a circumstance exists.

INSTRUCTION NO. 21

In this case, certain words and phrases have particular meanings.

Accordingly, you are to use the following definitions where these words and phrases appear in instructions that define crimes, defenses, special rules, and verdict questions.

“Deadly weapon” means: (1) a firearm, whether loaded or unloaded; or (2) a knife, bludgeon, or any other weapon, device, instrument, material, or substance, whether animate or inanimate, that, in the manner it is used or intended to be used, is capable of producing death or serious bodily injury.

A “firearm,” as used in the definition of “deadly weapon,” means any handgun, automatic, revolver, pistol, rifle, shotgun, or other instrument or device capable or intended to be capable of discharging bullets, cartridges, or other explosive charges.

“Explosive or incendiary device” means dynamite and all other forms of high explosives, including, but not limited to, water gel, slurry, military C-4 (plastic explosives), blasting agents to include nitro-carbon-nitrate, and ammonium nitrate and fuel oil mixtures, cast primers and boosters, R.D.X., P.E.T.N., electric and nonelectric blasting caps, exploding cords commonly called detonating cord or det-cord or primacord, picric acid explosives, T.N.T. and T.N.T. mixtures, and nitroglycerin and nitroglycerin mixtures; any explosive bomb, grenade, missile, or

other similar device; any incendiary bomb or grenade, fire bomb, or similar device, including any device, except kerosene lamps, which consists of or includes a breakable container including a flammable liquid or compound and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound and can be carried or thrown by one individual acting alone.

“Explosive or incendiary device” does not include rifle, pistol or shotgun ammunition, or the components for handloading rifle, pistol or shotgun ammunition.

“Person,” when referring to the victim of a homicide, means a human being who had been born and was alive at the time of the homicidal act.

“Possession” constitutes a “voluntary act” if the actor was aware of his physical possession or control thereof for a sufficient period to have been able to terminate it.

“Victim” means any natural person against whom any crime has been perpetrated or attempted, as crime is defined under the laws of this state or of the United States.

INSTRUCTION NO. 22

It is the defendant's theory of defense that he was insane at the time of the commission of the acts. The defendant asserts that he suffers from a chronic and serious mental illness with psychotic features, which falls within the schizophrenia spectrum of disorders. The defendant further asserts that in the spring of 2012, his mental illness worsened. The defendant asserts that around that time, he experienced his first psychotic break and began to suffer from a psychotic delusion that he could increase his self-worth by gaining "human capital" and killing people.

The defendant acknowledges that he engaged in planning and preparation, but asserts that he did so as a result of his delusional beliefs and psychotic thought processes, and that his purpose for engaging in planning and preparation was to pursue a psychotic delusion that he could increase his self-worth and "human capital" by killing other people.

The defendant maintains that his delusional belief system was borne of his mental illness, obscured his ability to make moral distinctions, and rendered him incapable of understanding that his actions were wrong from a societal perspective of morality. The defendant further asserts that his delusional beliefs interfered with his ability to act with reflection and judgment concerning the charged offenses.

INSTRUCTION NO. 23

The evidence in this case has raised the defense of insanity as a defense to all the charged offenses and lesser-included offenses.

The defendant was insane at the time of the commission of each act if:

1. he was so diseased or defective in mind at the time of the commission of the act as to be incapable of distinguishing right from wrong with respect to that act; or
2. he suffered from a condition of mind caused by a mental disease or defect that prevented him from forming a culpable mental state that is an essential element of a charged offense or of a lesser-included offense.

But care should be taken not to confuse mental disease or defect with moral obliquity, mental depravity, or passion growing out of anger, revenge, hatred, or other motives and kindred evil conditions because, when an act is induced by any of these causes, the person is accountable to the law.

In addition, “diseased or defective in mind” does not refer to an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

Similarly, “mental disease or defect” means only those severely abnormal mental conditions that grossly and demonstrably impair a person’s perception or understanding of reality and that are not attributable to the voluntary ingestion of

alcohol or any other psychoactive substance. “Mental disease or defect” does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

The prosecution has the burden to prove beyond a reasonable doubt that the defendant was not insane at the time of the commission of the act alleged in each count. In order to meet this burden of proof, the prosecution must disprove, beyond a reasonable doubt, both of the above numbered conditions with respect to the act alleged in the charged offense in each count and in each of the lesser-included offenses of that charged offense.

After considering all the evidence, if you decide the prosecution has failed to meet this burden of proof, then the prosecution has failed to prove beyond a reasonable doubt that the defendant was sane at the time of the commission of the act, which is an essential element of each charged offense and each lesser-included offense. If you decide that the prosecution has failed to prove beyond a reasonable doubt that the defendant was sane at the time of the commission of the act alleged in a charged offense and in its lesser-included offenses, you must find the defendant not guilty of that charged offense and of its lesser-included offenses. In that event, you should have the foreperson sign on the designated line in Part A of the verdict form for that count to indicate your verdict on that count.

After considering all the evidence, if you decide the prosecution has met this burden of proof, then the prosecution has proved beyond a reasonable doubt that the defendant was not insane at the time of the commission of the act. If you decide that the prosecution has proved beyond a reasonable doubt that the defendant was not insane at the time of the commission of the act alleged in a count, your verdict with respect to the charged offense in that count and the lesser-included offenses of that charged offense must depend upon your determination whether the prosecution has met its burden of proof with respect to the remaining elements of the charged offense and the lesser-included offenses.

INSTRUCTION NO. 24

The phrase “incapable of distinguishing right from wrong,” as used in Instruction 23, refers to a person’s cognitive inability, due to a mental disease or defect, to distinguish right from wrong as measured by a societal standard of morality, even though the person may be aware that the conduct in question is criminal. The phrase “incapable of distinguishing right from wrong,” as used in Instruction 23, does not refer to a purely personal and subjective standard of morality.

INSTRUCTION NO. 25

This is an informational instruction and must have no persuasive bearing on the verdicts you arrive at under the evidence.

If the defendant is found not guilty by reason of insanity, it will be this Court's duty to commit him to the custody of the Colorado Department of Human Services until such time as the Court determines that he is eligible for release. The test for determining a defendant's eligibility for release from this commitment is as follows: that the defendant has no abnormal mental condition which would be likely to cause him to be dangerous either to himself or others, or to the community, in the reasonably foreseeable future, and is capable of distinguishing right from wrong and has substantial capacity to conform his conduct to requirements of law.

If the defendant is found not guilty by reason of insanity, he will never again be tried on the merits of the criminal charges filed against him.

INSTRUCTION NO. 26

If you find the defendant guilty of any charged offense or lesser-included offense in any count, you should disregard the remainder of this instruction, as well as Part B of all the verdict forms.

If, however, you find the defendant not guilty of the charged offenses and lesser-included offenses in all the counts, you should answer the following verdict question in Part B of the verdict form for each count:

Did you find the defendant not guilty on this count solely based on the defense of insanity? (Answer “Yes” or “No”)

The Court reminds you that the prosecution has the burden to prove beyond a reasonable doubt each element of each charged offense and each element of each lesser-included offense. Further, the Court reminds you that an essential element of each charged offense and each lesser-included offense is that the defendant was not insane at the time of the commission of the act.

As to each count, if you decide that the only element of the charged offense and the lesser-included offenses that the prosecution failed to prove beyond a reasonable doubt is that the defendant was sane at the time of the commission of the act, you should have the foreperson mark “Yes” in the appropriate space in Part B of the verdict form for that count, and you should then have the foreperson sign on the designated line in Part B of that verdict form. As to each count, if you

decide that the prosecution failed to prove beyond a reasonable doubt any other element of the charged offense and the lesser-included offenses, you should have the foreperson mark “No” in the appropriate space in Part B of the verdict form for that count, and you should then have the foreperson sign on the designated line in Part B of that verdict form.

INSTRUCTION NO. 27

This instruction does not apply to Count 141, Possession or Control of an Explosive or Incendiary Device. This instruction applies only to the charged offenses and lesser-included offenses in the remaining counts: each charged offense of Murder in the First Degree—After Deliberation and its lesser-included offenses of Murder in the Second Degree and Manslaughter; each charged offense of Murder in the First Degree—Extreme Indifference and its lesser-included offenses of Murder in the Second Degree and Manslaughter; each charged offense of Attempt to Commit Murder in the First Degree—After Deliberation and its lesser-included offenses of Attempt to Commit Murder in the Second Degree and Attempt to Commit Manslaughter; and each charged offense of Attempt to Commit Murder in the First Degree—Extreme Indifference and its lesser-included offenses of Attempt to Commit Murder in the Second Degree and Attempt to Commit Manslaughter.

If you find the defendant not guilty of all the charged offenses and lesser-included offenses in all the counts to which this instruction applies, you should disregard the rest of this instruction, as well as Part C of each verdict form.

If, however, you find the defendant guilty of the charged offense or a lesser-included offense in a count to which this instruction applies, you should answer the following verdict question in Part C of the verdict form for that count:

Did the defendant use, or possess and threaten the use of, a deadly weapon? (Answer “Yes” or “No”)

The defendant used, or possessed and threatened the use of, a deadly weapon only if:

1. the defendant used, or possessed and threatened the use of, a deadly weapon,
2. during the commission of the offense proven, or in the immediate flight therefrom.

The prosecution has the burden to prove each numbered condition beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has met this burden of proof with respect to the offense proven in a particular count, you should have the foreperson mark “Yes” in the appropriate space in Part C of the verdict form for that count, and you should then have the foreperson sign on the designated line in Part C of that verdict form.

After considering all the evidence, if you decide the prosecution has failed to meet this burden of proof with respect to the offense proven in a particular count, you should have the foreperson mark “No” in the appropriate space in Part C of the verdict form for that count, and you should then have the foreperson sign on the designated line in Part C of that verdict form.

INSTRUCTION NO. 28

During this trial, you were permitted to submit written questions to witnesses. 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. In making your decisions, you must consider all of the evidence that has been presented.

INSTRUCTION NO. 29

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 verdict forms at the end of the case.

INSTRUCTION NO. 30

Following the attorneys' closing arguments, the bailiffs will escort you to the jury room, where you will select one of your members to be your foreperson. Your foreperson will preside over your deliberations and shall sign any part of a verdict form that you may agree on, according to the rules that I am about to explain.

The verdict form for Count 141, Possession or Control of an Explosive or Incendiary Device, contains two parts: Part A and Part B. The verdict forms for the remaining 164 counts contain the same two parts and an additional part, Part C.

You should indicate your verdict with respect to each count in Part A of the verdict form. If your verdict on a count is not guilty of the charged offense and the lesser-included offenses, you should have the foreperson sign on the designated line in Part A of the verdict form for that count. If your verdict on a count is guilty, you should have the foreperson place, in ink, an "X" in the space next to the offense that you conclude has been proven by the prosecution beyond a reasonable doubt (whether the charged offense in that count or a lesser-included offense of that charged offense), and you should then have the foreperson sign on the designated line in Part A of the verdict form for that count. Because the charged offense of Possession or Control of an Explosive or Incendiary Device (Count 141) does not have any lesser-included offenses, if you find the defendant guilty of that

charged offense, you should only have the foreperson sign on the designated line in Part A of the verdict form for that count.

Only one verdict shall be returned signed in Part A of the verdict form for each count.

As mentioned earlier in these instructions, each count charges a separate and distinct offense, and the evidence and the law applicable to each count should be considered separately, uninfluenced by your decision as to any other count. Therefore, the fact that you may find the defendant guilty of the charged offense or a lesser-included offense in a count should not control your verdict as to the charged offense and lesser-included offenses in any other count. Similarly, the fact that you may find the defendant not guilty of the charged offense and the lesser-included offenses in a count should not control your verdict as to the charged offense and the lesser-included offenses in any other count. This is the case even if the reason that you find the defendant not guilty of the charged offense and the lesser-included offenses in a count is solely based on the prosecution's failure to prove beyond a reasonable doubt that the defendant was sane at the time of the commission of the act.

Having said that, if you find the defendant guilty of **any** charged offense or lesser-included offense in **any** count, you should disregard Part B of **all** the verdict forms. You should answer the verdict question in Part B of the verdict forms **only**

if you find the defendant not guilty of all the charged offenses and all the lesser-included offenses in this case. (The verdict question in Part B of each verdict form asks whether the jury found the defendant not guilty of the charged offense and the lesser-included offenses solely based on the defense of insanity). Pursuant to these instructions, you will either complete Part B of all the verdict forms or you will disregard Part B of all the verdict forms.

If, based on your verdicts, you determine that you should answer the verdict question in Part B of all the verdict forms, you should have the foreperson complete and sign that part of each verdict form.

In the event that you find the defendant guilty of any charged offense or lesser-included offense in a count, you should answer the verdict question in Part C of the verdict form for that count, and you should have the foreperson complete and sign Part C of that verdict form. (The verdict question in Part C of each verdict form asks whether the defendant used, or possessed and threatened the use of, a deadly weapon). The verdict form for Count 141, Possession or Control of an Explosive or Incendiary Device, does not have a Part C because the verdict question in Part C does not apply to Count 141.

If you conclude that the verdict question in Part B of all the verdict forms should be answered, only one answer shall be returned signed in that part of each verdict form. Similarly, if you conclude that the verdict question in Part C of any

verdict form should be answered, only one answer shall be returned signed in that part of the verdict form.

Your verdict as to each charged offense and lesser-included offense must represent the considered judgment of each juror, and must be unanimous. Likewise, your response to any verdict question that you conclude should be answered (whether in Part B or Part C of a verdict form) must represent the considered judgment of each juror, and must be unanimous. All of you must agree to all the parts of each verdict form.

The verdict forms and these instructions shall remain in the possession of your foreperson until I ask for them in open court. Upon reaching your verdicts and answering any verdict question or questions that you conclude should be answered, you will inform the bailiffs, who in turn will notify me, and you will remain in the jury room until I call you into the courtroom.

You will be provided with 165 verdict forms. Each verdict form contains directions with respect to: (1) how to state your verdict in Part A of each verdict form; (2) under what circumstances you should answer the verdict question in Part B of all the verdict forms; and (2) under what circumstances you should answer the verdict question in Part C of any verdict form. Because the verdict form for Count 141, Possession or Control of an Explosive or Incendiary Device, does not contain a Part C, it only has instructions related to Part A and Part B of the verdict form.

I will now read to you five verdict forms, which represent the five different types of verdict forms you will receive: (1) for each charged offense of Murder in the First Degree—After Deliberation and its lesser-included offenses; (2) for each charged offense of Murder in the First Degree—Extreme Indifference and its lesser-included offenses; (3) for each charged offense of Attempt to Commit Murder in the First Degree—After Deliberation and its lesser-included offenses; (4) for each charged offense of Attempt to Commit Murder in the First Degree—Extreme Indifference and its lesser-included offenses; and (5) for the charged offense of Possession or Control of an Explosive or Incendiary Device. You must not draw any inferences based on the verdict forms I have selected to read to you or from the order in which I read them.