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7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF MOHAVE**

9 **STATE OF ARIZONA,**

10 Plaintiff,

11 vs.

12 **JUSTIN JAMES RECTOR**

13 Defendant.

14) NO: CR 2014 - 01193

15) **DEFENDANT'S FORMAL OBJECTION**
16) **TO FILING EX PARTE MITIGATION**
17) **MEMORANDA AS ORDERED**
18) **JANUARY 27TH, 2017 // MOTION FOR**
19) **APPOINTMENT OF AN INDEPENDENT**
20) **"MITIGATION MASTER" TO MONITOR**
21) **DEFENSE MITIGATION EFFORTS**
22) **INDEPENDENT OF TRIAL COURT**
23) **PARTICIPATION AND INJECTION INTO**
24) **DEFENSE'S INDEPENDENT**
25) **MITIGATION INVESTIGATION**

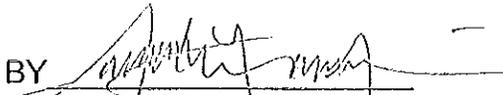
26 (ASSIGNED TO THE HON. LEE JANTZEN)

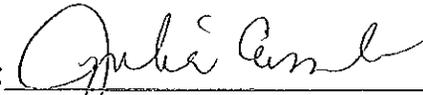
19 Defendant Justin James Rector, by and through undersigned counsel, OBJECTS
20 to the Courts Orders of January 27th and February 13th, 2017 that it file additional
21 memoranda regarding exactly what avenues of mitigation are being explored and
22 investigated, and asks the order be vacated. By corresponding Motion, the Defense
23 requests appointment of a "Mitigation Master", and independent Arizona Judge with
24 Capital Case experience, to oversee Defendant's efforts and ensure compliance with
25 trial court case preparation, without being *both* the neutral judge in the trial case, *and*
26 actively involved in the independent defense investigation, for the reasons cited in the
27 Memorandum of Points and Authorities attached hereto and incorporated herein.
28

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RESPECTFULLY SUBMITTED This 24th day of February 2017 BY:

1
2
3 BY 
4 Gerald T. Gavin
Co-Counsel for Mr. Rector

BY: 
Julia Cassels
Co-Counsel for Mr. Rector

5
6 **MEMORANDUM OF POINTS AND AUTHORITY**

7 The Defense, pursuant to the United States Constitution Amendments V, VI, VII,
8 XIV, and Arizona Constitution Article 2, §§ 4, 13, and 24, the 2003 American Bar
9 Association Guidelines for the Appointment and Performance Defense Counsel in
10 Death Penalty cases, Ake v. Oklahoma, 470 U.S. 68 (1985) and its progeny, has
11 already provided the Court, in chambers and unsolicited by the court, a written general
12 summary of mitigation efforts undertaken. The Defense strongly objects to the trial
13 judge essentially joining the defense team to review areas being independently
14 investigated and explored strictly for mitigation. The defense protests being subjected
15 both sides discovery issues are not addressed equitably.

16 The Defense recognizes and respects the Courts power in overseeing and managing
17 the overall case progress. The Defense notes the Court has not demanded the same
18 updates from the Prosecution, despite numerous defense motions and requests.

19
20 The Court has given latitude to the defense for very good reason: the State
21 caused nearly a year delay by noticing "witnesses" that decimated the defense team.
22 The defense has always answered and addressed progress on the case to, what
23 everyone believed, was the Court's satisfaction. Mitigation deadline delays were not
24 formally addressed bynot just the defense, but the Prosecution and this Court. All
25 parties were aware of the unforeseen complications. The Court didn't address setting
26 any formal mitigation deadlines because of the difficulties in obtaining new 2nd chair trial
27 counsel and a case investigator...again no fault of the defense. *The defense notes*
28 *despite 10 months passing from the State noticing these confidential witnesses and*

1 causing such great upheaval, no further discovery on these witnesses has been
2 tendered. The defense motion laying out all the information in State control, and
3 requested to be provided to the defense, was denied by the Court. At the Court's
4 invitation, that Motion for Information on those witnesses is being refiled and
5 renewed today by separate motion. The court has made no demands on the State
6 to comply. In *Rompilla v. Beard*, 545 U.S. at 387, the United State Supreme Court said
7 in relevant part:

8 " It is the duty of the lawyer to conduct a prompt
9 investigation of the circumstances of the case
10 and to explore all avenues leading to the facts
11 relevant to the merits of the case and the penalty
12 in the event of conviction. **The investigation
13 should always include efforts to secure
14 information in the possession of the prosecution
15 and law enforcement authorities.**

(emphasis added)

14 Other than a general admonition to the State to observe disclosure requirements,
15 a review of the minute entries in this case shows, the defense believes, a lack of any
16 specific direction or order for the State to provide the defense with any missing
17 discovery, despite numerous defense motions, the vast majority denied by this Court.
18 By not enforcing discovery requests against the State, the court effectively throws
19 required discovery from the State to the defense, adding to delay and necessary
20 investigation the Defense cannot ignore.

22 **Formal Request for Mitigation Master Appointment**

23 The defense formally requests this Court immediately order that an independent
24 Judge, with Capital trial experience outside and independent of Mohave County, be
25 appointed by a date certain in the near future. While the defense acknowledges and
26 abides this Court's inherent authority, it is deeply concerned the defense is being held to
27 standards the prosecution is not. The Court can strictly interpret the rules from here on
28

1 out, in stark contrast to the rule of the case to date, as it wishes. The result of which, as
2 the Court threatens, is sanctions against...primarily...the defense for discovery
3 violations. This will force defense counsel to be prima facie ineffective, and force their
4 removal from the case and...again....a search for two brand new lawyers to assume
5 Mr. Rector's case. As such...they will need a minimum two years...and to be effective
6 more... to acclimate to the case, review the enormous discovery, contact their own
7 expert and lay witnesses, and file their own motions and requests, and conduct their
8 own investigation as required by the 2003 ABA Guidelines for Defense Counsel in
9 Capital Cases, as adopted in Arizona by our Courts. This will cause enormous financial
10 costs, and further delay justice and resolution of this case for years. No new counsel
11 will simply jump on board and get to trial quickly: that would ensure a death sentence
12 and be legal malpractice.

14 The Defense states the following with the greatest respect for the Court and the
15 Prosecutor of this case: neither has ever defended, prosecuted, or sat as trial judge in
16 a Capital case. The complexities and requirements of these cases are enormous.
17 The number of potential witnesses, the exploration of every possible defense, the time
18 and effort needed to track down documents and witnesses, the development of trusting
19 relationships with mitigation witnesses, family and friends, is not comparable to any
20 other case. The defense has attempted to be cost conscious, and has not to date
21 requested additional investigative and mitigation assistance.

23 If the Court is going to know now enforce strict deadlines, the defense will be
24 forced to ask for additional assistance to meet the Court's deadlines. Both Defense
25 Counsel, and the Mitigation Specialist, commute 3 and ½ hours to work locally on this
26 case; the investigator lives over an hour and ½ away in Prescott, Arizona. The lack of
27 death qualified assistance in this rural area complicates investigation timelines.

1
2 The defense objects to the trial judge becoming ensconced in defense strategy
3 and decisions made to save Mr. Rector; he is entitled to an independent defense case
4 being created without disclosing competing defense theories and evidence before its
5 fully investigated. While the State has the Bullhead City Police Department, the
6 Mohave County Sheriffs Office, the Federal Bureau of Investigations, the Kingman
7 Police Department, the Bullhead City Fire Department, and the Mohave County
8 Attorney's office investigators at their disposal, the defense has a single investigator,
9 who has been devoted, at counsel's direction, to assist preparing the mitigation portion
10 of this case. He and the Mitigation Specialist have made outstanding progress in
11 obtaining documentation and witness location, contact, and development necessary in
12 capital cases. The defense brought many large binders of documents into chambers to

13
14 give the court a visual overview of exactly how much work has been completed. ,
15 defense will request, via separate motion, a transcript of the proceedings of January
16 27th, 2017, that the Court was shown in chambers, via agreed ex parte meeting in
17 chambers, the extent of mitigation progress to date. The defense believes the transcript
18 will show the Court, after that meeting, *was satisfied adequate progress was being*
19 *made.*

20 The defense notes, following that hearing, a critical local newspaper article was
21 published essentially characterizing the defense counsel deliberately causing delay,
22 lamenting the delays involved. That article is attached hereto as Exhibit "A"; the timing
23 of which immediately proceeded the issuance of a highly unusual 2nd minute entry,
24 highly critical of the defense and in stark contrast to the Courts comments at the
25 hearing.
26

27 Now....the Court wants specific confidential information on what theories the
28 defense is exploring, what witnesses and documents are being assembled, what

1 avenues of investigation are being pursued,....all so the court, one would assume, can
2 offer commentary, direction and directives on what is appropriate and what is not in the
3 mitigation investigation. The defense maintains they are entitled to confidences in
4 formulating a plan to save Mr. Rector, and do not need or desire input from the court
5 into that sacred area. The Court is also demanding to know what defense counsel are
6 doing, butconsistently....makes no such request of the State. The Court has
7 threatened sanctions...although in the entirety of this case the Court, by all
8 appearances formal and informal, was satisfied progress was being made.

9 **FORMAL OBJECTION TO FILING EX PARTE MITIGATION UPDATE**

10 Counsel....of course...respects the authority of this court. The defense has
11 prepared the ordered Mitigation Report, at the hearing on January 27th. The defense
12 will bring it to court for Judge Jantzen...and have it available for the Judge on February
13 24th, 2017 as ordered. The defense will request, orally but on the record, the Court
14 reconsider this order and not require the defense to comply. The defense would instead
15 ask the above request for an independent judicial officer in the state, with capital
16 experience, be appointed to review this and all further reports as a "Mitigation Master".
17 This was a procedure implemented and adopted in Maricopa County (the Phoenix area)
18 on all capital cases to avoid the problems already laid out in this motion.

19 That judge can provide any perceived necessary oversight, and ensure proper efforts
20 are being made, without the actual trial judge becoming a de facto member of the
21 defense team, and invade the province of the defense relationship with their client. A
22 judge with previous capital trial experience would understand, and be already exposed,
23 to the myriad of complications life and death cases entail in all phases...but especially
24 the mitigation phase. Mr. Rector's life is literally at stake and all possible efforts to
25 assist him must be made. Such a judge can conduct any hearings or meetings in their
26 office in Phoenix, meet with defense team, and issue a minute entry updating this Court
27
28

1 about the defense's progress and an assessment of ongoing investigation...as a neutral
2 observer not otherwise involved in the administration of this case. It would take a
3 minimal amount of time for that judge, provide this court with all the necessary
4 information, yet insulate the defense from overreaching judicial entanglement and
5 involvement in forming a viable defense.

6 If the Court demands the order be followed, the report will be provided *under*
7 *objection and protest*, to the Court. In the event it is tendered, the defense specifically
8 requests it be placed under Court seal, not available to the prosecution, the general
9 public, or anyone other than Judge Jantzen. *It forces the defense to provide*
10 *confidential strategy and defense direction information, information counsel believes*
11 *inappropriate for anyone other than the defense team and client.*
12

EXHIBIT "A"



Kingman Daily Miner analysis: Delayed Justice



Bella Grogan-Cannella, right, and Ariel Allison, left were each brutally murdered. The death penalty cases, in Bella's case a family friend, and in Ariel's, her mother's ex-boyfriend, are moving at a snail's pace through the judicial system.

Story by Doug McMurdo

Sunday, February 5, 2017

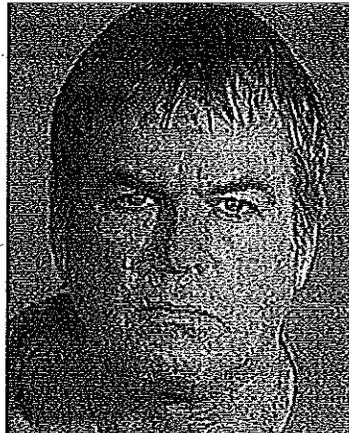
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Justin James Rector



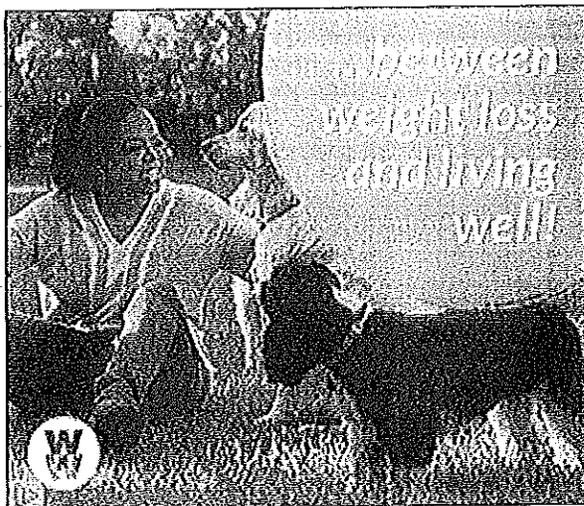
Darrell Ketchner

Nearly two and a half years have passed since Bella Grogan-Cannella's partially clad body was found in a shallow grave in a Bullhead City wash.

The man charged with killing the 8-year-old was quickly apprehended, jailed, and indicted on one count of first-degree murder and other alleged crimes.

The horrific sexual assault and murder-by-strangulation gained national notoriety. Few victims are more sympathetic than an innocent child and Mohave County Attorney Matt Smith and his staff decided the now 28-year-old Justin James Rector, if ultimately convicted, should be subject to the death penalty. [MENU](#)

Defense attorneys came and went, but the one who stuck around is Gerald Gavin, a man who has filed dozens of documents for prosecutor Greg McPhillips to respond to and Mohave County Superior Court Judge Lee Jantzen to rule on.



Gavin, a fierce opponent of the death penalty, has made it clear he will do whatever he legally can do to spare his client the ultimate punishment.

One tactic is to draw things out, which he's done. In 2014, Jantzen scheduled the trial for October – of 2016 – giving attorneys what appeared to be more than ample time to prepare.

When it became obvious that date would never be met, Jantzen set a new trial date for May, tacking on another eight months.

This isn't a criticism of Gavin or anyone else involved in this case. When the state seeks to kill one of its citizens, exercising an abundance of due care to ensure a fair trial for the accused is not only a legal duty, but a moral imperative.

But at what point does justice delayed become justice denied? The legal maxim requires justice to be speedy, but not to the point it becomes reckless. Clearly, Rector has and should be afforded every consideration.

The Issue

One of the primary conflicts between Gavin and McPhillips regards a mental health examination. Rector is under no legal obligation to submit to the examination. Gavin, however, has said he intends to have Rector examined, but not before he has gathered all of his mental health records. That process has been underway almost from the start of the case.

McPhillips wants the examination to be conducted so a doctor could presumably determine Rector's state of mind during the alleged attack and murder.

While the process of gathering mental health records began more than two years ago, both Jantzen and McPhillips have voiced concerns in court hearings about how much longer this will take.

McPhillips at a hearing on Jan. 27 said he was concerned about "having our eyes on the ball" regarding the mental health records. Jantzen agreed, telling Gavin he needed to "get to the end

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of the line" with his search.

Gavin, for his part, said he anticipates Rector's mental health history to be part of his defense strategy.

Those examinations will have to take place sooner rather than later if the case is to remain on track for a May trial. Jantzen has not yet extended the date, but it's expected he will, perhaps in March when Rector is next in court for a status hearing.

Ketchner Trial

Meanwhile, the second death penalty trial of Darrell Ketchner, the man who stabbed to death 18-year-old Ariel Allison and shot her mother, Jennifer Allison, on July 4, 2009, has been slowly and quietly moving forward since February 2014, when an appellate court determined the state permitted prejudicial testimony from a domestic violence expert. The higher court reversed the murder conviction and sent the case back to Mohave County to be retried.

Ketchner never denied committing the crimes. His entire defense focused on avoiding the death penalty. Still, it took four years for that case to conclude, only to be sent back for another trial two years ago.

When a Mohave County jury handed down the death penalty following Ketchner's first trial in 2013, Jennifer Allison told the Miner she was pleased with the verdict.

She said it gave her closure, but nearly eight years have gone by since that horrible night and closure continues to prove elusive.

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1 ORIGINAL of the foregoing filed
2 this ____ day of February, 2017 with:

3 Clerk of Court
4 401 E Spring Street
5 Kingman Arizona 86401

6
7 COPY of the forgoing
8 Delivered this 24th day
9 of February, 2017, to:

10 Honorable Lee Jantzen
11 Judge of the Superior Court
12 Mohave County Courthouse
13 2nd floor
14 Kingman Arizona 86401

15
16 Greg McPhillips
17 Assigned Deputy County Attorney
18 PO Box 7000
19 Kingman Arizona 86401

20 Client Justin James Rector
21 Mohave County Jail

22 File

23
24 BY: 