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2015 MAY 12 PM 2:48
VIRLYNN TINNELL
SUPERIOR COURT CLERK

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE

STATE OF ARIZONA,

Plaintiff,

vs.

JUSTIN JAMES RECTOR

Defendant.

NO: CR 2014-01193

**DEFENDANT'S MOTION IN LIMINE:
"NEXUS" OR CAUSATION**

(ASSIGNED TO THE HON. LEE JANTZEN)

Defendant Justin James Rector, by and through undersigned counsel, moves *in limine* for an order precluding the State from offering any evidence or argument that Mr. Rector has failed to prove a nexus, link, connection, or causal relationship between any mitigation evidence and the charged offense. Allowing the State to present evidence and argument regarding that will violate Mr. Rector's constitutional rights to due process, equal protection, right to counsel, and a fair trial and possibly appeal, as well as freedom from cruel and unusual punishment under the 5th, 6th, 8th, and 14th Amendments to the United States Constitution, and the corresponding provisions of the Arizona Constitution, as explained in the Memorandum of Points and Authorities attached hereto and incorporated herein.



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RESPECTFULLY SUBMITTED this 12th day of May, 2015.

By: 
GERALD T. GAVIN
Co-Counsel for the Defendant

By: 
RON GILLO
Co-Counsel for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

The United States and Arizona Constitutions preclude the State from requiring that a criminal defendant prove the existence of a "nexus" or causal relationship between the offense and mitigation evidence offered by the defendant. In Tennard v. Dretke, the United States Supreme Court made clear that requiring a capital defendant to show that the criminal act for which he or she faced sentencing was caused by a particular mitigating circumstance offered by the defendant could not pass constitutional muster. 542 U.S. 274, 282-88 (2004). In that case, the Court reversed the Fifth Circuit Court of Appeals' decision to deny habeas relief to a capital defendant in part because the defendant failed to show "that the criminal act was attributable to [a specific mitigating circumstance.]", finding the Fifth Circuit's decision "has no foundation in decisions of this Court." 542 U.S. at 282-84. The Court stressed that as long as evidence is relevant in that it is "evidence which tends logically to prove or disprove some fact or circumstance which a fact-finder could reasonably deem to have mitigating value", the State cannot keep the factfinder from considering it as evidence that warrants a sentence less than death. *Id.* at 542 U.S. at 284-85. Only months later, the Court reiterated that it had "rejected the"nexus" requirement in Tennard, repeated the minimal relevance threshold requirement, and accordingly, again overturned a Fifth Circuit decision that had denied habeas relief based in part on that requirement. Smith v. Texas, 543 U.S. 37, 43-45, 48-49. In short, a capital defendant need do no more than

1 s respect to level of punishment; he or she need not also prove a direct causal link
2 between the proffered circumstance and the offense.

3 Notwithstanding these unequivocal condemnations of a "nexus" or "connection"
4 or "link" requirement, the Arizona Supreme Court has inexplicably determined that a
5 prosecutor may question expert witnesses concerning "connections" between mental
6 health evidence and the offense and comment in closing argument that a defendant has
7 failed to establish any "link" or "connection between the evidence and the offense
8 because such questioning and comment go only to the weight of the evidence. *E.g.*,
9 State v. Anderson, 210 Ariz. 327, 349-50, 11 P. 3d 369, 391-92 (2005). That logic flies
10 in the face of the plain and unambiguous language of Tennard and Smith. Such
11 questioning and argument necessarily reach more than the weight of the evidence:
12 Supported by the authority of the State, they suggest that a "link" or "causation"
13 between the evidence and the offense is mandatory and that the jury cannot consider
14 the evidence if the defendant has not established that "link" or "connection". The
15 questioning and argument at issue fail to make clear the true state of the law: A criminal
16 defendant need not establish a causal connection, whether the term is "nexus" or "link"
17 or a "connection", to show that the proffered evidence caused the defendant to commit
18 the offense.

19
20 The State is allowed to argue that mitigating evidence is entitled to little or no
21 weight because the evidence is of little substance, not because the defendant has failed
22 to establish a nexus or link between the evidence and the offense. For example, a jury
23 may find that a defendant has established that he or she was neglected or abused as a
24 child but nonetheless afford that evidence little weight because the defendant
25 established only one or two instances of neglect or abuse or because the nature of the
26 abuse or neglect was not significant. The jury may not, however, disregard the
27 evidence because the defendant did not establish a direct tie between the evidence and
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1 the offense or prove that the abuse or neglect caused him or her to commit the offense.

2 Smith, 543 U.S. at 43-45, 48-49; Tennard, 542 U.S. 282-88.

3 Accordingly, the Court should preclude the State from asking questions about
4 causal connections or arguing either directly or by implication that the jury must not
5 consider the evidence absent proof of a causal connection.

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1 ORIGINAL of the foregoing filed
2 this 12th day of May, 2015 with:

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

6 COPY of the forgoing
7 Delivered this 12th day
8 Of May, 2015, to:

9 Honorable Lee Jantzen
10 Judge of the Superior Court
11 Mohave County Courthouse
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26 File

27 BY: 

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