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FILED  
BY: \_\_\_\_\_

2015 JUL 15 11:22

VIRLYNN TIRNELL  
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

**DEFENSE MOTION TO ALLOW  
INDEPENDENT DEFENSE  
INVESTIGATORY ACCESS TO THE  
ALLEGED VICTIM(S) WITHOUT ANY  
INTERFERENCE FROM THE  
PROSECUTION**

(ASSIGNED TO THE HON. LEE JANTZEN)

Defendant Justin James Rector, by and through undersigned counsel, hereby moves this Court for an order that the defense is permitted direct access to any alleged victim(s), permitting the defense to contact directly such designated people directly to arrange defense interviews, without going through the prosecution acting as a go-between, or filter, to such request. To allow such prosecutorial input taints the independent status of the defense investigation, allowing the State to unconstitutionally infiltrate the independent investigation, coopt it as a joint exercise, and allow State interference in the *defense's independent investigation of this case*. The defense objects to the State advising the alleged victims on whether to participate, objects to the

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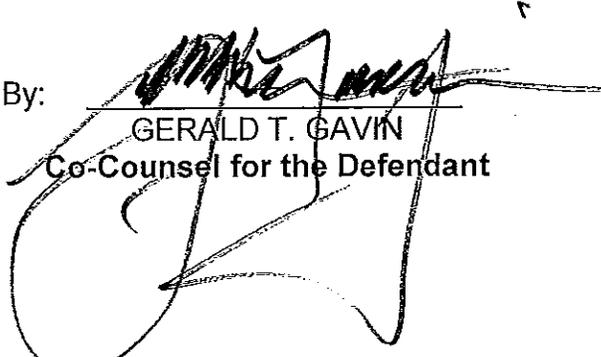
S8015CR201401193

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1 near-universal admonition from the State that alleged victims should reject requests for  
2 defense interviews, and have any input about how the defense conducts a supposedly  
3 independent investigation, as explained in the Memorandum of Points and Authorities  
4 attached hereto and incorporated herein.

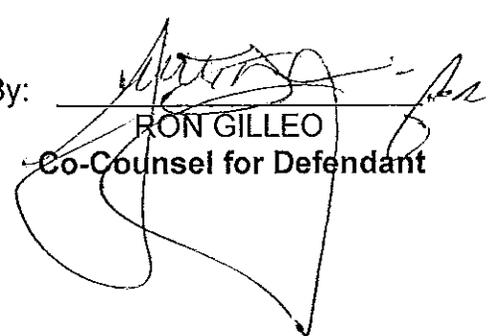
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6 **RESPECTFULLY SUBMITTED** this 15th day of July, 2015.

7  
8  
9 By:

  
GERALD T. GAVIN

Co-Counsel for the Defendant

By:

  
RON GILILEO

Co-Counsel for Defendant

11  
12  
13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 Defense Counsel for has a duty to conduct an *independent* investigation into the  
15 charges lodged against Mr. Rector to insure his rights are protected, and all possible  
16 issues and defenses are explored fully. Defense counsel must conduct "thorough and  
17 independent" investigations relating to issues of both guilt and penalty. *American Bar*  
18 *Association Guidelines for the Appointment and Performance of Defense Counsel in*  
19 *Death Penalty Cases 10.7 (revised 2003)*. These Guidelines "are not aspirational...[but  
20 rather] embody the current consensus about what is required to provide effective  
21 defense representation in capital cases." *History of the ABA Guideline 1.1*. The United  
22 States Supreme Court has affirmed that the Guidelines are established standards for  
23 capital defense counsel. *Wiggins v. Smith*, 539 U.S. 510., 123 S.Ct. 2527, 2537  
24 (2003) (the ABA Guidelines for the Appointment and Performance of Counsel in Death  
25 Penalty Cases are "well-defined norms".) See also *Ariz. Rules of Crim. P. 6.8(b)(iii)*  
26 (counsel in capital cases shall be familiar with the ABA Guidelines). As part of that  
27 *independent* investigation, the defense needs to interview all witnesses that may appear  
28

1 at trial, may aid the prosecution in presenting its case, or provide mitigating evidence for  
2 the defense; for strategy and tactical reasons, it is essential the defense have control  
3 over how such interviews are investigated, who is present, and timing of certain  
4 interviews. The State, through its assigned attorneys, should not dictate who is to be  
5 interviewed, what questions may be asked, or similar restrictions. The State should not  
6 have any control over who is interviewed, the dates and times of those interviews, or  
7 how to conduct such interviews. The defense merely asks for the same independence  
8 the State takes for granted, when police and state investigators decided who they  
9 contacted in regards to this investigation, when they spoke with witnesses, what  
10 questions were asked of witnesses, and generally how to conduct its investigation. The  
11 State conducted its investigation free of any defense input, objection, comment or  
12 suggestion. Mr. Rector simply requests the same courtesy. It is essential to conduct an  
13 untainted independent investigation.  
14

15 In 1989, the Arizona Supreme Court promulgated the first Victim's Rights rule in  
16 Arizona; Rule 39, Arizona Rules of Criminal Procedure. Necessarily, its applicability  
17 was limited to the judicial department. In the election of 1990, the people of Arizona  
18 voted to constitutionalize a much broader Victim's Bill of Rights ("the Bill") and granted  
19 statutory implementation powers to the legislature. Ariz. Const. Art. II, §2.1(A) (5). In  
20 1991, the legislature passed an extensive Victim's Rights Implementation Act ("the Act")  
21 pursuant to its powers under §2.1 (D). See A.R.S. §§ 13-4401 to 13-4438. That same  
22 year, the Supreme Court amended rule 39 to conform to implementing legislation.  
23

24 Defendant, for purposes of this motion, does not quarrel with a victim's right to  
25 deny a pretrial interview with defense counsel. Nor does defendant quarrel with  
26 status as a potential qualifying victims under the Act. "Victim" means a person against  
27 whom the criminal offense has been committed, or if the person is killed or  
28 incapacitated, the person's immediate family or other lawful representative, except if the

1 person is in custody for an offense or is the accused." A.R.S. §13-4401(19). In Knapp  
2 v. Martone, 170 Ariz. 237, 239, 823 P.2d 685, 697 (1992), the Arizona Supreme  
3 Court ruled that the trial court erred by denying victim status to an unindicted principal  
4 "who was, is, or could be a suspect in a case."

5 Mr. Rector *does challenge* the constitutionality of A.R.S. § 13-4433(B), however,  
6 as violative of the First, Fifth, Sixth, and Fourteenth Amendments to the United States  
7 Constitution and Article II, §§ 4, 6, and 24 of the Arizona Constitution. Specifically,  
8 requiring defense counsel to go through the prosecution to request an interview with a  
9 victim violates the defendant and undersigned's right to free speech, and Mr. Rector's  
10 rights to due process, equal protection and the right of confrontation.

11 According to A.R.S. §13-4433(B), "The defendant, the defendant's attorney or an  
12 agent of the defendant shall only initiate contact with the victim through the prosecutor's  
13 office. The prosecutor's office shall promptly inform the victim of the defendant's  
14 request for an interview, and *shall advise the victim of the victim's right to refuse the*  
15 *interview.*" (emphasis added). This court is required to presume the Act is  
16 constitutional. City of Tucson v. Rineer, 193 Ariz. 160, 971 P.2d 207 (App. 1998).  
17 Also, "[t]he party challenging the validity of a statute has the burden of overcoming the  
18 strong presumption." State v. Tocco, 156 Ariz. 116, 119, 750 P.2d 874, 877 (1988).

19 However, "if, in a given case, the victim's state constitutional rights conflict with a  
20 defendant's federal constitutional rights to due process and effective cross-examination,  
21 the victim's rights must yield. The Supremacy Clause requires that the Due Process  
22 Clause of the U.S. Constitution prevail over State constitutional provisions." State v.  
23 Riggs, 189 Ariz. 327, 330-31, 942 P.2d 1159, 1162-63 (1997); *see also* State v.  
24 ex.rel. Romley v. Superior Court, 172 Ariz. 232, 240-41, 836 P.2d 445, 453-54  
25 (App.1992) (disclosure of victim's medical records ordered).  
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1 Moreover, in this motion, Mr. Rector is not challenging the constitutionality of a  
2 victim's right to refuse an interview; specifically, he is challenging the constitutionality of  
3 requesting an interview only through the prosecutor's office. In the years of prior  
4 criminal defense experience with similar requests, counsel cannot recall a single  
5 instance where the State urged cooperation with the defense, and believes it nearly a  
6 universal unwritten rule that the prosecutor will advise the witness to, in fact, *refuse*  
7 *such an interview* and stymie the defense's essential investigation into relevant facts to  
8 protect the defendant's rights at trial.

9 Mr. Rector's insists the State attorneys are not part of his defense team; their  
10 input, direction and participation in how critical interviews are conducted for Mr. Rector  
11 is unwelcome, unwanted and unconstitutional. The defense was not permitted input  
12 into the State's investigation; the same should hold true for the State. Allowing such  
13 input directly impacts the effective, and private, factual investigation of charges against  
14 the defendant by the very party attempting to insure him being put to death. It is an  
15 unethical and impermissible conflict to which Mr. Rector strenuously objects. It allows  
16 the State to advise the witness whether to cooperate with the defense request, how to  
17 respond, reasons why the witness should reject the request, and other negative input  
18 that directly interferes with Mr. Rector's essential investigation to save his own life.

19 Portions of A.R.S. § 13-4433 have already been found unconstitutional.  
20 See State v. Roscoe, 185 Ariz. 68, 912 1297 (1996) (finding A.R.S. § 13-4433(F) and  
21 Criminal Rule 39 unconstitutional to the extent they conflict with the definition of the  
22 term "victim" as provided in the Victim's Bill of Rights, although undersigned is unaware  
23 of any reported cases raising the precise issue raised herein.  
24

25 In conclusion, Mr. Rector requests this court hold that the undersigned counsel  
26 be allowed direct and unfettered investigatory access to attempt to obtain a pretrial  
27 interview with any named victims without the necessity of complying with the provision  
28

1 of A.R.S. § 13-4455 (B) requiring such interviews be requested exclusively through the  
2 prosecutor's office. If the victims reject such an independent request, the defense will of  
3 course respect such an answer and abide by the denied access.

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1 ORIGINAL of the foregoing filed  
this 15th day of July, 2015 with:

2 Clerk of Court  
3 401 E Spring Street  
Kingman Arizona 86401

4 COPY of the forgoing  
5 Delivered this 15th day  
6 Of July, 2015, to:

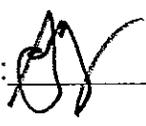
7 Honorable Lee Jantzen  
8 Judge of the Superior Court  
Mohave County Courthouse  
9 2<sup>nd</sup> floor  
Kingman Arizona 86401

10 Greg McPhillips  
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11 PO Box 7000  
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12 Ron Gileo  
13 Mohave County Legal Defender  
14 Co-Counsel for Justin James Rector  
313 Pine Street  
15 PO Box 7000  
Kingman Arizona 86401

16 Client Justin James Rector  
17 Mohave County Jail

18 File

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