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BY: _____

2015 SEP 16 AM 11

VIRLYNN TINHELL
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 PERMIT
EXECUTION IMPACT EVIDENCE**

(ASSIGNED TO THE HON. LEE JANTZEN)

COMES NOW Defendant Justin James Rector, hereby moves this court for an order allowing defense counsel to present evidence indicating the highly negative impact that the State's execution of Justin Rector would have on his children, his family and friends, and to argue such to the jury. The impact of a convicted defendant's execution on his those that love him, are friends with him, or know him is a permissible non-statutory mitigating factor. Justin Rector asks for this now, assuming *arguendo* that his trial reaches the penalty phase, and pursuant to the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article II §§ 4 and 15 of the Arizona Constitution, for the reasons cited in the Memorandum attached hereto and incorporated herein.



S8015CR201401193

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1 *than death*, including any aspect of the defendant's character,
2 propensities or record and any of the circumstances of the
3 offense..... (emphasis added).

4 Mitigating factors encompassed by this statute include "statutory" mitigators and "non-
5 statutory mitigators. A.R.S. §13-751(G)(1) – (G)(5); e.g. State v. Ramirez, 178 Ariz.
6 116, 134, 871 P.2d 237, 255 (1994).

7 **LEGAL ARGUMENT**

8 ***Arizona Courts Recognize That Execution Impact Evidence is Admissible***

9 On its face A.R.S. §13-751(G) requires the sentence to consider as mitigating
10 circumstances "any aspect of the defendant's character". The Federal equivalent does
11 also: 18 U.S.C. §3592 ("In determining whether a sentence of death is to be imposed
12 on the defendant, the finder of fact shall consider any mitigating factor, including the
13 following...(8) Other factors in the defendant's background, record, or character or any
14 other circumstance of the offense that mitigate against the imposition of the death
15 sentence."

16 Repeatedly, the Arizona Supreme Court has recognized that execution impact
17 evidence is a valid non-statutory mitigator because it relates to the defendant's
18 character. The string of decisions support Justin Rector's position stretch back more
19 than 25 years. In State v. Carriger, 143 Ariz. 142, 162, 692 P.2d 991, 1011 (1984), our
20 Supreme Court expressly agreed with the defendant's contention that "his love for his
21 family and the love they have for him is mitigating evidence." Accord State v. Spears,
22 184 Ariz. 277, 294, 908 P.2d 1062, 1079 (1996) ("Love for and of family may be a
23 mitigating circumstance"); State v. Trostle, 191 Ariz. 4, 22, 951 P.2d 869, 887 (1997)
24 (holding that the trial court erred in not giving weight to the mitigating factor of loving
25 family relationships); State v. Canez, 202 Ariz. 133, 164, 42 P.2d 564, 595 (2002)
26 ("Loving family relationships are mitigating")
27
28

1 ***Other Supreme Courts Recognize That Execution Impact Evidence is Admissible.***
2

3
4 Over 70 years ago the United States Supreme Court recognized the need to look
5 at each offender as an individual, and tailor their punishments accordingly.

6 For determination of sentences, justice generally requires
7 consideration of more than the particular acts by which the
8 crime was committed and that there be taken into account
9 the circumstances of the offense together with the character
10 and the propensities of the offender.

11 Pennsylvania ex.re. Sullivan v. Ashe, 302 U.S. 51, 55 (1937). Over 50 years ago the
12 Court opined that “[t]he Eighth Amendment stands to assure that the State’s power to
13 punish is ‘exercised within the limits of civilized standards.’ “ Woodson v. North
14 Carolina, 428 U.S. 280, 288 (1976) (citing Trop v. Dalles, 356 U.S. 86, 100 (1958)). To
15 realize those objectives, the Woodson court declared that the character evidence
16 relating to the defendant must be considered when the death penalty is at issue:

17 [W]e believe that in capital cases the fundamental respect for
18 humanity underlying the Eighth Amendment [citation omitted]
19 requires consideration of the character and record of the
20 offense as a constitutionally indispensable part of the process
21 of inflicting the death penalty.

22 Woodson, 428 U.S. 280 at 304.

23 Federal District Courts recognized as a permissible, non-statutory mitigating
24 factor the argument that the defendant’s “execution would detrimentally affect persons
25 who care about him.” United States v. Fell, 2005 WL 1634067 at *1 (D.Vt. July 5th,
26 2005). The District Court Judge reasoned that permitting execution impact evidence as
27 mitigation may shed light on the defendant’s background and character “by providing
28 testimony about any ‘positive qualities’, ‘his capacity to be of emotional value to others’,
and the nature of his interpersonal relationships. *Id.* at 2.

1 Infer from witness's testimony that she believed her daughter
2 Would be affected adversely by defendant's execution because
3 Of something positive about defendant's character or background.
4 Put differently, a rational juror could infer that there are
5 positive aspects about the defendant's relationship with his
6 daughter that demonstrate that defendant has capacity to be
7 of emotional value to others. In that inference, a juror could
8 find an aspect of defendant's character or background that
9 could justify a sentence of less than death.

10 *Id.* at 168 (emphasis added).

11 A later California decision, People v. Ochoa, 966 P.2d 442 (1998), echoes those
12 thoughts. Like the Arizona and Oregon statutes discussed above, the relevant
13 California statute permits capital jurors to consider as mitigation the defendant's
14 character. See California Penal Code §190.3. Deciding the issue directly and for the
15 first time, the California Supreme Court held that "the family members may offer
16 testimony of the impact of execution on them if by doing so they illuminate some
17 positive quality of the defendant's background or character. *Id.* at 506. The Court
18 reasoned that "evidence that he or she is loved by family members or others, and that
19 these individuals want him or her to live." is relevant, permissible, non-statutory
20 mitigation "because it constitutes indirect evidence of the defendant's character. *Id.* at
21 505-506.

22 CONCLUSION

23 "Consideration of both the offender and the offense in order to arrive at a just and
24 appropriate sentence has been viewed as a progressive and humanizing development."
25 Woodson, 428 U.S. at 304. The receipt of execution impact evidence is vital to the
26 sentence being able to continue that trend. This evidence....if it is available...is not
27 evidence to be ignored, but embraced. Justin Rector's life is not unto himself; his life
28 directly and indirectly involves children, loved ones and friends who will all likely suffer if

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he is put to death. This is evidence this jury and court can properly receive in making any determination regarding an appropriate sentence.

1 ORIGINAL of the 16th
2 Forgoing filed this 16th day of September, 2015 with:

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

6 COPY of the forgoing delivered
7 This 16th day of September, 2015 to:

8 Honorable Lee Jantzen
9 Judge of the Superior Court
10 Mohave County Courthouse
11 401 E. Spring Street
12 Kingman Arizona 86401

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23 Client Justin James Rector
24 Mohave County jail

25 File

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