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FILED  
BY: *kt*  
2016 MAY -6 PM 1:04  
VIRLYNN TINNELL  
SUPERIOR COURT CLERK

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
9 **IN AND FOR THE COUNTY OF MOHAVE**

10 **STATE OF ARIZONA,**

11 Plaintiff,

12 vs.

13 **JUSTIN JAMES RECTOR**

14 Defendant.

NO: CR 2014 - 01193

**DEFENDANT'S MOTION TO  
CONTINUE PROBABLE CAUSE  
HEARING AS TO ANY ALLEGED  
CAPITAL AND NON-CAPITAL  
AGGRAVATING FACTORS  
( CHRONIS HEARING)**

(ASSIGNED TO THE HON. LEE JANTZEN)

15 Defendant Justin James Rector, by and through undersigned counsel, moves  
16 this court to continue the Chronis hearing scheduled this date, for the reasons and  
17 authority contained in the Memorandum of Point and Authorities attached hereto and  
18 incorporated herein.  
19

20  
21 **RESPECTFULLY SUBMITTED This 6th day of May, 2016.**

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24 **GERALD T. GAVIN**  
25 **Attorney for Mr. Rector**  
26  
27



S8015CR201401193

MEMORANDUM OF POINTS AND AUTHORITIES

Justin James Rector, through counsel and pursuant to Rule 13.5 of the Arizona Rules of Criminal Procedure, moved this Court to set a hearing to require the government to show probable cause for any alleged aggravators in the above entitled cause. State v. Patterson, 283 P.3d 1, 10 (Ariz. 2012), the 5<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup>, and 14<sup>th</sup> Amendments to the United States Constitution, and Article II, §§ 4, 15 and 24 of the Arizona Constitution.

The rules require a finding of probable cause to determine the validity of an alleged aggravating circumstance. See McKaney v. Foreman, 209 Ariz. 268, 100 P.3d 18 (2004). *The defendant has a right under the Rules of Criminal Procedure to have aggravators screened for probable cause.* See Chronis v. Steinle, 220 Ariz. 559, 208 P.3d 210 (2009) (emphasis added). Under Rule 13.5(d) of the Arizona Rules of Criminal Procedure, the accused in a noncapital case may challenge the “legal sufficiency” of an alleged aggravating circumstance; Rule 13.5(c) a virtually identical section applying to capital cases, has been interpreted as entitling the accused to test the “legal sufficiency” of capital aggravating circumstances by means of a hearing to determine the existence of probable cause. Steinle, 208 P.3d at 213.

The State must show that there is probable cause to support its allegations of aggravating circumstances or that allegations must be dismissed. Patterson, *supra*.

On Friday, February 19<sup>th</sup>, 2016, the defense was made aware 2 “game-changing” witnesses had come forward, and in so doing created an ethical/legal conflict for assigned co-counsel Ron Gilleo, Mohave County Legal Defender. As a result, in a brief hearing in chambers on Monday, February 22<sup>nd</sup>, Mr. Gilleo moved to withdraw, which was granted by the court. Since that day, alternative capital defense counsel has been sought to step in and assist Mr. Rector and his defense team.

1 At the time the hearing was set on February 22<sup>nd</sup>, 2016, the parties and Court did  
2 not foresee that...as late as May 6<sup>th</sup>, 2016...and even beyond, no 2<sup>nd</sup> chair attorney  
3 would yet to file a notice of appearance. Additionally, as a result of Mr. Gilleo's conflict,  
4 his office investigator, Ralph Ruiz could no longer assist because of the same imputed  
5 conflict.

6 The American Bar Association Guideline 4.1(a)(1) governing Capital defense  
7 representation standards, **mandates two (2) qualified Capital attorneys** must be  
8 assigned to assist a capital defendant. These standards have been adopted nationwide  
9 by Appellate Courts, including the State of Arizona.

10 While a second chair has been located, that attorney cannot file a "*Notice of*  
11 *Appearance*" until **June 25<sup>th</sup>, 2016** as the attorney clears necessary obligations before  
12 counsel can come aboard. Undersigned counsel has also located an secured an  
13 Investigator to assist, pending appointment by the Court (and believes an order will be  
14 signed by the Court this date memorializing this today).

15  
16 The defense, and probably the State and Court, did not foresee both a 2<sup>nd</sup> chair  
17 attorney and investigator would not have already joined Mr. Rector's defense.

18 Defense counsel cannot litigate important substantive issues without the  
19 presence of a 2<sup>nd</sup> counsel; counsel is forced to request additional time here (and  
20 additional time to do the trial date via separate motion).

21 Mr. Rector does not have an intact, competent defense team operating at full  
22 strength. To "wing it", to just proceed as nothing has happened, is unfair to a man  
23 facing the loss of his life. Every hearing is important. Every issue is important.  
24 Undersigned counsel only feels comfortable moving the Court for necessary assistance,  
25 and delays. Not objecting to the current depleted situation is ineffective assistance of  
26 counsel; it violates Mr. Rector's State and Federal rights to Representation by counsel,  
27 Due Process of Law, and Equal Protection under the law.  
28

1                   Assuming the Court vacates the current trial via another motion, the  
2 urgency in completing this Chronis hearing is greatly diminished. It can easily be reset  
3 to a time when Mr. Rector has the proper and required two (2) defense counsel  
4 appointed and assisting. Proceeding now is a prima facie case of ineffective assistance  
5 of counsel, and an unnecessary risk for the court to force this entire case be restarted in  
6 the future. It subjects undersigned counsel to a potential , avoidable claim of ineffective  
7 assistance of counsel under Rule 32, Arizona Rules of Criminal Procedure. Counsel  
8 cannot stipulate to go forward until the situation is resolved in Mr. Rector's interest.

9                   Counsel requests today's hearing be vacated, and the hearing reset in the  
10 near future at a time convenient to all parties.  
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1 ORIGINAL of the foregoing filed  
2 this 6th day of May, 2016 with:

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

6  
7 COPY of the forgoing  
8 Hand delivered this 6th day  
9 of May, 2016, to:

10 Honorable Lee Jantzen  
11 Judge of the Superior Court  
12 Mohave County Courthouse  
13 2<sup>nd</sup> 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

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BY: 