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2015 MAY 20 PM 4:12  
VIRLYNN TIRNELL  
SUPERIOR COURT CLERK

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

9 STATE OF ARIZONA,  
10 Plaintiff,

No. CR-2014-1193

11 vs.

**RESPONSE TO DEFENDANT'S  
MOTION TO PRECLUDE VICTIM  
IMPACT STATEMENTS**

12 **JUSTIN JAMES RECTOR,**  
13 Defendant.

14 COMES NOW, the State of Arizona, by the Mohave County Attorney and through  
15 the undersigned deputy, Gregory A. McPhillips, respectfully requests defendant's motion  
16 to preclude victim impact statements be denied.

17 Law

18 Defendant's motion states "Arizona law provides not [sic] guidance regarding the  
19 role of the victim impact statements in the jury decision-making process."<sup>1</sup>

20 However, Arizona does specifically provide guidance as to the role of victim impact  
21 statements. ARS §§ 13-751 and 13-752 are on point, as are several cases and this  
22 evidence is specifically allowed under the procedures laid out in Rules of Criminal  
Procedure Rule 19.1.

23 Ariz. Rev. Stat. Ann. § 13-751 and 13-752 discuss sentencing proceedings for  
24 sentences of death, life imprisonment or natural life. Ariz. Rev. Stat. Ann. § 13-751(B)  
25 states:



<sup>1</sup> Defendant's motion page 3 lines 4-5.  
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1 At the aggravation phase of the sentencing proceeding that is held pursuant to §  
2 13-752, the admissibility of information relevant to any of the aggravating  
3 circumstances set forth in subsection F of this section shall be governed by the  
4 rules of evidence applicable to criminal trials. The burden of establishing the  
5 existence of any of the aggravating circumstances set forth in subsection F of this  
6 section is on the prosecution. The prosecution must prove the existence of the  
7 aggravating circumstances beyond a reasonable doubt.

8 Ariz. Rev. Stat. Ann. § 13-752(R) discusses victim role at the at the aggravation phase

9 Subject to § 13-751, subsection B, a victim has the right to be present at the  
10 aggravation phase and to present any information that is relevant to the  
11 proceeding. A victim has the right to be present and to present information at the  
12 penalty phase. At the penalty phase, the victim may present information about the  
13 murdered person and the impact of the murder on the victim and other family  
14 members and may submit a victim impact statement in any format to the trier of  
15 fact.

16 Ariz. Rev. Stat. Ann. § 13-752(S)(2) defines victim:

17 "Victim" means the murdered person's spouse, parent, child, grandparent or  
18 sibling, any other person related to the murdered person by consanguinity or  
19 affinity to the second degree or any other lawful representative of the murdered  
20 person, except if the spouse, parent, child, grandparent, sibling, other person  
21 related to the murdered person by consanguinity or affinity to the second degree or  
22 other lawful representative is in custody for an offense or is the accused.

23 The role of the victim impact statement in penalty phase of a capital case was  
24 discussed at great length by the Arizona Supreme Court in *State v. Prince*, 226 Ariz. 516,  
25 250 P.3d 1145 (2011). Under *Prince*, the court affirmed the parameters of A.R.S. §  
13-752 and Rule 19.1(d)(3), which allow a victim impact statement to detail both a victim's  
unique qualities and characteristics as well as explain the impact of the victim's death on  
the family.<sup>2</sup> In doing so the *Prince* Court relied on the reasoning in *Payne v. Tennessee*,  
501 U.S. 808 (1991), finding that the victim impact evidence was a method of "informing  
the sentencing authority about the specific harm caused by the crime," thus allowing "the  
jury to assess meaningfully the defendant's moral culpability."<sup>3</sup>

<sup>2</sup> *Id.*

<sup>3</sup> *State v. Prince*, 226 Ariz. 516 at 535 citing *Payne v. Tennessee*, 501 U.S. 808.

1 The *Prince* Court reiterated that "Arizona permits victim impact evidence during the  
2 penalty phase of capital sentencing proceedings."<sup>4</sup> The *Prince* Court held that "[a]lthough  
3 the Eighth Amendment "erects no per se bar" to the admission of such evidence, the  
4 Fourteenth Amendment's Due Process Clause prohibits victim impact evidence that "is so  
5 unduly prejudicial that it renders the trial fundamentally unfair."<sup>5</sup>

6 The *Prince* Court held that a victim may not recommend a particular sentence.<sup>6</sup>

7 The *Prince* Court rejected the argument that victim impact evidence is irrelevant in  
8 the penalty phase because mitigation focuses on the defendant rather than the victim or  
9 the impact of the victim's death on others.<sup>7</sup>

10 The *Prince* Court rejected the argument that victim impact evidence violated the  
11 Confrontation clause "[b]ecause confrontation rights do not extend to the penalty phase  
12 under either the Arizona or federal Constitution, no Confrontation Clause violation occurs  
13 when a third party reads a victim impact statement to the jury during the penalty phase."<sup>8</sup>

14 Arizona law provides guidance regarding the role of the victim impact statements  
15 in the jury decision-making process. The victims have a right to present victim impact  
16 statements. In this case, the State will explain the legal parameters to the victims prior to  
17 the penalty phase. Defendant's motion to preclude victim impact statements be denied.

18 RESPECTFULLY SUBMITTED THIS 20TH DAY OF MAY, 2015.

19 MOHAVE COUNTY ATTORNEY  
20 MATTHEW J. SMITH

21 By   
22 DEPUTY COUNTY ATTORNEY  
23 GREGORY A. MCPHILLIPS

24 <sup>4</sup> *State v. Prince*, 226 Ariz. 516, 534, 250 P.3d 1145, 1163 (2011) citing A.R.S. §  
25 13-752(R).

<sup>5</sup> *Id.* citing *Payne v. Tennessee*, 501 U.S. 808, 825-26, 111 S.Ct. 2597, 115 L.Ed.2d 720  
(1991); accord *Dann*, 220 Ariz. at 369 ¶¶ 98, 207 P.3d at 622..

<sup>6</sup> *Id.* citing *Ellison*, 213 Ariz. at 141 ¶¶ 111, 140 P.3d at 924.

<sup>7</sup> *Id.* citing *See*, e.g., *Bocharski*, 218 Ariz. at 488 ¶¶ 51, 189 P.3d at 415 (citing *Ellison*, 213  
Ariz. at 140-41 ¶¶ 111, 140 P.3d at 923-24); see also *Payne*, 501 U.S. at 825, 111 S.Ct.  
2597

<sup>8</sup> *Id.* citing *Tucker*, 215 Ariz. at 320 ¶¶ 94, 160 P.3d at 199.  
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1 A copy of the foregoing  
sent this same day to:

2  
3 HONORABLE LEE F. JANTZEN  
SUPERIOR COURT JUDGE

4 RONALD S. GILLES  
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