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VIRLYNN TINNELL
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
11 Plaintiff,

12 vs.

13 **JUSTIN JAMES RECTOR**
14 Defendant.

) NO: CR 2014-01193

) **DEFENDANT'S MOTION TO SUBMIT A**
) **DETAILED JURY QUESTIONNAIRE TO**
) **THE POTENTIAL JURY POOL *in concert***
) ***with* EXTENDED ORAL VOIR DIRE BY**
) **BOTH DEFENDANT AND STATE**

) (ASSIGNED TO THE HON. LEE JANTZEN)

15
16 Defendant Justin James Rector, by and through undersigned counsel, moves
17 this court to 1) order all prospective jurors to complete an extensive written
18 questionnaire under oath; and 2) distribute completed questionnaires to the State and
19 Defense far in advance of voir dire to allow counsel for both sides adequate time to
20 review, discuss, vet, and prepare to seat a jury in this case. It is the experience of
21 Courts nationwide in capital cases that such procedures lessen time burdens on jury
22 pools, give both the State and Defense an essential tool for uncovering bias against
23 either side. Once the questionnaires are completed, allow both sides extended oral *voir*
24 *dire* to follow up on any concerns revealed in written answers. The concert of both
25 questionnaire and live *voir dire* creates an efficient process, provides necessary
26 information, reduces error and jury selection/ panel complications, and is in the best
27

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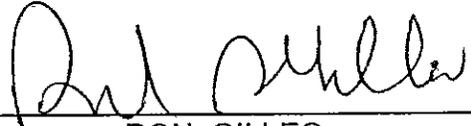


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1 interest of the Defendant, State, Court, the jury pool, and justice itself, in quickly seating
2 the most fair jury to all sides, and reduce the instance of mistrials during trial, causing
3 enormous problems, and a necessary remand of the proceedings. This motion is made
4 for the reasons contained in the Memorandum of Points and Authorities attached hereto
5 and incorporated herein.

6
7 RESPECTFULLY SUBMITTED This 16th September day of ~~May~~, 2015.

8
9
10 
11 _____
12 GERALD T. GAVIN
13 Co-Counsel for Mr. Rector

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11 _____
12 RON GILLO
13 Co-Counsel for Mr. Rector

14
15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16
17 **Why Is A Questionnaire Necessary In A Capital Jury Selection?**

18 Justin Rector is charged with capital murder. The State is attempting to *kill him*.

19
20 Should this matter proceed to trial, and there is a conviction, multiple Appellate and
21 Supreme Court reviews are all but certain. Higher courts will be expecting, from all
22 parties, an exhaustive inquiry into the venireperson's qualifications. All sides need
23 jurors to provide extensive information about their background, political beliefs,
24 understanding of the legal system, cultural background, previous jury experience,
25 constraints on their time and ability to sit through a lengthy trial, and numerous other
26 issues. Both sides need jurors who can sit and receive evidence in a fair manner.

27 Justin Rector's life...literally...depends on it. Allowing such a questionnaire before the
28 actual selection process is in all parties interest.

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1 The selection of such a jury will necessarily involve a large group of Mohave
2 County Citizens, who must take time from their daily lives to sit through what can be a
3 lengthy, frustrating process. Seating is limited. It is crowded. People are taking time
4 from their lives, their jobs, their families. To seat a fair jury in a case like that, it is the
5 expected norm that many people will be questioned; many people will be dismissed
6 from service; many people will leave this courtroom with a lifetime view, good or bad,
7 about our system of justice. It is incumbent on the Court, State and Defense that a
8 system be implemented to allow the parties to seat the fairest jury possible in the least
9 amount of time.

10 It is essential all parties know the individual juror backgrounds, uncover bias
11 against the police, the defendant, the lawyers and court, and bias about any part of this
12 process. An extensive jury questionnaire is the tried, true method of expeditiously
13 obtaining the necessary juror information, with the least amount of burden on these pool
14 members. It eliminates time-consuming court time...forcing the entire panel to listen to
15 individual details of each potential juror's life and views. It allows the State and Defense
16 to ask probing, informative questions to uncover bias, to ask questions of a delicate
17 nature, or potentially embarrassing questions about juror drug use, criminal convictions,
18 racial bias, and other similar matters no person wants discussed before a group of
19 people, especially in a small county. It allows both sides to make the best, most-
20 informed choices.

22 Allowing such a questionnaire greatly reduces the chance of a large jury panel
23 being tainted by unexpected, biased responses about either side. If someone has bias
24 issues, the questionnaire will reveal that. Then, those jurors can be dealt with privately
25 and individually, preserving the pool from being eliminated, and forcing the jury
26 commissioner to empanel another large group of people unnecessarily.

1 Many potential jurors, because of job and family commitments, will be unable to
2 commit a chunk of time, perhaps weeks or longer, from those responsibilities to sit and
3 perform their civic duty. Whether they be surgeons, single mothers, or any other person
4 whose jury service would cause great hardship for themselves or people depending on
5 them, "screening for time" has become an ever-important aspect of jury selection. As
6 the Court is aware, many potential jurors may seek to avoid jury service for numerous
7 reasons, some more legitimate than others. A questionnaire will speed that
8 determination up, and uncover potential juror problems that would have unexpectedly
9 caused a mistrial and numerous problems. Neither side wants a juror forced to sit
10 through proceedings, staring at the clock, voting to acquit or convict solely because they
11 want to "get it over with and go home". Whether the reason is they will be fired for
12 missing work, their bed-ridden child or older family member needs them, they are bored
13 by the process, whatever...such reasons need to be uncovered and dealt with far in
14 advance of someone simply voting with the majority to go home after the case is turned
15 over to the jury.
16

17 Very few potential jurors will admit to bias. Most people want others to consider
18 them as fair-minded individuals. A detailed questionnaire, about upbringing, political
19 ideations, their choices of reading material, entertainment choices, religious beliefs if
20 any, experiences with our judicial system, feelings about police, the courts, defendants,
21 lawyers, military service...among other things, better reveal to the parties a true
22 measure of the individual sitting before them. It will uncover potential hidden bias the
23 juror may not realize or understand they have. This can only be revealed if an in depth
24 discussion is had with each potential juror, *privately in a questionnaire*, and not in the 1
25 or 2 minutes each juror may get in an open courtroom in front of the entire panel.
26

27 A completed, written questionnaire will also aid...if necessary...any future court
28 reviewing these proceedings, in possibly: appellate proceedings, ineffective assistance

(emphasis/bolding added).

e. The examination of the prospective jurors shall be limited to inquiries directed to bases for challenges, for cause or to information *to enable the parties to exercise intelligently their preemptory challenges.* (emphasis added).

Attorney-Conducted *Voir Dire* Of Potential Jurors Required Upon Request

Rule 18.5(d) of the Arizona Rules of Criminal Procedure grants trial counsel the right, upon request, to conduct oral *voir dire* of prospective jurors. The Arizona Supreme Court has recognized that “[s]uch questioning often helps to elicit more detailed and candid responses.” State v. Blakeley, 204 Ariz.429, 435, 65 P.3d 77, 83 (2003).

The rule makes clear there are limitations; the rule allows the court to impose reasonable limitations...and “can terminate or limit *voir dire* on grounds of abuse”. A.R.C.P. 18.5(d). Defense counsel has no intention of ever abusing a potential juror, and intends to treat all with deference and respect. That said, the purpose of the exam is to allow counsel for both sides to become better informed, and “to bases for challenges for cause or to information to enable counsel to exercise intelligently the preemptory challenges.” A.R.C.P 18.5(e).

Both Sides Need “Reasonable Time” for *Voir Dire* Questioning

Arizona Rule of Criminal Procedure 18.5(d) states that judges have discretion to limit *voir dire* to a “reasonable time”. The reasonable time provision of this rule is not designed as a mechanism to forclose questioning during *voir dire*. To the contrary, the given [an] opportunity and reasonable time to question prospective jurors to discover information relevant to challenges and to possibly rehabilitate [prospective jurors]. State v. Anderson, 197 Ariz. 314, 321 4 P.3d 369, 376 (2000). Moreover, a reasonable time “necessarily includes” time to question the panel on key issues and subjects.

1 In Morgan v. Illinois, 504 U.S. 719, 112 S.Ct. 2222 (1992), the Supreme Court
2 commented on the importance of conducting adequate *voir dire*.

3 *Voir dire* plays a critical function in assuring the criminal
4 defendant that his constitutional rights to an impartial jury
5 will be honored. Without an adequate *voir dire* the trial
6 judge's responsibility to remove prospective jurors who
and evaluate the evidence cannot be fulfilled.

7 *Id.* at 729 -30, 112 S.Ct. at 2230, (citations omitted).

8 Also relevant to determining how much time should be allotted for *voir dire* is the
9 Need to consider the scope of *voir dire*. A.R.C.P. 18.5(e) governs the scope of *voir dire*,
10 and states that the inquiries of prospective jurors be directed "to bases for challeng for
11 cause or to information to enable the parties to exercise intelligently their preemptory
12 challenges."

13 A.R.C.P. 18.5(d) contemplates that the court will allot sufficient, reasonable time
14 for both parties to question prospective jurors on key issues and subjects, to discover
15 information relevant to challenges, and to engage in rehabilitation as necessary. "Part
16 of the guarantee of a defendant's right to an impartial jury *is an adequate voir dire to*
17 *identify unqualified jurors.*" (emphasis added).
18

19 In most criminal cases, this Court conducts the majority of *voir dire*, and the
20 attorneys then proceed, if need be, with limited follow-up questions. That typical
21 procedure simply will not work in a capital jury selection.

22 The Court no doubt wants to conduct a jury selection as expediently as possible
23 while seating a fair, impartial jury. The best way to achieve both goals is to allow both
24 sides the benefit of using *both a jury questionnaire and voir dire*. The jury questionnaire
25 will allow a gathering of maximum relevant information with minimum intrusion into the
26 venireman's life. Most of the necessary information about the juror can be gathered in
27 this manner, eliminating countless hours of courthouse downtime and unnecessary
28

1 delay. In completing these jury questionnaires, the answers to several, or more,
2 questions will certainly lead one or more sides to request *voir dire* follow up, to clarify
3 certain answers, confirm certain information or make further inquiry such answers may
4 demand. The questionnaire gathers the bulk of the data; the *voir dire* allows either side,
5 or the court, to fine-tune the information and get a complete juror profile with minimum
6 impact to the juror.

7 Having the background information from the questionnaire is essential before *voir*
8 *dire*. For *voir dire* questions to be effective in this case, the questions must provide
9 jurors sufficient information about material issues (information gleaned from the
10 questionnaires) so that a more complete response to questions will be forthcoming.
11 *Voir dire* that merely inquire about a juror's subjective evaluation of his/her ability to be
12 "fair" or "follow the law" doesn't elicit sufficient information, and for all intents and
13 purposes are useless. Saying you can "be fair" without the context of knowing the
14 tendencies, preferences, and beliefs of the responder is meaningless. Nearly everyone
15 proclaims they can be fair and provide socially desirable responses; concrete
16 background information allows both sides to ask informed questions and reduce
17 nonresponsive affirmations. Courts have held such questions form an inadequate basis
18 upon which to assess juror qualifications. See Murphy v. Florida, 421 U.S. 794, 800, 95
19 S.Ct. 2031, 2036 (1975).

21 It is requested the Court provide the prospective jurors a copy of the jury
22 questionnaire...excuse them to go home, and return the following day to turn in their
23 completed questionnaire to the court. Then, copies of those completed questionnaires
24 can be made for each side, and provided to counsel with several days to review the
25 selection preferences. Then, upon the panel being recalled, counsel will have had an
26 opportunity to eliminate voluminous oral questioning, and concentrate on follow up *voir*
27

1 vulnerable to problems now, and subject to reversal later. It will not protect Justin
2 Rector's constitutional rights. Only by coupling a detailed, extensive questionnaire with
3 an extensive, detailed individual *voir dire* of each venireperson can this Court achieve
4 even the possibility of seating a fair and impartial jury to sit in judgment in this life-and-
5 death case.

6 Justin Rector is entitled to both a thorough jury questionnaire and *voir dire* to
7 insure his State and Federal Constitutional rights to effective assistance of counsel, due
8 process of law, equal protection of the law, confrontation of the State's evidence against
9 him, and freedom from cruel and unusual punishment. U.S. Constitutional Amendments
10 V, VI, VIII, IX, and XIV...and Article II, §§ 4, 10, 15, and 24 of the Constitution of
11 Arizona.

12 Justin Rector's life is at stake; therefore, more due process protections are
13 required than in any other criminal case. See Ohio Adult Parole Authority v. Woodard,
14 523 U.S. 272 (1998) (five Justices recognized a distinct "life" interest protected by the
15 Due Process Clause in capital cases above and beyond liberty and property interests).
16 Death is different; for that reason more process is due, not less. See Lockett v. Ohio,
17 438 U.S. 586 (1978); Woodson v. North Carolina, 428 U.S. 280 (1976).
18

19 For these reasons, Justin Rector moves this court to grant this motion and
20 require those chosen to serve on the venire to complete an extensive jury questionnaire
21 (provided by a separate defense motion) under oath, and to provide copies of the
22 completed questionnaires to counsel for both sides well in advance of actual jury
23 selection, and allow both sides extensive *voir dire* to enhance the selection of a fair,
24 engaged jury both sides.
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27
28

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

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

7 COPY of the foregoing
8 Delivered this 16th day
9 Of May, 2015, to:

10 Honorable Lee Jantzen
11 Judge of the Superior Court
12 Mohave County Courthouse
13 2nd floor
14 Kingman Arizona 86401

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16 Assigned Deputy County Attorney
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25 Client Justin James Rector
26 Mohave County Jail

27 File

28 BY: 