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VIRLYNN TINNELL
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 FOR SPECIAL**
) **PROCEDURES TO INSULATE THE**
) **VENIRE AND THE EMPANELLED JURY**
)
)
) (Assigned to the Honorable Lee Janzten)

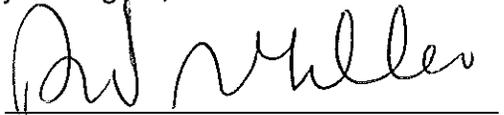
Defendant Justin James Rector, by and through undersigned counsel, hereby moves this Court to issue an order prohibiting the publication of the names, addresses, telephone numbers, email addresses, and places of employment of the prospective and impaneled jurors. Defendant also respectfully asks this Court for an order instructing court personnel involved in the gathering of the jury venire not to mention Mr. Rector's name or the nature of this case to any prospective jurors. Defendant further requests that the summons served upon each juror have no reference to this particular case. It is critical that any verdict the jury eventually returns be based on admitted trial evidence, not outside sources. This motion is supported by the Memorandum of Points and Authority attached hereto and incorporated herein.



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RESPECTFULLY SUBMITTED this 20th day of August, 2015.

By: 
Gerald T. Gavin
Co-Counsel for the Defendant

By: 
Ron Gilleo
Co-Counsel for the Defendant

MEMORANDUM OF POINTS AND AUTHORITY

Defendant Justin Rector requests this court adopt and implement certain prophylactic procedures to insure the jury pool arrives for voir dire knowing virtually nothing of this case, to help insure the Mr. Rector's constitutional right to a fair trial as much as possible.

It is imperative, given this is a capital case, that all information regarding the case originate from this Court, and they receive accurate, lawful information untainted by publicity or other outside influences.

It is imperative that the summons served upon the jurors not contain any reference to either Mr. Rector's name or the type of case involved. Any such reference would inform the juror of the case and permit him/her to read about the case, converse with friends, family and locales about the case, and to form opinions about the case prior to any trial or Court cautionary instructions . To insure no prospective jurors are tainted pre-trial, Mr. Rector further requests this Court issue an order to all employees of the Sheriffs Office, the Court Clerk, the Jury Commission, and all other courthouse personnel that no mention is made of the Defendant's name or nature of the case to any prospective jurors. Only through a rigid, early-adopted insulation process of the jury panel can the defendant hope to empanel a fair, impartial jury drawn from a

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1 representative cross-section of the community as guaranteed by the United States
2 Constitution.

3 There is a real possibility of jury contamination if the names, addresses, and
4 phone numbers of potential jurors in this case are published in the media. This case
5 involves the death penalty. The case will likely attract media attention. Given the highly
6 inflammatory nature of the case, release of this personal jury information to the
7 community will expose them to outside influence, pressures and information. It would
8 result in a contamination of the venire that couldn't be remedied by voir dire, and
9 subjects jurors to encounters with various citizens who wish to force-feed their feelings
10 upon the jurors.

11 Any balancing of scales regarding those affected by this order weighs heavily in
12 Mr. Rector direction. With a tainted jury, he cannot receive a fair trial, have effective
13 assistance of counsel if such a jury were empanelled, confront witnesses before a jury
14 already tainted by outside knowledge of the case, nor be free from the perils of cruel
15 and unusual punishment. The utmost caution and fairness is demanded in capital
16 litigation, regardless of the inconvenience, to protect defendant's "life interest" and to
17 guard against an unreliable death verdict. Ohio Adult Parole Authority v. Woodard, 523
18 U.S. 272 (1998) (five Justices recognized a distinct "life interest" protected by the Due
19 Process Clause in capital cases above and beyond liberty and property interests.)

21 **DUE PROCESS CONSIDERATIONS REQUIRE INSULATION OF THE JURY**

22 In a criminal case, trial by jury is fundamental to the American scheme of justice;
23 the Fourteenth Amendment to the United States Constitution guarantees a trial by a fair
24 and impartial jury. Sheppard v. Maxwell, 384 U.S. 333 (1966). The jury's verdict must
25 be based upon the evidence developed at trial. Thompson v. Louisville, 362 U.S. 199
26 (1960). This is true regardless of the heinousness of the crime charged, the apparent
27 guilt of the offender or the station in life which he occupies. Irvin v. Dowd, 366 U.S. 717,
28

1 722 (1961). Prospective jurors who have formed opinions about the case cannot be
2 impartial. Reynolds v. United States, 98 U.S. 145 (1978). "If even one such juror is
3 empaneled and a death sentence is imposed, the State is disentitled to execute the
4 sentence. Morgan v. Illinois, 504 U.S. 719, 729 (1992).

5 Failure of a state court to grant the right to a criminal defendant to be tried by an
6 impartial jury constitutes a denial of due process in violation of the Fourteenth Supreme
7 Court elaborated on the connection between due process requirement of an impartial
8 jury and pretrial publicity in Sheppard, 384 U.S. 333. The Court stated that due process
9 requires that the accused receive a trial by an impartial jury free from outside influences.
10 Id. at 362. It went on to state that given the pervasiveness of modern communications
11 and the difficulty erasing prejudicial publicity from the minds of jurors, trial courts must
12 take strong measures to insure that the balance is never weighed against a defendant.
13 Id. at 362.

14
15 In light of the danger of jury contamination in this case... attention to the form of
16 the summons, restraint upon publication of the jurors names and contact information,
17 and restraint by Courthouse personnel and law enforcement regarding the case name
18 and general case synopsis, all serve as a legitimate means to attempt to limit
19 prejudicial forces that might taint a prospective jury pool.

20
21 **FAILURE TO INSULATE THE VENIRE VIOLATES DEFENDANT'S RIGHT TO**
22 **EFFECTIVE ASSISTANCE OF COUNSEL**

23
24 In addition to constituting a due process violation, failure to insulate the venire
25 results in a violation of Mr. Rector's rights to effective assistance of counsel as
26 guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments of the Constitution
27 of the United States and Article II, §§ 4,10,15, and 24 of the Arizona Constitution . The
28 ABA Guidelines for the Appointment and Performance of Death Penalty Cases

1 (hereinafter ABA Guidelines) devote Guideline 10.10.2 entirely to voir dire and jury
2 selection. The commentary to Guideline 10.10.2 instructs defense counsel to “devote
3 substantial time to determining the makeup of the venire, preparing a case-specific set
4 of voir dire questions, planning a strategy for voir dire, and choosing a jury most
5 favorable to the theories of mitigation that will be presented” Defense counsel are also
6 instructed to “conduct a voir dire that is broad enough to expose those prospective
7 jurors who are unable or unwilling to follow applicable sentencing laws... Id.

8 The United States Supreme Court has reiterated that the appropriate standards
9 to review capital defense counsel’s performance are those enunciated in the ABA
10 Guidelines and referred to them as “guides to determining what is reasonable”. Wiggins
11 v. Smith, 539 U.S. 510, 525 (2003). Defense counsel in this matter cannot effectively
12 secure an impartial jury nor carry out the ABA Guideline’s objective of ensuring “high
13 quality legal representation” if the trial court fails to insulate the venire and in turn
14 impanels a tainted jury.” See ABA Guidelines 1.1.
15

16
17 **PUBLICATION OF INFORMATION WITHOUT NEWS VALUE DOES NOT**
18 **CONSTITUTE PROTECTED SPEECH WARRANTING FIRST AMENDMENT**
19 **PROTECTION**

20 In Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978), the United States
21 Supreme Court reviewed the law applicable to the issue of whether or not a trial court
22 could terminate access to public records. The Court initially noted that the courts of this
23 country have recognized a general common law right to copy and inspect public records
24 and documents. However, the Court held it was uncontested that “the right to inspect
25 and copy judicial records is not an absolute”. Id. at 589.
26

27 Nixon stated that because of the difficulty in identifying all the factors to be
28 weighed in determining whether access is appropriate, the decision as to access is one

1 best left to the sound discretion of the trial court. Ultimately, the decision must be
2 exercised in light of the relevant facts and circumstances of the particular case. Id. at
3 599. Thus, the standard applied when a trial court seals its records is subject simply to
4 an inquiry of whether the court abused its discretion.

5 When the media seek to publish the names, addresses, and phone numbers of
6 jurors or potential jurors, it has taken itself out of the ambit of protected speech and
7 moved into the area where the judiciary may regulate the activity. Publication of such
8 information is virtually a call to action of those misguided members of the community
9 who would contact jurors to press their views upon them, or possibly threaten and
10 intimidate them. In this case, there is no news value to this information. A juror's
11 address and telephone number serve no legitimate public concern, and the downside is
12 it provides an easy vehicle to contact jurors, intimidate or harass them over polarized
13 views certain few members of the community seek to impart on others.

15 Protecting Mr. Rector's fundamental rights to a fair trial and impartial jury will not
16 constitute an abuse of discretion in this matter. The public still has a right to attend
17 court hearings and enjoy the transparency of our judicial system; that freedom need not
18 further include the personal information of our jury panel, as the potential harm to jury
19 members far outweighs the desires of citizens to obtain such information. An order
20 sealing the names, addresses and phone numbers of prospective jurors enhances the
21 chance to receive a fair trial and impartial jury while preserving the public's right of
22 access...a right that should end at the courtroom doors and not extend to jurors homes.

24 "The theory of our system is that conclusions to be reached in a case will be
25 induced only by evidence and argument in open court, and not by any outside influence,
26 whether of private talk or public print." Patterson v. Colorado, 205 U.S. 454, 462 (1907).
27 In an effort to eliminate any outside influence, Mr. Rector requests the following orders
28 regarding the venire:

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- 1) any summons contain no reference to this specific case;
- 2) that all employees of the Sheriff Department, Clerk's Office, or jury Commission make no reference to this case when contacting Prospective jurors in this matter; and
- 3) that the names, addresses, and telephone numbers of the prospective Jurors not be subject to publication in the media.

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ORIGINAL of the foregoing filed
this 20th day of August, 2015 with:

Clerk of Court
401 E. Spring Street
Kingman Arizona 86401

COPY of the forgoing
Delivered this 20th day
Of August 2015, to:

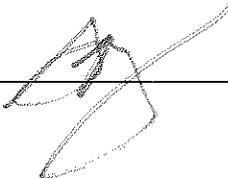
Honorable Lee Jantzen
Judge of the Superior Court
Mohave County Courthouse
2nd floor
Kingman Arizona 86401

Greg McPhillips
Assigned Deputy County Attorney
PO Box 7000
Kingman Arizona 86401

Ron Gilleo
Mohave County Legal Defender
Co-Counsel for Justin Rector
PO Box 7000
Kingman Arizona 86401

Client Justin James Rector
Mohave County Jail

File

By:  _____

By _____

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