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FILED
BY: K
2015 MAR 11 AM 9:20
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 Plaintiff,

11 vs.

12 JUSTIN JAMES RECTOR,

13 Defendant.

No. CR-2014-1193

**STATE'S RESPONSE TO NOTICE
OF INVOCATION OF
CONSTITUTIONAL RIGHTS / RIGHT
TO REMAIN SILENT / RIGHT TO
REPRESENTATION BY COUNSEL
And
STATE'S REQUEST TO SPEAK
WITH DEFENDANT**

15 COMES NOW, the State of Arizona, by the Mohave County Attorney and through
16 the undersigned deputy, Gregory A. McPhillips, respectfully requests the court deny
17 defendant's request for a prophylactic order that no discussion regarding any
18 investigation is to take place unless defendant's counsel has been notified and is actually
19 present in person or by telephone.

20 In addition, defendant previously requested to speak with undersigned counsel.
21 Since that time defense counsel¹ has not acted on defendant's request to speak with
22 undersigned prosecutor. The State is requesting to speak with defendant. The State
23 request that defense counsel discuss, with defendant, defendant's request to speak with
24 undersigned counsel and inform undersigned counsel if defendant waives his right to
25 remain silent.



S8015CR201401193

¹ That defense counsel is no longer assigned to this case. Both Mr. Gillieo and Mr. Gavin are fairly new to the case.
Rector/CR-2014-1193

1 ***There is no legal basis for defendant's request for a prophylactic order***

2 Defendant requests that that no discussion regarding any investigation is to take
3 place unless defendant's counsel has been notified and is actually present in person or by
4 telephone. Defendant's request is a classic "right to counsel request." Presumably
5 defendant's motion is based in the Sixth Amendment of the United States' Constitution;
6 yet defendant makes no such reference.

7 In support of his "right to counsel request" defendant cites § 10 and § 24 of the
8 Arizona Constitution. § 10 deals with a right against self-incrimination and against double
9 jeopardy. Right to counsel is not mentioned. § 24 mentions a plethora of rights for
10 accused in criminal proceedings. Again, Right to counsel is not mentioned.

11 Essentially defendant filed this motion to circumvent well established Sixth
12 Amendment case-law. Once the sixth amendment attaches (as it has in this case) then
13 such right to counsel does not encompass offenses that are not the same offense under
14 the Blockburger test.² Said another way, right to counsel only encompasses offenses
15 that are the same offense under the Blockburger test. Under this well-established
16 analysis, officers may speak with defendant when the offense is unrelated.

17 The Court has no authority to issue the order defendant requested. To put this in
18 context, defendant would require his attorney to be present anytime defendant is
19 questioned as a witness to an offense, or even infraction of jail policy, committed by
20 another inmate. Such an order would make jail operations more difficult as the jail could
21 never question defendant about any infraction committed by anyone. Such an order
22 would not protect the rights of defendant and would create a significant burden on the
23 operation of the jail.

24 Such a prophylactic order amounts to a violation of separation of powers.
25 Defendant provides the court with no legal basis for such an order. Defendant is asking

² *Texas v. Cobb*, 532 U.S. 162, 121 S.Ct. 1335 (2001); *Blockburger v United States*, 284 U.S. 299, 52 S.Ct. 180 (1932).

1 the court to prospectively alter how jail operations are conducted for this single inmate.
2 Such an order is not within the province of the court.

3 The Court will not ignore the Blockburger test and issue a prophylactic order that
4 no discussion regarding any investigation is to take place unless defendant's counsel has
5 been notified and is actually present in person or by telephone.

6 ***Defendant requested to waive his right to remain silent***

7 On 11-10-14 defendant requested to speak with undersigned counsel³. On
8 numerous occasions undersigned counsel has requested to speak with defendant
9 (through defendant's attorney) and undersigned counsel has not received a response.⁴
10 Undersigned counsel is convinced that defendant intends to waive his right to remain
11 silent, as to this specific investigation, and wants to speak with undersigned counsel.

12 In the present motion, defense counsel is vicariously asserting defendant's right to
13 remain silent. Defense counsel cannot vicariously assert defendant's right to remain
14 silent.⁵ These are defendant's rights—not defense counsel's rights. Defendant may
15 decide to waive these rights at any time and defense counsel has no "right" to stop
16 defendant from doing so. Likewise, the Court has no authority to stop defendant if he,
17 chooses to waive his rights and speak with authorities.

18 The State requests that defense counsel discuss, with defendant, defendant's
19 request to speak with undersigned counsel and inform undersigned counsel if defendant
20 waives his right to remain silent.

21 ***Conclusion***

22 The Court will not ignore the Blockburger test and issue a prophylactic order that
23 no discussion regarding any investigation is to take place unless defendant's counsel has
24 been notified and is actually present in person or by telephone. As such, defendant's
25 request for a prophylactic order will be denied.

³ Defendant's written request is attached to this motion.

⁴ The last such request is attached to this motion. Undersigned counsel has not spoken to Mr. Gavin about this request. All prior requests were made to previous counsel who recently withdrew.

⁵ See *Moran v Burbine*, 475 U.S. 412, 106 S.Ct. 1135 (1986).

1 Further, defense counsel must acknowledge that the defendant has requested to
2 speak with undersigned counsel, confer with defendant and alert undersigned counsel if
3 such is still defendant's intent.

4 RESPECTFULLY SUBMITTED THIS 11TH DAY OF MARCH, 2015.

5 MOHAVE COUNTY ATTORNEY
6 MATTHEW J. SMITH

7
8 By  _____
9 DEPUTY COUNTY ATTORNEY
10 GREGORY A. MCPHILLIPS
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MOHAVE COUNTY JAIL INMATE REQUEST FORM

2009
AGN

DATE: 11/10/14 NAME: Pector, Justin NAME # 202408 CELL #: Med 274

JAIL COMMANDER: _____ ATTORNEY: McPHILLIPS

JAIL SUPERVISOR: _____ COURT: _____

SHIFT SUPERVISOR: _____ PROBATION: _____

OTHER: _____ RELEASE PROPERTY: _____

REQUEST: I WANT TO GIVE A FULL CONFESSION. MR. MOORE TOLD ME YOU REQUESTED TO TALK TO ME BUT WONT LET IT HAPPEN. CAN HE PREVENT THIS MEETING ~~IS~~ FROM TAKING PLACE JUST BECAUSE HE DISAGREES? EVEN THOUGH EVERYONE IS OK WITH IT EXEPT HIM? IM WILLING TO DO THIS IN HIS PRESENCE! PLEASE RESPOND AND THANK YOU FOR YOUR TIME.

OFFICER RECEIVING REQUEST: P/O OMERASEVIC 2009 11/10/14 2000

ACTION TAKEN BY: _____ REVIEWED BY: _____

ACTION TAKEN: _____

INMATE SIGNATURE (AFTER ACTION): _____ DATE: _____



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February 16, 2015

Harry Moore
Mohave County Public Defender's Office
P O Box 7000
Kingman AZ 86402

*RE: State v. Justin James Rector
Superior Court Division 4 CR-2014-1193*

Dear Harry Moore:

I am formally requesting to interview Justin Rector. Will he speak with me?

I last made this request on September 30, 2014. We discussed waiting until the Rule 11 evaluation was complete. That evaluation is now complete.

Sincerely,

Gregory A. McPhillips
Deputy County Attorney

CC:
Ronald S. Gilleo
Mohave County Legal Defender's Office
P O Box 7000
Kingman AZ 86402

1 A copy of the foregoing
sent this same day to:

2 HONORABLE LEE F. JANTZEN
3 SUPERIOR COURT JUDGE

4 Gerald T. Gavin
3880 Stockton Hill Road, Suite 103-450
5 Kingman, AZ 86409

6 RONALD S. GILLES
LEGAL DEFENDER
7 Mohave County Legal Defender's Office
P O Box 7000
8 Kingman AZ 86402

9 By *Gup*

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