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VIRLYNN TIMMELL
SUPERIOR COURT CLERK

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MOHAVE**

12 **STATE OF ARIZONA,**

13 Plaintiff,

14 vs.

15 **JUSTIN JAMES RECTOR**

16 Defendant.

NO: CR 2014-01193

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

(ASSIGNED TO THE HON. LEE JANTZEN)

17 Defendant Justin James Rector, by and through undersigned counsel, moves the
18 Court for an order precluding witnesses from making statements to the jury about the
19 impact of the victim's death on the witnesses, for the reasons contained in the
20 Memorandum attached hereto and incorporated herein.

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22 **RESPECTFULLY SUBMITTED This 12th day of May, 2015.**

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26 **GERALD T. GAVIN**
Co-Counsel for Mr. Rector

RON GILLO
Co-Counsel for Mr. Rector



S8015CR201401193

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3 The use of Victim Impact Statements give the State an unfair advantage, and
4 should not be permitted. Allowing such statements to be made will deny Mr. Rector's
5 Due Process under the Fifth and Fourteenth Amendments to the United States
6 Constitution and Article II, §4 of the Arizona Constitution; violate his right to confront
7 witnesses under the Sixth Amendment to the United States Constitution, and Article II, §
8 24 of the Arizona Constitution; and render any resulting death sentence as arbitrary and
9 capricious in violation of the Eight Amendment to the United States Constitution, and
10 Article II, § 15 of the Arizona Constitution.

11 First, the impact of the victim's death on the witness is not relevant to any matter
12 the jury is allowed to consider under Arizona's Death Penalty Scheme. Arizona has
13 made the choice that the trier of fact (currently the jury) shall only consider the
14 aggravating factors listed in A.R.S. §13-703(F). Because victim impact testimony does
15 not tend to establish any of those factors, it is irrelevant for purposes of establishing
16 aggravation. State v. Mann, 188 Ariz. 220, 228, 934 P.2d 784 (Ariz. 1997); State v. 910
17 P.2d 635, 653 (Ariz. 1996); State v. Gulbrandson, 184 Ariz. 46, 66, 906 P.2d 579, 599
18 (Ariz. 1995). On the flip side, nor is it relevant regarding the defendant's mitigation
19 presentation. The impact of the victim's death on the witness does not rebut mitigation
20 offered by a capital defendant, because mitigation evidence concerns the defendant
21 and the offense, not the victim or his/her surviving family or friends.

22
23 Although the United State Supreme Court in Payne used the "circumstances of
24 the capital crime" umbrella to justify the admission of victim impact evidence, allowing
25 admission of background facts or circumstances that are consequences of the crime,
26 but not part of the crime itself, distorts the meaning of the phrase and raises the specter
27 of arbitrary and capricious application of this factor. Indeed, in State v. Greenway, the
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1 Arizona Supreme Court discussed the fact that victim impact statements should not be
2 considered for capital sentencing, but could be considered only in regard to other
3 counts for which a capital defendant was being sentenced. 170 Ariz. 155, 163, 823
4 P.2d 22 (1991). In short, Arizona law provides not guidance regarding the role of victim
5 impact statements in the jury's decision-making process.

6 Second, and equally as important, Arizona's Death Penalty Scheme does not
7 expressly provide a capital defendant with the right to cross-examine surviving victim
8 witnesses about their statements. As such, the Defendant is deprived of the opportunity
9 to confront the witnesses against him.

10 For these reasons, Defendant requests that the Court preclude family and friends
11 of the victim from addressing the jury about the impact of the victim's death on the
12 witness.
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1 ORIGINAL of the foregoing filed
2 this 12th day of May, 2015 with:

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

6
7 COPY of the forgoing
8 Delivered this 12th 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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27 File

28 BY: 