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

11 **STATE OF ARIZONA,**)
12)
13 Plaintiff,)
14 vs.)
15 **JUSTIN JAMES RECTOR**)
16 Defendant.)
17)

NO: CR 2014 - 01193
**DEFENDANT'S MOTION IN LIMINE:
TESTIMONY AND ARGUMENT ABOUT
MENTAL STATES**

(ASSIGNED TO THE HON. LEE JANTZEN)

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19
20 Defendant Justin James Rector, by and through undersigned counsel, pursuant
21 to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States
22 Constitution, and Article II, §§ 1,4,13, 23, 24, 32, and 33 of the Arizona Constitution,
23 moves this Court *IN LIMINE* to preclude the State, should this case proceed to
24 sentencing, from eliciting any testimony that Justin Rector knew right from wrong, could
25 control his actions, or acted out of choice, as well as Justin not being shown leniency for
26 those same reasons. Whether a defendant knows right from wrong, or acts volitionally
27 or by choice. are incorrect legal standards to be applied to the ultimate decision of what


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1 sentence to impose in a capital case. Such testimony and argument are irrelevant and
2 will confuse the jury. Such testimony would also violate Justin Rector's constitutional
3 rights to due process, equal protection, the right to counsel, a fair trial and appeal, and
4 freedom from cruel and usual punishment, for the reasons and authority contained in
5 the Memorandum of Point and Authorities attached hereto and incorporated herein.

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7
8 RESPECTFULLY SUBMITTED This 9th day of December, 2015.

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11 GERALD T. GAVIN
12 Co-Counsel for Mr. Rector

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11 RON GILIEO
12 Co-Counsel for Mr. Rector

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15 **MEMORANDUM OF POINTS AND AUTHORITES**

16 Of the common themes often employed by the State in capital trials is that
17 Defendants should not be shown leniency because he was not insane at the time of the
18 offense, he acted volitionally, and he made a choice to commit murder. The State
19 usually elicits testimony on cross-examination of defense experts that the defendant
20 knew right from wrong, made a choice to commit the act, and could control his actions.
21 Defendant must anticipate the State will elicit such testimony and make a similar
22 argument in Justin Rector's case.

23
24 Whether the Defendant knew right from wrong, could control his actions, or acted
25 out of choice are not at issue here. Whether the Defendant knew right from wrong is the
26 standard for an insanity defense that relieves a defendant of criminal responsibility for
27 his or her act (A.R.S. § 13-502), *not an issue related to culpability for sentencing*
28 *purposes.* The same is true for whether the Defendant could control his actions,

1 chose to do what he is accused of doing, are other related arguments the State often
2 pursues against a life sentence in a capital case. The notions of volition (the ability to
3 *liability* (A.R.S. 13-201), *not culpability for purpose of determining whether life or death is*
4 *the appropriate sentence*. As such, knowing right from wrong, controlling one's actions
5 and acting based upon choice, are *guilt phase standards not relevant for determining if*
6 *mitigating circumstances exist, or whether the Defendant should be given a life*
7 *sentence*. Indeed, unless those issues had been resolved, the State could not have
8 moved forward with its prosecution of the Defendant, and we would not be at the
9 sentencing phase. The language of the standard jury instruction that “[m]itigating
10 circumstances are not an excuse or justification for the offense, but are factors that in
11 fairness or mercy may reduce the Defendant’s moral culpability” (Capital Case
12 Sentencing Instructions, Capital Case 2.3, State Bar of Arizona 2009), confirms that the
13 issues of whether a defendant knew right from wrong or could control his/her actions
14 have no place in a capital sentencing proceeding.

15
16 The United States Supreme Court has repeatedly held that there must not be an
17 impediment, including through jury instructions or prosecutorial argument, to the
18 sentencer’s full consideration and ability to give effect to mitigating evidence. Penny v.
19 Lynaugh, 492 U.S. 302, 326 (1989); Hitchcock v. Dugger, 481 U.S. 393 (1987);
20 Lockett v. Ohio, 438 U.S. 586, 604 (1978). Testimony by the State’s expert, and
21 argument by the State regarding right versus wrong, and ability to control one’s actions,
22 do exactly that...by confusing the jury as to the standard they are to apply. Jurors are
23 often uncomfortable about the lack of bright-line rules to guide them in their
24 decisionmaking. In some jurors minds, despite warnings to the contrary, testimony and
25 argument from the State carry greater weight merely because...they come from the
26 State. Indeed, they may consider what the State says about the standards they are to
27 follow as authoritative. Thus, some jurors may wrongly believe the State is espousing

1 the correct standard, and apply what is in fact an incorrect formulation regarding
2 culpability.

3 The Kansas Supreme Court has recognized the impropriety of argument that the
4 defendants proffered mitigation does not excuse, or justify, the offense.

5
6 The prosecutor first stated that the defendant claimed brain
7 damage as a mitigator, the defendant's expert "couldn't say"
8 that the brain damage caused either C.W.'s murder or the
9 previous murder of Bessie Lawrence....Next, the prosecutor
10 noted Kleypas' claim of alcohol as a mitigator and stated:
11 "A pint bottle of Canadian Mist did not cause this murder."...
12 Regarding the claimed mitigator that Kleypas did well in
13 prison, the prosecutor stated: "Does the fact that he did well
14 in prison make the murder..less severe?".....The prosecutor
15 Then referenced Kleypas' claim that his paraphilia was a
16 mitigator, stating : "The defendant's paraphilia did not kill
17 [C.W.]...The prosecutor went on to ask the jury that even if
18 Kleypas had schizophrenia which he claimed to be a mitigating
19 circumstance, "Does that lessen what he did?"....

20 These statements by the prosecutor were clearly improper and
21 reflect a complete lack of understanding of the concept of
22 mitigating circumstances. By these statements, the prosecutor
23 argued to the jury that the mitigating evidence should not be
24 considered unless it excused or justified the crime; this was
25 an erroneous standard of law.

26 ...[T]he prosecutor also made comments telling the jury to
27 disregard mitigating evidence because it was not causally
28 related to the crime. Regarding Kleypas mitigating circumstance
of damage brain due to cocaine use, the prosecutor stated to
the jury that because Klepas did not use cocaine on the night
of the murder, "Cocaine just didn't enter into the picture. The
cocaine was all a smoke screen, all a distraction to divert your
attention away..." Similarly, regarding Kleypas schizophrenia, the
prosecutor stated: "Ladies and Gentlemen, the crux of this issue
about schizophrenia is it simply doesn't matter and why, because
the murder...was intentional and was planned and it was
organized. Schizophrenia and sever emotional distress just don't
enter the picture of this murder."....Once again, the prosecutor's
comments reflect a complete misunderstanding about the nature
of mitigating circumstances. While neither Kleypas' brain damage
nor schizophrenia may have caused the murder, both conditions
are relevant in the determination of whether either should reduce
the moral culpability or blame assigned Kleypas. In a general
sense, they are mitigating because "they might serve 'as a basis
for a sentence less than death' " By his comments, the prosecutor

1 told the jury not to consider them as mitigators in direct
2 contravention of Skipper and Eddings. This constituted
3 prosecutorial misconduct.

4 State v. Klepas, 40 P.3d 139, 281-288 (Kan.2001)(internal citations omitted).

5 Accordingly, to avoid confusing the jury and prejudicing Mr. Rector, the Court
6 should preclude the State from eliciting or offering any testimony, by either the defense
7 witnesses or its own witnesses, that suggest that the jury may base its sentencing
8 decision on whether the Defendant knew right from wrong, could control his actions, or
9 made a choice to act in a particular way.

10 If the Court permits the State to elicit the testimony and make the arguments to
11 which Mr. Rector objects, Mr Rector requests the following curative instruction be given
12 following each instance:

13 You have heard evidence and argument that the defendant
14 understood the nature of his actions, was able to control his
15 actions, chose to do what he did, or knew his actions were
16 wrong. If the defendant did not understand the nature of his
17 actions, was unable to control his actions, did not have the
18 ability to chose his actions, or did not know they were wrong,
19 he would not have been found guilty of first degree murder
20 because these are defenses to that charge. In order to prove
21 the existence of a mitigating circumstance or to be granted
22 a life sentence, the defendant does not need to prove that
23 he did not understand the nature of his actions, was unable
24 to control his actions, or did not know they were wrong.

25 Given the short trial setting this court has imposed, and a quickly approaching
26 trial date, the Defense files this Motion *In Limine* far in advance of trial to avoid any
27 accusation that Mr. Rector tried to ambush or surprise the State last minute; the
28 Defense understands the Court may table this motion to a more appropriate time, but
wanted it made part of the record to take up at that later date without further delay.
This motion only becomes relevant if, after a trial, Mr. Rector has been convicted; that
has not happened, nor is it conceded. This is a prophylactic filing, and a discussion
tabled for that future possible scenario is acceptable to the defense at this juncture.

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ORIGINAL of the foregoing filed
this 9th day of December, 2015 with:

Clerk of Court
401 E Spring Street
Kingman Arizona 86401

COPY of the forgoing
Delivered this 9th day
Of December, 2015, to:

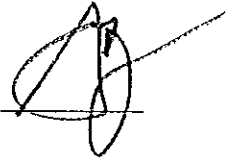
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File

BY: 

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