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 VIRLYNN TINHELL
 SUPERIOR COURT CLERK

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 IN AND FOR THE COUNTY OF MOHAVE

STATE OF ARIZONA)	
)	NO. CR2014-00193
)	
PLAINTIFF,)	
)	DEFENDANT'S REPLY TO STATE'S
vs.)	RESPONSE TO DEFENDANT'S MOTION TO
)	COMPEL LAW ENFORCEMENT GATHER,
JUSTIN JAMES RECTOR,)	PRESERVE AND TENDER ALL EVIDENTIARY
)	ITEMS AND ALL CASE INFORMATION TO THE
DEFENDANT.)	PROSECUTORS OFFICE
)	
)	(Assigned to the Hon. Lee Jantzen)

Defendant Justin James Rector, by and through undersigned counsel, hereby Provides his REPLY to the State's RESPONSE to the above-entitled motion, this Court for a protective and prophylactic order for law enforcement to gather, preserve, and tender all Evidence and information in this case to the State Prosecutor in the Memorandum attached hereto and incorporate herein.

RESPECTFULLY SUBMITTED This 23th day of March, 2015



By:


GERALD T. GAVIN
Defendant's Co-Counsel


RON GILLO
Defendant's Co-Counsel

MEMORANDUM

Defendant's request is simple; the State feigning confusion on how to comply with the proper care and reporting of important case evidence would be laughable if not for the tragic circumstances of this case, and the dire consequences facing Mr. Rector.

The State asks "What agencies are subject to the Court order?". There are likely tens of thousands of law enforcement agencies" in this country. Lets keep it simple: any law enforcement agency that played an active role in the investigation of this case. This would include any agency that had officers on the ground participating in this case. That does not mean agencies nationwide who had suspect and victim flyers sitting on their desks. It means the very obvious: agencies that had officers in Mohave County working this case.

The State asks "What would trigger a violation of the court order?". That is a hypothetical legal question no party can answer at this stage. Like our Supreme Court and pornography....we will know it when we see it.

The State further asks "what would be the sanction for violating the order?" It pains counsel to address this, but if the State is knowingly destroying evidence in a Capital murder case, especially after the Defense has respectfully asked it be notified of any destruction before it takes place, and the State elects to do so otherwise...the Defense will be seeking dismissal of the case, or at the very least a preclusion of the State from executing the accused following a trial. *There are no inconsequential*

evidentiary items in a Capital investigation. If its taken into custody as evidence, its all important. The State seeks a blank check to dispose of items as it sees fit. Disposal may be fine; please...because a life is at stake, ask the defense first. If the defense objects to disposal, we will request items remain with the defense. Simple.

The State has indicated the Prosecution has tendered reports from BHCPD, FBI, MCSO, DCS and the Office of the Mohave County Medical examiner. Lets be exceedingly clear: the defense makes no claim against Mr. McPhillips, the Mohave County Attorneys Office or any of the listed agencies. The Defense is *not seeking* the State redisclose what has been disclosed. Again...this is simple. If the Prosecution has provided all documents on this case generated by any of the listed agencies above, we are done. The defense has provided, in its motion, potential additional documentation that may not have been tendered to the Prosecution.

The defense cannot possibly know what documentation is in the possession of the involved law enforcement agencies that the Prosecution doesn't have. Again...if the Prosecution is certain we have all documentation from all the above agencies, we are done. If it is possible that notes, emails, photographs, video's, witness statements, supplemental reports, lab reports, expert opinions....the list is expansive, possibly exist, *and the Prosecution has not been made aware of this from the agencies,* the defense simply asks the Prosecution take the reasonable step of *formally asking* each of these agencies if *all documentation has been provided to the Prosecutors office; do we have a complete accounting that everything has been secured?* Simple.

The State indicates the ..."Defendant did not provide the court with a substantial need for an item of evidence the defendant needs but cannot obtain without undue

hardship to obtain the substantial equivalent by other means.” Simple. If these law enforcement agencies have *any additional documentation not provided to the Prosecutor, please do so immediately, so it may be disclosed to the defense.* The hardship is Mr. Rector may be put to death. The burden to the State, to ask officers if we have everything regarding this case, and ask them to provide it to the Prosecution if they haven’t, is miniscule. It is not a “fishing expedition” to ask...is this everything?

The defense concedes the point, and modifies its request, to have the Prosecutor take items of evidence into their office. The defense is certainly content these involved agencies store biological, ballistic and other evidentiary items in secure facilities designed for such. The defense also concedes the language it chose to employ was poorly worded, and stands corrected. That said, the Prosecution cannot hide behind semantics to attempt to evade a complete, thorough investigation. There is *no rational reason* the State can maintain that all documentation...words on pieces of paper, photographs, etc...*if not already secured by the Prosecution and disclosed,* cannot now be protected before destruction and provided to the defense. The defense must trust the Prosecutors office to do the right thing. To date, the defense has no reason to think otherwise. From prior unrelated cases, the Prosecutor is as aware as the defense that things go missing: reports aren’t typed promptly, or turned into a supervisor, or a roll of film or disc is innocently forgotten in a camera or computer, a witness statement is in a briefcase, a lab report isn’t sent to officers. There can be many things forgotten initially. Before we proceed...the defense simply asks these agencies double check. Make sure Mr. McPhillips has been provided everything possible on this case. That is not to much to ask when a man’s life is at stake. This is not a run-of-the-mill case.

The State has admitted it normally doesn't secure emails and travel plans of investigating agencies. Why not? If investigating officers are sending personal emails to their loved ones, the defense doesn't want or need it. If they are sending emails about possible suspects, possible crime scenes, naming officers duties in the investigation, naming contact information for witnesses, naming items of evidence located, name complications in the investigation, naming procedure in the investigation, providing timeline information as to possible suspects, the list is again...expansive...and limited only by imagination. If officers are communicating about this case and investigation, that information cannot be duplicated by the defense, and the State can cite no privacy or other interest outweighing Mr. Rector's need to fully investigate his own case, and have access to the exact information the State and Federal investigators were privy to. Its simple. Every officer....in every named agency above...working on this case...please...take a few minutes, print off every email related to this specific investigation, and provide it immediately to the Case Agent Detective Grasse of the Bullhead Police Department. The officers should have nothing to hide; it is official documentation in a Capital murder investigation...lodged in the hands of each officer sending or receiving an email related to this specific case. Please. Save it. Print it. Provide it to the case agent. Have him provide it to Mr. McPhillips. Have Mr. McPhillips disclose it to the defense. The burden on the State is minimal; the defendant's life is...literally...at stake. The State concedes it apparently has not attempted to secure these investigative documents. It could be a dozen....or thousands. Please ask every involved officer, in all the above agencies, to comply with this simple request.

The defense appreciates the Prosecution has likely made every effort to be complete in disclosure. The defense trusts Mr. MrPhillips to do the right thing. It simply asks now, before anything missing is potentially destroyed, we are certain all documentation of this investigation is protected, secured, and shared.

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To:


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Judge of the Mohave Superior Court
Mohave County Courthouse
Kingman Arizona 86401

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File

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