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VIRLYNN TINNELL
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,**

CASE NO. CR 2014-01193

13 **PLAINTIFF,**

14 **vs.**

**DEFENSE MOTION REQUESTING
ACCESS TO VIEW/ INSPECT /
PHOTOGRAPH/ MEASURE /
DOCUMENT ALLEGED CRIME SCENES
AS PART OF INDEPENDENT DEFENSE
INVESTIGATION OF CASE**

15 **JUSTIN JAMES RECTOR,**
16 **DEFENDANT.**

17 **(ASSIGNED TO THE HON. LEE JANTZEN)**

18
19 **COMES NOW** the defendant Justin James Rector, by and through
20 undersigned counsel, who respectfully requests this Court allow the defense to view (in
21 person), inspect, photograph, measure, and otherwise document the alleged crime
22 scenes as part of the defense investigation of the case and preparation for trial, as
23 detailed in the Memorandum of Points and Authorities attached hereto and incorporated
24 herein.
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27
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S8015CR201401193

1 RESPECTFULLY SUBMITTED This 9th day of March, 2015

2
3 By:

4 Gerald T. Gavin
Defendant's Co-Counsel

5 Ron Gilleo
6 Defendant's Co-Counsel

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **FACTUAL BACKGROUND**

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10 As the Court is aware, this is a Capital murder case. The discovery provided by
11 the State indicates, in the police reports, that the police investigated various crime
12 scenes. The government, of course, had full access to inspect, observe, photograph,
13 measure and otherwise document the scenes until they were ready to release each
14 scene. The defense simply seeks the same courtesy, nothing more. The defense was
15 not present at any of that and had no input about documenting items potentially helpful
16 to the defense.
17

18 Defense counsel are obligated by the Court and our profession to conduct a
19 thorough investigation of his client's case, especially any alleged crime scenes. The
20 defense needs to conduct its own independent investigation to determine how best to
21 assist Mr. Rector with his case. To not do so invites ineffective assistance claims later,
22 and perhaps years of wasted time and court costs.
23

24
25 **LEGAL AUTHORITY AND ANALYSIS**

26 As part of their duties, the police collected physical evidence from the scene that
27 purports to document the details of their criminal allegations against Mr. Rector. It is
28

1 crucial that the defense be permitted to view the scene, to possibly measure the areas
2 in question; to deny this opportunity is in violation of Mr. Rector's rights under the 5th
3 and 6th Amendments to the Constitution of the United States and his corresponding
4 Arizona Constitutional rights.

7 **I. The Victim's Right's Amendment Does *Not* Give An Alleged Victim**
8 **The Right to Preclude the Defense From Viewing a Crime Scene.**

9 Counsel concedes that a victim has a constitutional right to refuse *certain*
10 Requests by the defense. For instance, Division 2 of the Arizona Court of Appeals has
11 held that the discovery Rules 15 and 17, Arizona Rules of Criminal Procedure, have
12 been abrogated by the Victim's Bill of Rights constitutional amendment with respect to
13 victim interviews. State v. Warner, 168 Ariz. 261, 812 P.2d 1079 (App.1990); see:
14 State v. O'Neil, 172 Ariz. 180, 836 P.2d 393 (App.1991).

15
16 However, where a Constitutional Due Process Right conflicts with the Arizona
17 Victim's Rights Amendment, the Federal Due Process right controls. In State ex el.
18 Romley v. Superior Court In and For the County of Maricopa, 172 Ariz. 232, 836 P.2d
19 445 (Ariz.App. Div 1 1992), the Court held:

21 Due process rights are guaranteed in the Arizona
22 Constitution at Article 2, §4:

23 "No person shall be deprived of life,
24 Liberty, or property without due
25 Process of law."

26 This guarantee is congruent with the U.S. Constitution,
27 Amendments 5 and 14. State v. Herrera-Rodriguez,
28 164 Ariz. 49, 52, 790 P.2d 747, 750 (App.1989). We
therefore have no problem reconciling state due
process rights with federal due process rights. However,
we must also reconcile and balance the state due
process guarantee with the Victim's Bill of Rights. As

1 both are constitutional rights, this is a difficult task.
2 See: State v. ex rel. Dean v. City of Tucson, Ariz. (2 CA-
3 CV 91-0161 filed April 30th, 1992). Due process of law
4 is the primary and indispensable foundation of individual
5 freedom in our legal system. Application of Gault, 387
6 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967). Our
7 Supreme Court has also held that denial of due process
8 is a denial of fundamental fairness, shocking to a
9 Universal sense of justice. Oshrin v. Coulter, 142 Ariz.
10 109, 688 P.2d 1001 (1984). See Kinsella v. U.S. ex rel
11 Singleton, 361 U.S. 234, 80 S.Ct. 297, 4 L.Ed.2d 268
12 (1960); Crouch v. Justice of the Peace Court of the Sixth
13 Precinct, 7 Ariz.App. 460, 466, 440 P.2d 1000, 1006
14 (1968). Our Supreme Court has also held that, if a trial
15 court excludes essential evidence, thereby precluding
16 a defendant from presenting a theory of defense, the
17 trial court's decision results in a denial of the defendant's
18 right to due process that is not harmless. Oshrin, 142
19 Ariz. at 111, 688 P.2d at 1003.
20 *We therefore hold that when the defendant's constitutional*
21 *right to due process conflicts with the Victim's Bill of*
22 *rights in a direct manner...then due process is the superior*
23 *right.*

24 Romley, *supra*. This is so because due process is the foundation of our system of laws,
25 having been first provided to the people in the Magna Carta and given us by our
26 founders in the United States Constitution. When there is a conflict, the Due Process by
27 virtue of the Supremacy Clause, which states:

28 This Constitution and the Laws of the United States
which shall be made...under the Authority of the
United States, shall be the Supreme Law of the Land;
and the judges in every state shall be bound thereby,
any thing in the Constitution or Laws of any State
to the Contrary notwithstanding. United States
Constitution, Article VI. Romley, *Id.* (emphasis
added).

29 A defendant has a right to present a defense. Washington v. Texas, 388 U.S. 14
30 (1967). In Washington, the U.S. Supreme Court held that a defendant's Sixth

1 Amendment right to compulsory process requires that he must be allowed to call
2 witnesses whose testimony would be relevant and material to the defense. Meaningful
3 adversarial testing of the State's case requires that the defendant not be prevented from
4 raising an effective defense, which must include the right to present relevant, probative
5 evidence. Montana v. Egelhoff, 518 U.S. 37 (1996).
6

7 The allegations against Mr. Rector are that, on around September 2nd, 2014 he
8 kidnapped and murdered the victim, 8 year old allegedly
9 removing her from her home, murdering her, and burying her in a shallow grave.
10 Inspection of the scenes are required to effectively interview the State's witnesses,
11 explore the States methods and decisions about how and what to impound into
12 evidence, and otherwise prepare the case for trial.
13

14 The defense must view all the crime scenes pursuant to this investigation. The
15 Sixth Amendment right to confrontation is severely limited if the defense is not permitted
16 to view, and document if needed, the alleged crime scenes, when the State already
17 had full opportunity to do so. Denial of the right of effective cross-examination is a
18 constitutional error of the first magnitude so that no amount of showing of want of
19 prejudice could cure it. Davis v. Alaska, 415 U.S. 308 (1974).
20

21 The trial date is presently set for Monday, October 16th, 2016. *Because the view*
22 *of the crime scenes is crucial to the defendant's case, and is not precluded by the*
23 *Victim's Rights Amendment, nor Statute, and is protected by the defendant's right of*
24 *confrontation and due process, the defendant hereby moves this Court to ORDER the*
25 *State provide the defendant with the opportunity to view the alleged crime scenes (the*
26 *residence, vehicle and curtilages in question), at a mutually convenient time, and to*
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1 *permit photography, video, audio, and measurements as may be necessary. The*
2 *defense will be respectful and courteous to all parties, and endeavor to make the*
3 *process as efficient as possible.*
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1 **ORIGINAL FILED** this 16th day
2 Of March, 2015 with

3 **CLERK OF THE COURT**
4 Mohave County Court House
5 401 Spring Street
6 Kingman Arizona
7 86401

8 And copies hand-delivered this date to:

9 Hon Lee Jantzen
10 Judge of the Superior Court
11 Mohave County Courthouse
12 401 Spring Street
13 Kingman Arizona 86401

14 Greg McPhillips
15 Assigned Deputy Mohave County Attorney
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18 Ron Gilleo
19 Mohave County Legal Defender
20 313 Pine Street
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23 Client / Mohave County jail

24 Client

25 File

26 By _____