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**IN THE SUPREME COURT
IN AND FOR THE STATE OF ARIZONA**

In the matter of:

Petition to Amend Ariz. R. Evid.
804(b)(3) of the Arizona Rules of
Evidence

Arizona Supreme Court
No. R-24-0021

**Comment of Arizona Attorneys
for Criminal Justice (AACJ)
in Support of an Amendment
to Arizona Rule of Evidence
804(b)(3)**

Pursuant to Rule 28 of the Arizona Supreme Court Rules, Arizona Attorneys for Criminal Justice (“AACJ”) respectfully submits this comment in support of the proposed amendment to Rule 804(b)(3) of the Arizona Rules of Evidence.

AACJ, the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 in order to give a voice to the rights of the criminally accused and to those attorneys who defend the accused. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of

criminal law through education, training, and mutual assistance, and fostering public awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

AACJ supports the proposal to amend Rule 804(b)(3) because it will provide greater flexibility to judges, allowing them to consider all relevant circumstances, when considering the trustworthiness—and therefore the admissibility—of a statement against interest. The Amendment would clarify that under the Arizona Rules, courts may consider both the inherent trustworthiness of the statement and independent evidence corroborating or refuting the accuracy of the statement.

As explained in the Petition, the proposed Rule change is consistent with longstanding Arizona Supreme Court law regarding admissibility of statements against interest. *See State v. LaGrand*, 152, Ariz. 21, 27–28 (1987), *State v. Harrod*, 200 Ariz. 309, 313 ¶ 16 (2001). The Amendment also conforms with more recent case law on this issue. In *State v. Machado*, the Arizona Supreme Court further clarified that when determining the trustworthiness of a statement under Rule 804(b)(3), a court “must examine *any evidence* that corroborates or contradicts the statement to find whether a reasonable person could conclude that the statement is true.” 226 Ariz. 281, 285 ¶ 21 (2011) (quoting *Harrod*, 200 Ariz. at ¶ 16). In *Machado*, the Court considered corroborating circumstances external to the statement itself, including that descriptions of vehicles near the scene matched

descriptions provided in the call at issue. *Id.* at ¶ 22. The Court further explained that “the primary goal of the corroboration requirement in Rule 804(b)(3) is to prevent criminal suspects from fabricating hearsay admissions to the crime by others,” and explained that because the defendant was not a suspect when the statement at issue was made, it was unlikely that he was involved in its fabrication. *Id.* Such analysis also involves considering “the totality of the circumstances” rather than the inherent trustworthiness of the statement itself, thus supporting the proposed Rule change.

Moreover, the proposed change to Arizona Rule of Evidence 804 is designed to align it with a pending similar change to the Federal Rules of Evidence. AACJ believes that conformity between the Arizona Rules of Evidence and the Federal Rules should be adopted when not inconsistent with Arizona law.

Accordingly, AACJ supports the proposed Amendment to Rule 804.

Respectfully submitted this 1st day of May, 2024

By: /s/ Karen S. Smith
Karen S. Smith
Arizona Attorneys for Criminal Justice