

1 Honorable Sam Myers
2 Criminal Department Presiding Judge
3 Superior Court of Arizona, Maricopa County
4 175 W. Madison Street
5 Phoenix, AZ 85003
6 (602) 372-2940

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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of: } Supreme Court No. R-16-0031
} COMMENT OF THE SUPERIOR
} COURT OF ARIZONA, MARICOPA
} COUNTY REGARDING PETITION
} TO DELETE RULE 20, ARIZONA
} RULES OF CRIMINAL
} PROCEDURE

On behalf of the Superior Court in Maricopa County, the Criminal Department Presiding Judge files the following comment pursuant to Rule 28, Arizona Rules of the Supreme Court, opposing the petition to delete Rule 20 of the Arizona Rules of Criminal Procedure.

The petition proposes to completely eliminate the trial court's ability to grant a directed verdict at the close of the State's presentation of evidence. Although rarely granted, a directed verdict serves several important purpose.

Directed verdicts promote judicial economy. The court must be allowed to manage its limited time and resources in an effective manner. If the State has failed to provide sufficient evidence for a jury to find the defendant guilty, why should the court, jurors, and all those involved in the case continue with the trial? This will cause delays in other cases, prevent defense attorneys from spending time on other cases, preclude jurors from timely returning to their daily lives, and importantly, force the defendant to present a defense when one is

1 unnecessary. If defendant has private counsel, this will increase the defendant's
2 personal costs that he or she will be unable to recover.

3 Directed verdicts allow the costs in a case to stop when continuing with
4 the trial is futile. These costs include but are not limited to court time, juror fees,
5 juror mileage, juror time, attorney costs, and the time of all the staff required for
6 the court to function. And this fails to take into account the costs to the
7 defendant. If a defendant is incarcerated, the county will have to continue to pay
8 incarceration costs and the defendant will continue to have his or her liberty
9 restricted – even though the State has failed to present sufficient evidence.

10 The Superior Court has surveyed other jurisdictions and the majority of
11 jurisdictions include a directed verdict option. Here are a few of the many
12 jurisdictions that include a directed verdict option:

- 13 • Alabama (Ala. R. Crim. P., Rule 20.2);
- 14 • Alaska (R. Crim. P., Rule 29)
- 15 • Arkansas (Ark. R. Crim. P., Rule 33.1);
- 16 • California (West's Ann.Cal.Penal Code § 1118.1);
- 17 • Colorado (Colo. R. Crim. P., Rule 29);
- 18 • Delaware (Super. Ct. Crim. R., Rule 29);
- 19 • Florida (Fla. R. Crim. P., Rule 3.380);
- 20 • Georgia (Ga. Code Ann. § 17-9-1);
- 21 • Idaho (I.C.R., Rule 29);
- 22 • Illinois (725 ILCS 5/115-4);
- 23 • Kansas (K.S.A. 22-3419);
- 24 • Louisiana (LSA-C.Cr.P. Art. 778);
- 25 • Maine (ME Rules of Unified Criminal Procedure, Rule 29);
- 26 • Maryland (MD Code, Criminal Procedure, § 6-104);
- 27 • Massachusetts (Mass. R. Crim. P., Rule 25);
- 28 • Michigan (MI Rules MCR 6.419);

- Minnesota (49 M.S.A., Rules Crim.Proc., Rule 26.03, Subd. 18);
- Missouri (Supreme Court Rule 27.07);
- Montana (MCA 46-16-403);
- New Jersey (R. 3:18-1);
- New York (McKinney's CPL § 290.10);
- North Carolina (Rules Civ.Proc., G.S. § 1A-1, Rule 50);
- North Dakota (N.D.R.Crim.P., Rule 29);
- Ohio (Crim. R. Rule 29);
- South Dakota (SDCL § 23A-23-1 (Rule 29(a)); and
- Tennessee (Tenn. R. Crim. P., Rule 29).

Even the federal system allows the judge to enter a directed verdict. Rule 29 of the Federal Rules of Criminal Procedure provides in part:

(a) Before Submission to the Jury. *After the government closes its evidence* or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction. The court may on its own consider whether the evidence is insufficient to sustain a conviction. If the court denies a motion for a judgment of acquittal at the close of the government's evidence, the defendant may offer evidence without having reserved the right to do so.

(b) Reserving Decision. The court may reserve decision on the motion, proceed with the trial (where the motion is made before the close of all the evidence), submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict. If the court reserves decision, it must decide the motion on the basis of the evidence at the time the ruling was reserved.

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(Emphasis added.)

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1 Arizona should not deviate from the majority of jurisdictions that grant the
2 trial court discretion to enter a directed verdict at the close of the State's
3 evidence.

4 For the foregoing reasons, the Superior Court in Maricopa County
5 opposes the petition to eliminate Rule 20.

6 Respectfully submitted this 18th day of May, 2016.

7
8 /s/ Sam Myers
9 Honorable Sam Myers
10 Criminal Department Presiding Judge
Superior Court of Arizona, Maricopa County

11 Electronic copy filed with
12 the Clerk of the Supreme
13 Court of Arizona this 18th
14 day of May, 2016.