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8 ARIZONA SUPREME COURT

10 IN RE:

11 PETITION TO AMEND RULE
12 20(b)(1), ARIZONA RULES OF
13 CRIMINAL PROCEDURE

R-19-0025

MARICOPA COUNTY ATTORNEY'S
RESPONSE TO PETITION TO AMEND RULE
20(b)(1), ARIZONA RULES OF CRIMINAL
PROCEDURE

15 The Maricopa County Attorney hereby submits this comment to the Arizona
16 Attorneys for Criminal Justice's Petition to Amend Arizona Rule of Criminal
17 Procedure 20(b)(1) and asks this Court to deny the Petition because it is an unnecessary
18 expansion of a court's power to direct an acquittal in a criminal jury trial.
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20 On two separate occasions over the last four years, the Maricopa County
21 Attorney's Office has asked this Court to remove a trial court's power to enter a pre-
22 verdict judgement of acquittal because that power violates the State's right to a jury
23 trial and a victim's right to justice and due process. When a court orders an acquittal
24 before a verdict, even if that order is based on a clear, undisputed misunderstanding
25 about the law, the State is forever barred from seeking justice for that offense. See
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1 *Evans v. Michigan*, 568 U.S. 313 (2013). As the United States Supreme Court has
2 noted, there is no constitutional basis for giving courts the power to grant pre-verdict
3 acquittals,
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5 Nothing obligates a jurisdiction to afford its trial courts the power to grant
6 a midtrial acquittal, and at least two States disallow the practice. *See*
7 Nev.Rev.Stat. § 175.381(1) (2011); *State v. Parfait*, 96,1814 (La.App. 1
8 Cir. 05/09/97), 693 So.2d 1232, 1242. Many jurisdictions, including the
9 federal system, allow or encourage their courts to defer consideration of a
10 motion to acquit until after the jury returns a verdict, which mitigates
11 double jeopardy concerns. *See* Fed. Rule Crim. Proc. 29(b). And for cases
12 such as this, in which a trial court's interpretation of the relevant criminal
13 statute is likely to prove dispositive, we see no reason why jurisdictions
14 could not provide for mandatory continuances or expedited interlocutory
15 appeals if they wished to prevent misguided acquittals from being entered.
16 But having chosen to vest its courts with the power to grant midtrial
17 acquittals, the State must bear the corresponding risk that some acquittals
18 will be granted in error.

19 *Id.* at 329 (footnotes omitted). Nevertheless, this Court rejected both efforts to limit a
20 court's power to direct acquittals to post-verdict proceedings.
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22 Petitioner now seeks to expand Rule 20 to permit even more pre-verdict directed
23 acquittals. As currently drafted and interpreted by case law, Rule 20 gives trial courts
24 two opportunities to direct a verdict of acquittal before a verdict is rendered. The court
25 may direct a verdict of acquittal after the State rests or after the defense rests. ARIZ. R.
26 CRIM. P. 20(a)(1). The court may do so on motion of the defense or on its own motion.

27 *Id.* Once the court decides not to direct an acquittal, however, and the case is submitted
28 to the jury, the court's power to direct an acquittal is limited to post-verdict
proceedings. ARIZ. R. CRIM. P. 20(b)(1); *State v. Godoy*, 244 Ariz. 327, 418 P.3d 1100

1 (App. 2017). Petitioner seeks to expand the court’s power to permit directed acquittals
2 following mistrials.
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4 Given the standard for granting a motion under Rule 20, a trial court should not
5 need days, weeks, or months to consider its decision. This fact is reflected in the rule
6 itself which requires that a court decide a Rule 20 motion “with all possible speed.”
7 ARIZ. R. CRIM. P. 20(a)(3). A court can only direct an acquittal when the evidence in
8 a case is so lacking that considering all inferences in favor of the State, there is “no
9 substantial evidence to support a conviction.” ARIZ. R. CRIM. P. 20(a)(1); *See State v.*
10 *Mosley*, 119 Ariz. 393, 402, 581 P.2d 238, 247 (1978) (“A directed verdict should not
11 be granted if the evidence is such that reasonable minds may differ on the inferences
12 to be drawn therefrom.”). In other words, a case lacking substantial evidence should
13 be easy to identify. Indeed, some commenters who objected to the previous attempts
14 to limit directed acquittals to post-verdict proceedings pointed out that a Rule 20
15 motion would only be granted in the most obvious situations where a case is completely
16 devoid of evidence to support a conviction.
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21 Understanding the very limited circumstances where a directed acquittal is
22 appropriate under the rules and caselaw, it is unnecessary to modify Rule 20 to expand
23 the court’s ability to direct an acquittal in the weeks or months following a mistrial. If
24 the State’s case is so devoid of evidence as to justify removing the case from the jury’s
25 purview to allow the trial court to sit as a one-person jury and grant an acquittal, there
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1 should be no reason for the court to have denied the motion in the first instance.
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3 Petitioner wants to create a situation where Rule 20 motions can be relitigated after a
4 mistrial despite the fact that a mistrial returns the case to a pretrial posture. *See Godoy*,
5 244 Ariz. at 330, ¶ 12, 418 P.3d at 1103. During the pretrial stage of a case, even after
6 a mistrial, additional evidence may be collected, additional analysis conducted, or
7 different charges filed and pursued.¹ There are numerous ways a case might be
8 improved following a mistrial. There is no reason to expand Rule 20's scope to give a
9 court the power to direct an acquittal before hearing the State's evidence in the next
10 trial.
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13 Petitioner asserts that the current rule is bad public policy. Petitioner claims that
14 the current rule "incentivizes" judges to grant directed acquittals before sending the
15 case to the jury. But Petitioner's claim here is a peculiar way to look at the judicial
16 function when assessing a Rule 20 motion. Petitioner appears to suggest that trial
17 courts will be more inclined to strip the case from the jury and enter a "not guilty"
18 verdict because they are afraid they might not be able to do so later. But the current
19 rule permits a judge to change his or her mind if the defendant is convicted which
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25 ¹ There are numerous reasons why it may be appropriate to modify charges following
26 a mistrial. For example, charges may be modified to charge a different subsection that
27 better fits the evidence admitted at trial or charges might be modified or added to
28 present a more complete and accurate case to the jury. Changing or adding charges in
these types of circumstances is permissible. *See e.g. State v. Mieg*, 225 Ariz. 445, 239
P.3d 1258 (App. 2010).

1 sufficiently protects the defendant's rights and the State's ability to appeal. The case
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3 Petitioner cites to support this argument does not apply because that case noted that if
4 a court could not direct a verdict after a *conviction*, a court might be more inclined to
5 direct an acquittal before submitting the case to a jury. *See State v. West*, 226 Ariz.
6 559, 562, ¶ 12, 250 P.3d 1188, 1191 (2011). In that scenario, a court might be
7 concerned about not being able to protect a defendant's rights should a *conviction* be
8 obtained. That concern is not present in a mistrial because there is no conviction, the
9 case is returned to a pretrial posture, and the court will have the opportunity to again
10 assess the quantum of evidence after the State rests at the next trial.
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13 Petitioner's other concerns that failing to change the rule will somehow make a
14 judge more willing to force juries to reach a verdict or, the opposite, to declare a mistrial
15 too early, are difficult to comprehend. Are we to believe that a judge will
16 inappropriately force a verdict due to a fear of not being able to direct an acquittal
17 otherwise? Of the many reasons courts might be incentivized to encourage a jury to
18 reach a verdict, being able to direct an acquittal would be extremely low on the list if
19 it exists at all. Petitioner also suggests the current rule encourages courts to declare a
20 mistrial before a jury is deadlocked. But to the extent Rule 20 has any impact on this
21 issue (a questionable assertion) changing the rule as Petitioner requests would
22 exacerbate this concern, not alleviate it. As currently written "forcing" a mistrial
23 prevents the judge from directing a verdict. If the rule was changed, the mistrial would
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1 allow a judge to direct an acquittal. The rule change would actually encourage the
2 result Petitioner seeks to avoid. Petitioner's public policy arguments are simply
3 unpersuasive.
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5 Petitioner provides no compelling reason to modify the rule's post-verdict
6 limitations that have been in effect since 1975. Giving trial courts the power to remove
7 criminal matters from a jury and consequently leaving the State and any victim no
8 recourse on appeal is problematic enough. That power should not be expanded to
9 include mistrials as Petitioner requests. Petitioner's change would further limit the
10 State's right to prosecute offenders and a victim's right to justice and due process with
11 no significant benefit to a defendant's due process rights. For these reasons, the
12 Maricopa County Attorney asks this Court to deny the Petition.
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16 Respectfully submitted this 1st day of May 2019.
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