

Submitted March 9, 2007.

ANDREW P. THOMAS
MARICOPA COUNTY ATTORNEY

BY /s/ Suzanne E. Cohen

/s/ Suzanne Cohen
Deputy County Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

A. Defendant's Exculpatory Statements Are Inadmissible Hearsay.

After the defendant was arrested he was interviewed by several police officers. The defendant denied the charges against him. He also denied the charges to his family and friends. It is those denials the State seeks to preclude.

An exculpatory statement is a statement which tends to justify, excuse, or exonerate the defendant from alleged fault or guilt. State v. Cobb, 2 Ariz.App. 71, 73, 406 P.2d 421, 423 (1965). Thus, any statements uttered by Defendant in justification of his conduct or denying his conduct are exculpatory. Id. Defendant's exculpatory pre and post-arrest statements are thus inadmissible hearsay unless they fall within an exception to the hearsay rule.

Defendant's hearsay statements do not qualify as an admission, because they are not being offered against him. Rule 801(d)(2), Ariz.R.Evid. Rule 801(d)(2) limits admissibility to only those statements one party seeks to use against the other party, and excludes a party from seeking to introduce its own statements to support its own position.

Even if the Defendant were to testify at trial, his prior consistent exculpatory statements are not admissible unless specifically offered to rebut a charge of *recent* fabrication or improper influence or motive. Rule 801(d)(1), Ariz.R.Evid.

Additionally, the defendant's statements are not admissible under Evidence Rule 803(24) or 804(b)(5) because they do not bear circumstantial guarantees of trustworthiness. State v. Jeffers, 135 Ariz. 404, 423-24, 661 P.2d 1105 (1983); State v. Duffy, 124 Ariz. 267, 275, 603 P.2d 538 (App. 1979); State v. Spratt, 126 Ariz. 184, 187, 613 P.2d 848 (App. 1980); State v. Smith, 138 Ariz. 79, 84, 673 P.2d 17, 22 (1983). These self-serving statements are highly suspect and, absent circumstantial guarantees of trustworthiness, are properly excluded at trial. State v. Barger, 167 Ariz. 563, 810 P.2d 191 (App. 1990).

Moreover, the fact that exculpatory and inculpatory statements are in close proximity does not make admissible the exculpatory statements. See United States v. Williamson, 512 U.S. 594, 114 S.Ct. 2431,(1994). Admissions of non-self-inculpatory statements are not permitted, even if they are made within a broader statement that was generally self-inculpatory. State v. Nieto, 186 Ariz.449, 924 P.2d 453 (Ariz.App.Div. 1 1996).

B. Conclusion.

For the foregoing reasons, this Court should preclude the Defendant from attempting to introduce any of his prior exculpatory statements.

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Copy of the foregoing
mailed/delivered this
9th day of March, 2007,
to:

The Honorable Raymond Lee
Judge of the Superior Court

Stephen Frank Karban
Pro Per Defendant
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BY /s/ Suzanne E. Cohen
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