

1 **Rule 804. Exceptions to the Rule Against Hearsay—**
2 **When the Declarant Is Unavailable as a**
3 **Witness**

4 * * * * *

5 **(b) The Exceptions. * * ***

6 **(3) *Statement Against Interest.*** A statement that:

7 **(A)** a reasonable person in the declarant's
8 position would have made only if the
9 person believed it to be true because,
10 when made, it was so contrary to the
11 declarant's proprietary or pecuniary
12 interest or had so great a tendency to
13 invalidate the declarant's claim
14 against someone else or to expose the
15 declarant to civil or criminal liability;
16 and

17 **(B)** if offered in a criminal case as one
18 that tends to expose the declarant to
19 criminal liability, is supported by

20 corroborating circumstances that
21 clearly indicate its trustworthiness, ~~if~~
22 ~~offered in a criminal case as one that~~
23 ~~tends to expose the declarant to~~
24 ~~criminal liability—~~after considering
25 the totality of circumstances under
26 which it was made and any evidence
27 that supports or undermines it.

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Committee Note

Rule 804(b)(3)(B) has been amended to require that in assessing whether a statement is supported by “corroborating circumstances that clearly indicate its trustworthiness,” the court must consider not only the totality of the circumstances under which the statement was made, but also any evidence supporting or undermining it. While most courts have considered evidence independent of the statement, some courts have refused to do so. The rule now provides for a uniform approach and recognizes that the existence or absence of independent evidence supporting the statement is relevant to, but not necessarily dispositive of, whether a statement that tends to expose the declarant to criminal liability should be admissible under this exception when offered in a criminal case. A court evaluating the admissibility of a third-party confession to a crime, for example, must consider not only circumstances such as the

timing and spontaneity of the statement and the third-party declarant's likely motivations in making it. The court must also consider information, if any, supporting the statement, such as evidence placing the third party in the vicinity of the crime. Courts must also consider evidence that undermines the declarant's account.

Although it utilizes slightly different language to fit within the framework of Rule 804(b)(3), the amendment is consistent with the 2019 amendment to Rule 807 that requires courts to consider corroborating evidence in the trustworthiness inquiry under that provision. The amendment is also supported by the legislative history of the corroborating circumstances requirement in Rule 804(b)(3). *See* 1974 House Judiciary Committee Report on Rule 804(b)(3) (adding "corroborating circumstances clearly indicate the trustworthiness of the statement" language and noting that this standard would change the result in cases like *Donnelly v. United States*, 228 U.S. 243 (1913), that excluded a third-party confession exculpating the defendant despite the existence of independent evidence demonstrating the accuracy of the statement).