

Approved: 4/13/92

**STATEMENT BY DEFENDANT (WHERE ADMISSIBLE
FOR CREDIBILITY PURPOSES ONLY)**

We have in this case an oral/written statement (MARKED EXHIBIT _____)
alleged to have been made by the defendant.

This statement has been introduced by the prosecution not as evidence of defendant's
guilt of the crime charged, but to affect (his/her) credibility on condition that the jury first
determine that the statement was made.

(HERE DISCUSS THE STATEMENT)

So you can see ladies and gentlemen of the jury, prior to your considering this statement
for the limited purposes of affecting the defendant's credibility as a witness, you must determine
whether the statement was actually given. In considering whether or not the statement was made
by the defendant you may take into consideration the circumstances and facts surrounding the
giving of the statement.

**(HERE DISCUSS FACTS AND CIRCUMSTANCES SURROUNDING
THE GIVING OF THE STATEMENT)**

If you find that the statement was not made then you must not consider it for any purpose.
If you find that only part of the statement was made then you may only consider that part as it
may affect defendant's credibility.

If you find that the statement was made it may be considered solely to determine the
defendant's credibility if you believe it does, in fact, affect such credibility and not as evidence of
(his/her) guilt. In this regard in all fairness you will want to consider all of the circumstances
under which the claimed prior inconsistent statement occurred; the extent and importance or lack
of importance of the inconsistency on the overall testimony of the defendant as bearing on

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(his/her) credibility, including such factors as where and when the prior statement occurred and the reasons, if any, therefore.¹

The extent to which defendant's credibility is affected by such inconsistencies, if any, is for you to determine. Consider the materiality and relationship of such contradictions to the entire testimony and all the evidence in the case.

Harris v. New York, 401 U.S. 222, 91 S.Ct. 643, 28 L. Ed. 2d 1 (1971) State v. Kimbrough, 109 N.J. Super. 57 (App. Div. 1970).

State v. Hampton, 61 N.J. 250 (1972).

State v. Miller, 67 N.J. 229 (1975).

Oregon v. Hass, 420 U.S. 714, 95 S.Ct. 1215, 43 L. Ed. 2d 570 (1975).

NOTES:

- (1) State v. Miller, 67 N.J. 229, 233 (1975) interpreting Harris, holds that:

"An in-custody statement taken from an accused by the police without first complying with the Miranda rule is not admissible in evidence as part of the State's main case. However, if it otherwise satisfies standards of admissibility, it may be used to impeach the defendant's credibility as a witness should the defendant take the witness stand and give testimony which is at variance with what was said in the statement to the police. But the jury should be instructed as to the limited consideration it may give to the statement and its contents."

- (2) See also Oregon v. Hass, 420 U.S. 714, 95 S.Ct. 1215, 43 L. Ed. 2d 570 (1975).

¹ If voluntariness is an issue charge accordingly. See Model Criminal Charge on Statements of Defendants (9/1/76).