

**CREDIBILITY – DEFENDANT’S STATEMENTS AT OR NEAR TIME OF ARREST**  
**(To Be Used Only When Defendant Testifies)<sup>1</sup>**

You have heard evidence that at or near the time of his/her arrest, defendant gave [a] statement[s] to the police that differed from what he/she testified to during this trial.<sup>2</sup>

**[CHARGE WHEN DEFENDANT DENIES MAKING THE PRIOR STATEMENT(S)]**

Prior to your considering this/these prior statement(s) for the limited purposes of affecting the defendant's credibility as a witness, you must determine whether the statement(s) was/were actually given. In considering whether or not the statement(s) was/were 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.

**[CHARGE IN ALL CASES]**

If [you find that: defendant did make this/these prior statements and] **OR** [ you find that the prior statement[s] [does/do] differ from his/her trial testimony, this evidence may only be used in determining the credibility or believability of that testimony.<sup>3</sup>You may not conclude that the defendant committed the crime[s] charged simply because his/her statement[s]at or near the time of his/her arrest differ from his/her trial testimony.<sup>4</sup>

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<sup>1</sup> The State may not introduce this evidence in its case in chief; it may only adduce this impeachment evidence on cross-examination or rebuttal if defendant testifies. State v. Brown, 190 N.J. 144, 158-159 (2007).

<sup>2</sup>This charge envisions that, as in State v. Elkwisni, 190 N.J. 169 (2007) , the evidence consists of pre-trial statements given by defendant that arguably conflict with his/her trial testimony.

<sup>3</sup>State v. Elkwisni, 384 N.J. Super. 351, 377 (App. Div. 2006), affirmed 190 N.J. 169, 182 (2007).

<sup>4</sup>Elkwisni, *supra* at 181, quoting State v. Muhammad, 182 N.J. 551, 573-574 (2005).

Our law permits consideration of evidence of defendant's statements at or before the time of his/her arrest only for the purpose of affecting the credibility of his/her testimony and for no other purpose. You are not, however, obligated to change your opinion as to the credibility of defendant's testimony simply because of this evidence. You may consider such evidence along with all the other factors we previously discussed in determining the credibility of defendant's testimony.