

### **3.9(e) DEFENDANT'S STATEMENTS - AMENDED**

A statement claimed to have been made by the defendant outside of court has been placed before you. Such a statement should always be considered with caution and be weighed with great care to make certain it was freely and voluntarily made.

Therefore, you must determine from the evidence that the defendant's alleged statement was knowingly, voluntarily, and freely made.

In making this determination, you should consider the total circumstances, including but not limited to

1. whether, when the defendant made the statement, [he] [she] had been threatened in order to get [him] [her] to make it, and
2. whether anyone had promised [him] [her] anything in order to get [him] [her] to make it.

***In this case, it is claimed that the defendant made the statement during interrogation by law enforcement officers. You must, therefore, consider whether the interrogation was recorded. If the interrogation of the defendant was not recorded, the absence of a recording may be considered by you, as evidence that the statement was not freely and voluntarily made. If you choose, you may disregard the defendant's out of court statement because the defendant's interrogation was not recorded.***

If you conclude the defendant's out of court statement was not freely and voluntarily made, you should disregard it.

Comment

This instruction was adopted in 1981.