

including the testimony of [REDACTED] and [REDACTED], and any evidence of facts and circumstances from which identity or non-identity of the criminal may be inferred.

You cannot find the defendant guilty unless you are satisfied beyond a reasonable doubt by all the evidence, direct and circumstantial, not only that the crime was committed but that it was committed by the defendant.

Now, in this case the Commonwealth has introduced evidence of a statement which is claimed was made by the defendant. Before you may consider the statement as evidence against the defendant, you must find that a crime was in fact committed, that the defendant in fact made the statement, and that the statement was voluntary; otherwise, you must disregard the statement. Each juror should ultimately decide these questions for themselves and thereby individually accept or reject the defendant's statement as evidence.

You must not allow the fact that I admitted the statement in evidence to influence you in any way during your deliberations. I shall now instruct you in more detail with regard to the above that I have just covered.

You may not consider the statement as

evidence against the defendant unless you find that a crime was committed. In making that preliminary determination, you may consider any direct or circumstantial evidence apart from the statement itself tending to prove or disprove a crime. This means you must disregard the statement unless you are satisfied beyond a reasonable doubt by the other evidence that a crime, in this case rape and/or burglary, was committed. The other evidence need not tend to show that the crime was committed by the defendant, only that a crime was committed.

You may not consider the statement as evidence against the defendant unless you find that the statement -- or that the defendant in fact made the statement. Words allegedly spoken by a defendant should not be used against him unless he actually uttered those words.

You may not consider the statement as evidence against the defendant unless you find he made the statement voluntarily. This means that you must disregard the statement unless you are satisfied by a preponderance of the evidence, that is by the greater weight of the evidence, that the defendant made the statement voluntarily. The word "voluntary" has a special meaning in the law which I will now explain.

In this case if a defendant makes a

218

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statement in response to police questioning, the basic test for determining its voluntariness is as follows. To be voluntary, a defendant's statement must be the product of a rational mind and a free will. The defendant must have a mind capable of reasoning about whether to make a statement or say nothing and he must be allowed to use it. The defendant must have sufficient willpower to decide for himself whether or not to make a statement and he must be allowed to make that decision.

Now, this does not mean that a statement is involuntary merely because a defendant made a hasty or a poor choice or might have been wiser to say nothing; nor does it mean that a statement is involuntary merely because it was made in response to searching questions. It does not mean, however, that if a defendant's mind and will are confused or burdened by promises of advantage, threats, physical or psychological abuse, or other improper influences, any statement which he makes is involuntary.

In deciding whether the statement was voluntary, you should weigh all facts and circumstances surrounding the making of the statement which shed light on whether the statement was the product of an essentially free will and choice and not of a will and choice overborne by pressure or improper influences.