

Innocence Legal Team
1600 S. Main Street, Suite 195
Walnut Creek, CA 94596
Tel: 925 948-9000

Attorney for Defendant

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

THE PEOPLE OF THE STATE OF)	Case No.
CALIFORNIA,)	
)	
Plaintiff,)	POINTS AND AUTHORITIES ON
)	THE ADMISSIBILITY OF
vs.)	EXPLANATIONS FOR ALLEGED
)	ADMISSIONS
)	
)	Date:
Defendant.)	Time:
_____)	Dept:

The prosecution will introduce into evidence an alleged admission. The defense moves for permission to introduce all evidence necessary to make the alleged admission fully understood. In other words, the defendant has a right to explain what he meant and support with evidence his version as being correct.

I

STATUTORY AUTHORITY

"Evidence Code Section 356. Entire act, declaration, conversation, or writing may be brought out to elucidate part offered. Where part of an act, declaration, conversation or writing is given in evidence by one party, the whole on the same subject may be inquired into by an adverse party; when a letter is read, the answer may be given; and when a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration or writing which is necessary to make it understood may also be given in evidence."

As explained in **People vs. Arias** (1996) 13 Cal.4th 92, 156:

" The purpose of this section is to prevent the use of selected aspects of a conversation, act, declaration, or or writing, so as to create a misleading impression on the subjects addressed. (People v. Pride , supra, 3 Cal.4th 195, 235, 10 Cal.Rptr. 2d 636, 833 P.2d 643.) Thus, if a party's oral admissions have been introduced in evidence, he may show other portions of the same interview or conversation, even if they are self-serving, which 'have

some bearing upon, or connection with, the admission. . . .
In evidence.' (Citations omitted.)" Also see People v. Douglas
(1991) 234 Cal.App.3d 273, 285.)

Admission of the rest of a statement, declaration, act, etc. is thus predicated on it being relevant or necessary for an understanding of the part already admitted. (**Sprague vs. Equifax** (1985) 166 Cal.App.3d 1012, 1035.) Evidence Code section 356 will allow a secondary admission to explain, modify, or qualify a primary admission even if the primary admission is not ambiguous and even if the secondary admission is of a self-serving nature. (**Carson vs. Facilities Dev. Co.** (1984) 36 Cal.3d 830, 848.)

II

NON-HEARSAY IS ADMISSIBLE TO EXPLAIN DEFENDANT'S ADMISSION

Out of court statements made to the defendant which formed the basis for his explanation of his alleged admission are admissible non-hearsay. (**People vs. Roberson** (1959) 167 Cal.App. 2d 429; **People vs. Reeder** (1978) 82 Cal.App.3d 543.) For example, in **Roberson**, the defendant was prosecuted for making a sale of narcotics to an undercover officer. The defendant denied the offense and called his girlfriend to testify that she had told him a week before the alleged sale that she had heard that the officer in question was in fact an undercover police officer. The reviewing court found her statement to defendant admissible as non-hearsay to establish his pre-sale belief as to the status of the buyer as a policeman from which the logical inference could be drawn that the defendant acted in accordance with that belief and did not make the sale.

CONCLUSION

Since the prosecution has introduced an alleged admission by the defendant, the defendant has the right to give his explanation of the meaning of his statement and non-hearsay evidence to explain and substantiate his belief in his explanation.

Dated:

Respectfully submitted,

Attorney for Defendant