MCDONALD, C. J., dissenting. I disagree with the majority's conclusion that the prosecution's failure to turn over the victim's statements does not require a new trial. The majority finds that the statements were not material.

I recognize that there may be strong circumstantial evidence that the victim did not consent to sexual activity with the defendant. The crucial evidence supporting the defendant's conviction, however, was the victim's direct testimony that she did not consent to any sexual activity with the defendant. She was the crucial witness for the state.

The statements were documented in a January 9, 1997 interview in which a victim's advocate asked the victim, at the request of the state's attorney, when, where and why she got into the car with the defendant. A note from the victim's advocate to the state's attorney reported: ''[The victim] indicated that she got into [the defendant's] car in the parking lot of the bar, not while walking down the road [and] when asked why she got in the car, she related that she had been drinking and that [her friend, James Lawrence] who was in the bar, told her that [the defendant] appeared to be OK to

accept a ride from.''

The statements differ from the victim's testimony at trial in 1997, that she had been walking home from the bar when the defendant drove up to her on the road and offered her a ride. It also contradicts other statements that she had made concerning how she came to be in the defendant's car. On the night of the alleged incident, September 16, 1996, the victim gave Detective Derek Allen of the Connecticut state police a sworn statement. The victim told Allen that she had left the bar and was walking along the road when the defendant pulled over and asked her if she wanted a ride. She then accepted his offer. That same night, the victim was taken to the hospital and treated by Valerie I'Anson, an emergency room physician. I'Anson testified that the victim said that after leaving the bar and walking down the road, the defendant forced her into his car.

At trial, the victim also testified that she could not remember whether she had talked, danced or accepted a drink from the defendant while at the bar. There was, however, testimony from Shane Weeks, the bartender, and from Lawrence, the victim's friend, that indicated that she had talked, danced and accepted a drink from the defendant. The jury was, however, unaware of any evidence that Lawrence had told the victim at the bar that the defendant was ''OK'' to give her a ride home. The victim and Lawrence were not questioned about this conversation at the trial.

''It is well established that impeachment evidence may be crucial to a defense, especially when the state's case hinges entirely upon the credibility of certain key witnesses. . . . The rule laid out in *Brady* [v. *Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)] requiring disclosure of exculpatory evidence applies to materials that might well alter . . . the credibility of a crucial prosecution witness.'' (Internal quotation marks omitted.) *State* v. *Esposito*, 235 Conn. 802, 815–16, 670 A.2d 301 (1996).

The majority finds that the statements would have been ''cumulative'' because there was other evidence at trial to impeach the victim's testimony. While this evidence may have impeached the victim at trial, I disagree that the impeachment evidence contained in the interview was cumulative. The statements were made shortly before trial to the prosecutor's representative and were not the same kind of evidence for impeachment as the prior statements as they contained yet another version of the events. See *State* v. *Floyd*, 253 Conn. 700, 746–47 n.32, A.2d (2000), citing *United States* v. *Cuffie*, 80 F.3d 514 (D.C. Cir. 1996). The statements could have been ''the last straw [that broke] the . . . camel's back . . . .'' C. Dickens, Dombey and Son (1848) c. 2.

The defendant's right to have his guilt determined by

a jury is paramount and the statements might have impacted the jury's assessment of the victim's testimony. The majority rejects the defendant's argument as to the effect of the statements upon the victim's testimony but we should be mindful that it is not our function to pass on credibility or find facts—that responsibility belongs exclusively to the jurors "as the sole triers of fact and credibility . . . ." (Internal quotation marks omitted.) *State* v. *Provost*, 251 Conn. 252, 256, 741 A.2d 295 (1999); *State* v. *Pratt*, 235 Conn. 595, 604, 669 A.2d 562 (1995).

I would conclude the statements "could reasonably [have been] taken to put the whole case in such a different light as to undermine confidence in the verdict." *Kyles* v. *Whitley*, 514 U.S. 419, 435, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995).

Accordingly, I dissent.