

PRIOR CONTRADICTORY STATEMENTS OF WITNESSES (NOT DEFENDANT)¹

Evidence, including a witness' statement or testimony prior to the trial, showing that at a prior time a witness has said something which is inconsistent with the witness' testimony at the trial may be considered by you for the purpose of judging the witness' credibility. It may also be considered by you as substantive evidence, that is, as proof of the truth of what is stated in the prior contradictory statement.

Evidence has been presented showing that at a prior time a witness has said something or has failed to say something which is inconsistent with the witness' testimony at the trial. This evidence may be considered by you as substantive evidence or proof of the truth of the prior contradictory statement or omitted statement.

However, before deciding whether the prior inconsistent or omitted statement reflects the truth, in all fairness you will want to consider all of the circumstances under which the statement or failure to disclose occurred. You may consider the extent of the inconsistency or omission and the importance or lack of importance of the inconsistency or omission on the overall testimony of the witness as bearing on his or her credibility. You may consider such factors as where and when the prior statement or omission occurred and the reasons, if any, therefore.

[CHARGE IF APPLICABLE]

In regard to the testimony of (witness' names) on cross-examination inconsistencies were shown (admitted) between the prior statements and those given on the stand [or: between the witness's prior silence and statements on the stand.] The witness(es) gave reasons therefor, saying that [many of] such prior statements or omissions were untrue. Among the reasons given that I recall, were (list reasons: self protection, exculpation, poor recollection at the time, things

¹ In the case where the party calling a witness offers the witness's prior inconsistent statement as substantive evidence see State v. Anthony Gross, 121 N.J. 1, 15-17 (1990); State v. Frank Gross, 121 N.J. 18 (1990) and State v. Spruell, 121 N.J. 32 (1990).

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recently remembered and not, therefore, formerly disclosed, not believing a matter was important, etc.)

The extent to which such inconsistencies or omissions reflect the truth is for you to determine. Consider their materiality and relationship to (his/her) entire testimony and all the evidence in the case, when, where and the circumstances under which they were said or omitted and whether the reasons (he/she) gave you therefor appear to be to you believable and logical. In short, consider all that I have told you before about prior inconsistent statements or omissions.

You will, of course, consider other evidence and inferences from other evidence including statements of other witnesses or acts of the witness and others, disclosing other motives that the witness may have had to testify as (he/she) did, that is, reasons other than which (he/she) gave to us.

Perhaps, a hypothetical example will help you to understand what constitutes a prior contradictory statement and, more importantly, how it may be used by you. Assume at the trial the witness testifies: "The car was red". In cross-examination of that witness, or at some other point in the trial, it is shown that at an earlier time, the witness testified or said: "The car was blue". You may consider the prior contradictory statement that "The car was blue" as a factor in deciding whether or not you believe that statement made at trial that "The car was red". You may also consider the earlier statement that "The car was blue" as proof of the fact or a evidence that the car was blue.