

RECANING WITNESS (SUBSTANTIVE)

[NOTE: Use this charge only where the party calling a witness offers the witness's prior inconsistent statement as substantive evidence.]

Evidence has been presented showing that at a prior time [declarant-witness's name] has said something or has failed to say something which is inconsistent with the witness's testimony at the trial.¹

[CHARGE ONLY THE FOLLOWING PARAGRAPH FOR PRIOR STATEMENTS MADE UNDER OATH]

You may consider this evidence along with all the other evidence in the case.

[CHARGE THE REMAINING PARAGRAPHS FOR PRIOR STATEMENTS MADE IN WRITING OR SOUND RECORDING]

In deciding whether any such statement, if made, is credible you should consider any relevant factors, including:²

[CHARGE WHICHEVER FACTORS APPLY:]

1. [Name of declarant-witness's] connection to and interest in the matter reported in his/her prior statement;
2. The person or persons to whom he/she gave the statement;
3. The place and occasion for giving the statement;
4. Whether [name of declarant-witness] was then in custody or otherwise the target of investigation;
5. The physical and mental condition of [name of declarant-witness] at the time;
6. The presence or absence of other persons;
7. Whether [name of declarant-witness] incriminated himself/herself or sought to exculpate himself/herself by the statement;

¹ The Court should determine whether the recanting witness's prior inconsistent statement satisfies the "special reliability" requirements of N.J.R.E. 803a(1) (A) at a Rule 104 hearing before receiving it in evidence, but should not inform the jury that it has previously found the statement to be reliable. State v. A. Gross, 121 N.J. 1, 15-17 (1990).

² State v. A. Gross, 121 N.J. at 10, 16.

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8. Whether the writing is in [name of declarant-witness]'s hand;
9. The presence or absence, and the nature of, any interrogation;
10. Whether the [sound recording] [writing] contains all, or only a portion or summary, of what [name of declarant-witness] said;
11. The presence or absence of any motive to fabricate;
12. The presence or absence of any explicit or implicit pressures, inducement, or coercion for making the statement;
13. Whether the use to which the authorities would put the statement was apparent or made known to [name of declarant-witness];
14. The inherent believability or lack of believability of the statement;
15. The presence or absence of corroborating evidence.

[CHARGE THE FOLLOWING PARAGRAPH IF APPLICABLE:]

I further instruct you that a witness's prior inconsistent statement under police interrogation must be carefully examined and assessed in light of all the surrounding circumstances, including his/her interest in giving the statement at that time.³

If you decide that the statement is reliable, then you may consider it for its truth and weigh it along with all the other evidence in the case. However, if you decide that the statement is not reliable, then you may not consider it for any purpose.

³ Gross, 121 N.J. at 17.