

3.11

Prior Inconsistent Statements

The believability of a witness may be challenged by evidence that on some former occasion he [(made a statement) (acted in a manner)] that was not consistent with his testimony in this case. Evidence of this kind [ordinarily] may be considered by you only for the limited purpose of deciding the weight to be given the testimony you heard from the witness in this courtroom.

[However, you may consider a witness's earlier inconsistent statement as evidence without this limitation when

[1] the statement was made under oath at a [(trial) (hearing) (proceeding)].
[or]

[2] the statement narrates, describes, or explains an event or condition the witness had personal knowledge of;
and

[a] the statement was written or signed by the witness.
[or]

[b] the witness acknowledged under oath that he made the statement.
[or]

[c] the statement was accurately recorded by a tape recorder, videotape recording, or a similar electronic means of sound recording.]

It is for you to determine [whether the witness made the earlier statement, and, if so] what weight should be given to that statement. In determining the weight to be given to an earlier statement, you should consider all of the circumstances under which it was made.

Committee Note

Instruction and Committee Note Approved October 17, 2014

The materiality of the earlier statement is a question of law for the court.

This instruction attempts to deal with the situation in which the jury has been permitted to hear separate earlier inconsistent statements that were offered for different purposes. One earlier inconsistent statement was offered for the limited purpose of attacking believability, while the other was offered as substantive evidence under Section 115-10.1. This instruction seeks to distinguish between these two statements.

When both kinds of earlier inconsistent statements are used for both purposes this instruction should be given in its entirety at the close of the trial. The bracketed word “ordinarily” in the first paragraph should be used in the instruction as given.

When earlier inconsistent statements are used *solely* for the limited purpose of attacking believability, and not as substantive evidence under Section 115-10.1, then only the first and last paragraphs, without bracketed material, should be used at the close of trial.

The Committee believes that all evidence is substantive unless limited to a non-substantive purpose, such as impeachment. That is why the Committee recommends that the first and last paragraphs of this instruction be given orally to the jury without bracketed material when the earlier inconsistent statement is being offered for a limited, non-substantive purpose. This instruction should then be given again in the final, written instructions.

There is no need to use this instruction when the earlier inconsistent statement is being offered as substantive evidence under Section 115-10.1 and no earlier inconsistent statement is being offered for use only for the purpose of impeachment.

Use the bracketed phrase “whether the witness made the earlier statement” in the last paragraph whenever the making of the statement is an issue in the case. If the making of the statement is an issue, then this phrase should be used whether the statement is being offered for substantive use or impeachment use.

Do not use numbers or letters unless paragraphs [1] and [2] are both given.

Use applicable paragraphs, subparagraphs, and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.02.