

On May 5, at 2 p.m. in City Park, Victim was hit from behind and temporarily knocked unconscious. Upon regaining consciousness moments later, Victim discovered that his bag containing valuables had been stolen.

While investigating the crime later that day, Police Officer interviewed Witness. Witness told Police Officer that she had seen the robbery of Victim and had recognized Defendant, a resident of the neighborhood, as the perpetrator. Witness also told Police Officer that Defendant had a reputation in the neighborhood for violence, that everyone was afraid of him, and that she shouldn't be talking to the police at all. Nevertheless, Witness agreed to accompany Police Officer to police headquarters, where she looked at photographs of suspects and signed a written statement. The statement read, "I was walking in City Park on May 5, at 2 p.m., when I saw Defendant. I saw Defendant attack Victim and then run away with Victim's bag. I know Defendant from the neighborhood and recognized Defendant as suspect number 1 on the 12-person photograph display shown to me today by Police Officer."

Defendant was subsequently arrested and charged with robbery and assault.

At Defendant's trial, Prosecutor called Witness to the stand. In response to questions from Prosecutor, Witness testified that she had no memory of the incident. She stated that she did not remember seeing anyone in City Park at the time of the alleged robbery. When Prosecutor asked Witness whether her sudden memory loss was because she was afraid of Defendant, Witness said that she had never seen Defendant before in her life and was not afraid of him because she did not know him. When Witness was asked whether she had told Police Officer that Defendant had robbed Victim, Witness denied ever making that statement.

Immediately after this testimony, Prosecutor offered Witness's signed statement into evidence to impeach Witness's credibility and to prove that Defendant was in City Park and attacked Victim. An authenticated copy of Witness's statement was provided to Defense Counsel. Defense Counsel raised no constitutional challenges to Witness's identification of Defendant at police headquarters. However, Defense Counsel objected to Prosecutor questioning Witness about the statement and to admission of the copy of the statement. The judge sustained both objections.

After the prosecution had rested, Defense Counsel called Buddy to the stand. Buddy testified that he had never met Defendant. He also testified that some of his friends had recently met Defendant a few times, and that they think that Defendant is an honest and gentle person who would never hurt anyone. Prosecutor objected to this testimony. The judge sustained the objection and excluded Buddy's testimony.

The rules of evidence in this jurisdiction are identical to the Federal Rules of Evidence.

1. Should the judge have permitted Prosecutor to question Witness about Witness's written statement and admitted the copy of the statement to impeach Witness's credibility? Explain.
2. Should the judge have admitted Witness's written statement to prove that Defendant was in City Park and attacked Victim? Explain.
3. Should the judge have admitted Buddy's testimony to prove Defendant's character for honesty and gentleness? Explain.

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Investigating a park robbery, an officer interviewed a witness who said she saw the robbery and recognized the defendant, a neighborhood resident, as the perpetrator; she added that the defendant had a reputation for violence and that everyone was afraid of him. At the station she viewed a 12 person photo array and signed a statement: "I saw the defendant and recognized him as suspect number 1 in the photo display" and "I saw the defendant attack the victim and then run away with the victim's bag." At trial the witness testified she had no memory of the incident, had never seen the defendant, and denied ever telling the officer about the robbery. The prosecutor offered the signed statement to impeach her and to prove the defendant was in the park and attacked the victim. The defense then called a friend who had never met the defendant but said his own friends, who met the defendant a few times recently, think he is honest and gentle. The judge sustained every objection.

← *She earlier called him violent and feared: her total denial looks like feigned memory loss.*

← *The identification: made after perceiving him, and she is on the stand for cross.*

← *The narrative of the attack: a prior statement to police, not made under oath.*

← *Trial denial contradicts the signed statement: a classic prior inconsistent statement.*

← *Not his own opinion and not community reputation: improper form of character proof.*

Section 1: Impeachment with a Prior Inconsistent Statement (Question 1)

Issue. Whether the witness's trial claim of no memory and her denials may be impeached with her prior signed statement, and whether the statement may come in as extrinsic evidence.

Rule. G/R: a witness may be impeached with a prior inconsistent statement. A claim of memory loss can be treated as inconsistent with a prior statement on the same point, especially where the judge finds the memory loss feigned.

Extrinsic evidence of the prior statement is admissible once the witness has a chance to explain or deny it. Used only to impeach, the statement is not hearsay because it is not offered for its truth, and on request the jury is told of that limited use.

Question 1: why is it offered? To impeach.

Impeachment use sidesteps hearsay.

Analysis. Here, the witness swore she had no memory, had never seen the defendant, and never spoke to the officer, flatly contradicting her signed statement. Because she had earlier described the defendant as violent and feared, the judge could find the memory loss feigned and the testimony inconsistent. She could be questioned about the whole statement, given a chance to explain or deny it, and the statement could come in as extrinsic evidence to impeach, subject to a limiting instruction that it cannot prove the elements of the crime.

Feigned memory loss (periwinkle) makes the denial inconsistent.

Conclusion. Therefore, Section 1: the judge should have permitted the questioning and admitted the statement to impeach; sustaining the objections was error.

Section 2: Substantive Use, the Statement of Identification (Question 2)

Issue. Whether the identification portion of the statement may be admitted substantively to prove the defendant was in the park.

Question 2, part one: offered for its truth.

Rule. G/R: a prior statement identifying a person, made after perceiving that person, is not hearsay if the declarant testifies at trial and is subject to cross examination about the statement. The declarant's present inability to remember or confirm the identification does not defeat admissibility.

Identification is a defined non-hearsay category.

Analysis. Here, the witness identified the defendant from the neighborhood, from seeing him in the park, and from the photo array, and she is on the stand subject to cross examination. Her claimed memory loss does not bar the identification, which comes in as non-hearsay to prove the defendant was present.

Cross examination is available, so lack of memory does not matter.

Conclusion. Therefore, Section 2: the identification portion should have been admitted substantively.

Section 3: Substantive Use, the Attack Narrative (Question 2)

Issue. Whether the statement that the defendant attacked the victim and ran off with the bag may be admitted to prove the attack.

Question 2, part two: the narrative of the crime.

Rule. G/R: a prior inconsistent statement is admissible for its truth only if it was made under oath at a trial, hearing, other proceeding, or deposition; otherwise it is hearsay and needs a separate exception.

Substantive use has an oath requirement.

Analysis. Here, the attack narrative was given to police at the station, not under oath in a proceeding, so it does not qualify as

No oath, no substantive use.

substantive prior inconsistent statement evidence and fits no other exception. It may impeach, but it cannot prove the elements of robbery or assault.

Conclusion. Therefore, Section 3: the attack narrative was properly excluded as substantive proof.

Section 4: Character Evidence, the Friend's Testimony (Question 3)

Issue. Whether the friend's testimony that his friends think the defendant honest and gentle is admissible to prove the defendant's good character.

Rule. G/R: character evidence is generally inadmissible to show conduct in conformity, but a criminal defendant may offer a pertinent good-character trait to show he did not commit the crime. Such proof is limited to reputation or opinion testimony.

Analysis. Here, gentleness is pertinent to violent charges of robbery and assault, and honesty is at least arguably pertinent to a theft charge, so the trait is relevant. But the friend gave neither his own opinion nor the defendant's community reputation; he relayed what his own friends thought after meeting the defendant a few times recently, which is not reputation in a community and not the opinion of a witness who actually knows the defendant.

Conclusion. Therefore, Section 4: the judge properly excluded the testimony.

Question 3: defense character evidence.

Even pertinent character must take the right form.

Wrong form: secondhand opinions of recent acquaintances.

Step-by-Step: Impeachment, Substantive Use, and Character

Ask first why the statement is offered, to impeach or for its truth, then, for defense character evidence, check the form of proof.

1. Offered to impeach? A prior inconsistent statement, including feigned memory loss, impeaches after a chance to explain or deny.

→ **Impeachment allowed**



2. Offered for its truth as an identification? Non-hearsay if the declarant testifies and is subject to cross.

→ **Identification admitted**



3. Offered for its truth as a prior inconsistent statement? Substantive use needs the statement to be under oath in a proceeding.

→ **Attack narrative excluded**



4. Defense character evidence? A pertinent good trait is allowed, but only by reputation or opinion.

→ **Secondhand opinions excluded**