

A defendant was charged with perjury for having falsely testified in an earlier civil case that he knew nothing about a business fraud.

In the perjury trial, the defendant again testified that he knew nothing about the business fraud. In rebuttal, the prosecutor has called the defendant's neighbor to testify that after the civil trial was over, the defendant admitted to the neighbor privately that he had known about the fraud.

Is the neighbor's testimony in the perjury trial admissible?

- A. No, because it is hearsay not within any exception.
- B. No, because it relates to the business fraud and not to the commission of perjury.
- C. Yes, both to impeach the defendant's testimony and as substantive evidence of the perjury.
- D. Yes, but only to impeach the defendant's testimony.

Explanation:

A **prior inconsistent statement** is a statement that was made by a witness in the past that is inconsistent with the witness's current testimony. These statements may be used to **impeach** that witness. Here, the defendant testified that he knew nothing about the business fraud, but he previously admitted to the neighbor that he had known about the fraud. Therefore, the neighbor's testimony regarding the defendant's prior inconsistent statement is admissible to impeach him.

A prior inconsistent statement is also admissible as **substantive evidence**—ie, to prove the truth of the matter asserted therein—if the statement is **excepted or excluded** from the rule against hearsay. **Statements made by** and offered against an **opposing party** are **excluded from the hearsay rule** (ie, are nonhearsay). And since the defendant's prior statement is being offered against him, it is nonhearsay and admissible as substantive evidence that the defendant committed perjury in the civil case **(Choices A & D)**.

(Choice B) The neighbor's testimony relates to business fraud *and* the commission of perjury. But even if it did not relate to perjury, the prior statement could still be admitted for impeachment purposes or as substantive evidence of the defendant's guilt.

Educational objective:

A prior inconsistent statement may be used to impeach a witness's trial testimony. And an opposing party's out-of-court statement is nonhearsay when offered against that party and can therefore be admitted as substantive evidence.

References

Fed. R. Evid. 613 (prior inconsistent statements).

Fed. R. Evid. 801(d)(2)(A) (statement by party-opponent).

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Use of witness's prior inconsistent statement

