

PRIOR INCONSISTENT ORAL STATEMENT

In this example, you want the out-of-court statement credited. On direct, the witness testified that the person who robbed him had a dark complexion. Your client has a dark complexion. When the witness first reported this incident to the police, he told the police that the person had a light complexion. The police officer recorded this description in a PD 251 – his police report

- QUESTION: During this incident, you got a very good look at the man who robbed you, right?
- ANSWER: Yes, very good.
- QUESTION: Even though it happened quickly, you were able to notice a few important details about the person?
- ANSWER: Yes.
- QUESTION: The person who robbed you had a light complexion?
- ANSWER: No, dark
- QUESTION: The same day you were robbed, you talked to the police?
- ANSWER: Yes.
- QUESTION: The police arrived on the scene within minutes?
- ANSWER: Yes.
- QUESTION: And you were taken to the police station?
- ANSWER: Yes.
- QUESTION: The incident was fresh in your mind?
- ANSWER: Yes.
- QUESTION: The police asked you questions about the robbery?
- ANSWER: Yes.
- QUESTION: You told the police as much as you could remember?
- ANSWER: Yes.
- QUESTION: You wanted the police to find the person who robbed you?
- ANSWER: Absolutely.
- QUESTION: So you tried to be as accurate as you could be?
- ANSWER: Yes.
- QUESTION: You tried to be very careful when you spoke to the police?
- ANSWER: Yes.
- QUESTION: You tried to give them the best information that you could?
- ANSWER: Yes.
- QUESTION: You told the police that the man who had robbed you had a light complexion?

If the witness agrees, the impeachment is complete. If disagrees, you need to call the police officer in your case to complete the impeachment. You can't use the PD 251 to impeach the witness because the witness did not create the document.)

If the witness does agree, depending on the case, you may want to ask the witness a question like "And that's because the person who robbed you had a light complexion." Whether you want to ask that question depends on the facts of your case, the type of witness, your own level of experience, and many, many other factors.