

State of New York Court of Appeals

MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 5
The People &c.,
Respondent,
v.
Charles Howard,
Appellant.

Howard B. Comet, for appellant.
Jordan Cerruti, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.

The victim, who was the sole person to testify about the facts concerning defendant's conviction of robbery in the first degree, gave a statement to police, through

an interpreter, several hours after the alleged robbery that was inconsistent on a material element of the offense with his trial testimony. That statement was introduced through the officer's testimony at trial, solely for the purpose of impeachment. When an alleged contradictory prior statement is admitted solely for the purpose of impeachment, the rule of *People v Ledwon* (153 NY 10 [1897]) and *People v Jackson* (65 NY2d 265 [1985]) is not implicated. The evidence was legally sufficient to support the inference that defendant intended to steal property forcibly (*see People v Gordon*, 23 NY3d 643, 651 [2014]).

GARCIA, J. (concurring):

I agree that the order of the Appellate Division should be affirmed. I disagree, however, with the majority that the victim “gave” an inconsistent statement to the police (majority op at 1). The statement allegedly made by the victim to a police officer was admitted solely for impeachment purposes, and the victim stated that he did not recall

making that statement. “Because the victim’s trial testimony was not inherently inconsistent, this case is not akin” to those cases invoking our single witness rule (*People v Delamota*, 18 NY3d 107, 116 [2011] [alleged prior inconsistent statement describing perpetrator offered through police officer for impeachment purposes]; *compare People v Fratello*, 92 NY2d 565, 569 [1998] [victim’s prior statements admitted for the truth of the matter asserted under the “excited utterance” exception to the hearsay rule]); *People v Ledwon*, 153 NY 10, 21 [1897] [applying single witness rule where there were “hopeless contradictions” in the witness’s trial testimony, namely he asserted both that his father committed suicide and that he was murdered by the defendants]). “That two or more witnesses give conflicting testimony . . . simply creates a credibility question for the jury” (*People v Jackson*, 65 NY2d 265, 272 [1985] [declining to apply the single witness rule in a case involving conflicting expert testimony]). Taking the issue from the jury where the second witness offers only an alleged prior inconsistent statement for impeachment purposes would require a court to find, as a matter of law, that the testifying witness was impeached to the extent that no rational jury could find the trial testimony credible. That high bar for removing the issue from the jury was not met here. As in *Delamota* (18 NY3d at 110), the evidence in this case was legally sufficient to support the conviction.

Order affirmed, in a memorandum. Chief Judge Wilson and Judges Rivera, Troutman and Halligan concur. Judge Garcia concurs in result in an opinion, in which Judges Singas and Cannataro concur.

Decided February 13, 2025