**IMPEACHMENT**

 There are essentially six different ways to impeach a witness:

1. Disprove facts testified to by witness (Rule 621)
2. Prior convictions of witness (Rule 609)
3. Bias/Influence (Rule 622)
4. Character issues (Character for truthfulness) (Rule 608(a)(1)-(2))
5. Prior inconsistent statements (Rule 613)
6. Incompetence to testify

Under Rule 620, credibility is always a jury issue. Therefore, a witness cannot testify that they believe or do not believe another witness.[[1]](#endnote-1) Expert testimony on a person’s credibility is very restricted.[[2]](#endnote-2)

A party may not bolster the credibility of a witness unless and until that credibility has been attacked by the opposing party.[[3]](#endnote-3) The prohibition against improper bolstering of a witness’ credibility does not limit the proponent’s ability to introduce other evidence that supports the witness’ testimony. Instead, the prohibition applies to the proponent presenting character witnesses to bolster the witness’ credibility and that prohibition exists until such time as the witness’ credibility is attacked.

**IMPEACHMENT VIA CONTRADICTION**

 O.C.G.A. § 24-6-621 provides, “A witness may be impeached by disproving the facts testified to by the witness.” As Professor Milich notes, if a witness testifies that he and the defendant were at home on the night in question, the opposing party may challenge the witness (provided there is a good faith reason to believe contrary facts are true) by asking, “Isn’t it true that you and the defendant were at the Shadow Bar when the fight broke out?” However, it would be improper to then ask, "After the initial fight, isn’t it true that you left the bar and the defendant remained where he assaulted the bartender?” The witness would have no way of knowing, from personal observation, what happened after he left the scene. Therefore, there is a requirement that the questioning relating to contradiction of testimony requires that the questions relate to something that the witness could have personally witnessed.

 It is equally improper to ask the witness why other witnesses who have testified to contrary facts would be lying. This line of questioning requires the witness to speculate as to the motives of other witnesses.[[4]](#endnote-4)

 There are few limits on what can be asked on cross-examination to contradict the witness’ testimony. However, the subject matter must be on “non-collateral” matters – the facts that are alleged to contradict the witness must not be collateral to the issues in the underlying case. If the alleged contradictory facts are not collateral to the underlying case (i.e. they are germane to the underlying case), the opposing party may introduce extrinsic evidence of the alleged collateral facts.[[5]](#endnote-5) Post-2013, if a witness testifies to a collateral fact that the cross-examiner believes in good faith is false, the cross-examiner may confront the witness with the contradiction but must accept the witness’ response.[[6]](#endnote-6)

 For example, if the witness in a murder case testifies that he was never married, a fact not relevant to the murder case, but the cross-examiner has a good faith reason to believe that the witness had been married but is now a widower, that evidence is wholly immaterial to the underlying case. While immaterial to the case, the witness is obviously lying or very confused about his own marital history and that touches on the witness’ credibility. In that circumstance, the cross-examiner may confront the witness about the discrepancy but must accept the witness’ answer and cannot offer extrinsic evidence on that point.[[7]](#endnote-7)

 When a criminal defendant takes the stand, the rules are a bit more relaxed.  “When the criminal defendant takes the stand, any discrepancies in his testimony may be ‘fully explored’ on cross-examination regardless of their relevance or the fact that it may reflect poorly on the defendant’s character.”[[8]](#endnote-8) The defendant may not testify to facts that are not true and then use the prohibition against introduction of character evidence as a shield against cross-examination.[[9]](#endnote-9)

**IMPEACHMENT BASED UPON PRIOR CONVICTIONS OF WITNESS**

Under certain circumstances, a witness may be impeached on the ground that they have one or multiple prior conviction(s). This rule is based on the premise that a convicted felon is less likely than the average person to respect the legal obligation to testify truthfully. Before the evidence is admitted, the court must first determine whether “the probative value of admitting the evidence outweighs its prejudicial effect to the accused” per O.C.G.A. § 24-4-403.

A criminal defendant who takes the stand may be impeached just as any other witness, regardless of whether he puts his good character into issue. However, the factors to be weighed when impeaching an ordinary witness via prior convictions differ slightly from those where the witness being impeached upon the same grounds is the accused.

When impeaching a **witness who is not the accused** based upon prior convictions, the following factors must be taken into account:

1. The prior conviction must be for a felony or for a crime such as perjury, criminal fraud, theft by deception, or a similar misdemeanor which involves some form of deception; [[10]](#endnote-10)
2. The conviction is only admissible if the probative value substantially outweighs its prejudicial effect (§ 403 analysis); [[11]](#endnote-11)
3. Not more than 10 years have elapsed between the prior conviction (or date of release from *confinement*) and the date the witness testifies; [[12]](#endnote-12)
4. Prior nolo contendere convictions are never admissible to impeach; [[13]](#endnote-13)
5. First Offer or Conditional Discharge “convictions” are not admissible, assuming First Offender / Conditional Discharge was successfully completed. Be aware that present probation, even for first offender, is probably admissible against state witness as possibly illustrative of interest in testifying or state of feelings of witness, but not for mere impeachment based upon prior convicted; [[14]](#endnote-14)
6. Prior juvenile adjudications are not admissible unless the trial court makes very specific findings;
7. Prior convictions which resulted in a pardon based upon “actual innocence” are not admissible. [[15]](#endnote-15)

On the other hand, the factors to consider when the **witness being impeached is the accused** are as follows:

1. No misdemeanors other than a *crimen falsi* crime may be introduced against the accused;
2. The court must always perform a § 403 analysis as to every prior conviction offered against the accused; [[16]](#endnote-16)
3. If the prior conviction is less than 10 years old, the court must make a finding that the probative value outweighs the prejudicial effect as evidence of the defendant’s bad character; [[17]](#endnote-17)
4. If the prior conviction is more than 10 years old, it can only be admitted under subsection (b) and the trial judge must go further and put on the record the specific facts and circumstances upon which the trial court relied in balancing the probative value against the danger of unfair prejudice; [[18]](#endnote-18)
5. The trial judge should give a limiting instruction if requested and the prosecutor cannot argue that the prior conviction suggests that the defendant has a propensity to commit the type of crime for which he is on trial.

As to the procedure for admission of prior convictions, it is recommended that the party offering the prior conviction also bring forth a certified copy of the record of conviction before impeaching the witness, although doing so is no longer required.[[19]](#endnote-19) If the witness denies the prior conviction, counsel must have a certified copy of the record to prove it and avoid a potential hearsay issue.[[20]](#endnote-20)

The certified copy should be limited to the name of the crime for which the witness was convicted, the time and place of the conviction, and the sentence imposed. The details of the crime are irrelevant and inadmissible for impeachment purposes. The witness may have a brief opportunity to explain or mitigate the conviction, but such testimony may then open the door to the details of the crime.[[21]](#endnote-21) The party offering the conviction cannot admit the conviction for impeachment and then argue that the witness has a propensity to commit that type of crime.[[22]](#endnote-22) If a hearsay declarant does not testify at trial, the declarant may be impeached with a certified copy of a prior conviction under the same rules set forth above.[[23]](#endnote-23)

Impeachment based upon prior convictions of the witness only applies to convictions, not arrests, indictments, investigations, or other activities. Note the fact that the witness was disciplined by a professional licensing agency or employer is not admissible as a “prior conviction,” as this may become relevant where a disciplinary report exists against a police officer. [[24]](#endnote-24) [[25]](#endnote-25)

**IMPEACHMENT VIA BIAS OR INFLUENCE**

 O.C.G.A. § 24-6-622 provides, “The state of a witness’s feelings towards the parties and the witness’s relationship to the parties may always be proved for the consideration of the jury.” This manner of impeachment extends to claims of bias,[[26]](#endnote-26) prejudice, interest,[[27]](#endnote-27) fears,[[28]](#endnote-28) or other factors that may tend to influence the witness’ testimony.[[29]](#endnote-29) Evidence that a party attempted to influence a witness is always admissible.[[30]](#endnote-30) However, beware of any claims that a third party attempted to influence a witness on behalf of a party. There must be some foundation that the party “authorized or acquiesced” in the attempt to influence the witness before such evidence is admissible against the party.[[31]](#endnote-31) The fact that a witness was threatened is admissible to explain the witness’ reluctance to testify or motive to testify to withhold facts even if there is no evidence that the defendant was connected to the defendant.[[32]](#endnote-32)

 Proper procedure for establishing bias, influence, interest, etc. is for the witness to be confronted with facts indicating bias or prejudice and give the witness the opportunity to admit those facts. If the witness denies the facts or equivocates, evidence may be introduced to support the impeachment.[[33]](#endnote-33) If the witness denies the facts that would suggest bias, extrinsic evidence may be introduced to prove the underlying facts. However, if the underlying facts suggesting bias are admitted by the witness, the impeachment is done and documents proving the underlying facts would be inadmissible.[[34]](#endnote-34)

 Establishing that a witness for the prosecution is receiving beneficial treatment in exchange for testimony against the defendant on trial is a type of evidence of bias. This sort of evidence must be provided to the defendant in advance of trial under *Giglio*.[[35]](#endnote-35)

 Trial courts liberally allow expert witnesses to be cross-examined concerning their financial relationship with the parties.[[36]](#endnote-36)

**IMPEACHMENT VIA CHARACTER ISSUES**

O.C.G.A. § 24-6-608 sets forth two ways to attack or support the credibility of a witness: (a) call a witness to testify to reputation or opinion for truthfulness or untruthfulness, or (b) cross examine any witness with specific prior acts.

Rule 608(a) states a witness’s truthfulness only becomes relevant if he testifies or if his out of court statement is admitted for truth under a hearsay exception. Only then can the attacked witness rebut with his own witness who testifies as to reputation or opinion for truthfulness; an attack on credibility must *always* occur first before a witness can offer evidence of truthfulness. In this case, it is acceptable that the evidence is extrinsic.

In establishing the knowledge of the witness as to the character or reputation of a witness to be impeached, the witness who is testifying must be asked if he is familiar with the reputation of the witness who is to be impeached in the community in which he lives or works.**[[37]](#endnote-37)** When offering their opinion about a witness’s character for truthfulness, the character witness must have personal knowledge of such, and the admission of the testimony is within the court’s discretion.**[[38]](#endnote-38)** The character witness may not testify on direct examination to specific instances of the subject’s conduct which are probative of truthfulness.**[[39]](#endnote-39)** However, the character witness may be crossed with specific acts to test just how much that witness really knows about the person’s character for truthfulness.

Under 608(b), it is within the court’s discretion whether to allow the cross examination of a witness with specific prior acts.**[[40]](#endnote-40)** Prior acts unrelated to the case may be raised but only if they are probative of untruthfulness. The cross-examiner may not challenge the answer of the witness with extrinsic proof unless presenting a conviction per § 609, to show bias, or the cross-examiner has proof which directly contradicts some material portion of the witness’s testimony.**[[41]](#endnote-41)** **[[42]](#endnote-42)**

**IMPEACHMENT VIA PRIOR INCONSISTENT STATEMENTS**

As Professor Milich has expressed, “perhaps the most frequently used and most effective method of impeaching a witness is showing that the witness has made out-of-court statements that are inconsistent with his in-court testimony.”**[[43]](#endnote-43)** Prior inconsistent statements of a witness are admissible both to impeach the witness and as substantive evidence if the witness is available for cross-examination.**[[44]](#endnote-44)** This form of impeachment by self-contradiction involves three basic requirements: (1) the witness made an out-of-court statement,**[[45]](#endnote-45)** (2) that statement is inconsistent with the witness’s trial testimony, and (3) the out-of-court statement is relevant to the case.**[[46]](#endnote-46)** Note that involuntary statements are inadmissible for any purpose, including as prior inconsistent statements offered for impeachment.

The witness must first be given the chance to explain or deny a prior inconsistent statement before it is proved by extrinsic evidence.**[[47]](#endnote-47)** Often this is accomplished by confronting the witness with the substance of the prior statement and asking the witness if he made such a statement. However, if the prior inconsistent statement is a party admission, it is not necessary to give the declarant an opportunity to explain or deny before offering extrinsic evidence of the statement.**[[48]](#endnote-48)**

Prior consistent statements of a witness are considered improper bolstering of the witness’s credibility and are thus generally inadmissible. However, if the witness’s credibility is attacked and a prior consistent statement logically rebuts that attack, it is admissible both to rehabilitate the witness and as substantive evidence.**[[49]](#endnote-49)** **[[50]](#endnote-50)**

 The out-of-court statement does not need to fully contradict the witness’s in-court testimony—it need only clash with something the witness said while on the stand.**[[51]](#endnote-51)** For example, inconsistency may be found in changes in position, evasive answers, or where a witness hedged in one statement but was firm in the other.**[[52]](#endnote-52)**

A prior inconsistent statement is not admissible absent some showing that it was based on the witness’s personal knowledge or from information received directly from a party (that is, an admission).

**IMPEACHMENT VIA INCOMPETENCE**

 Although it may be an obvious point, any evidence that shows relevant defects in the witness’s physical or mental competence is admissible. It is also always fair game for a witness’ ability to observe or recall the facts in question to be called into question.[[53]](#endnote-53) Where there is an allegation that the witness was taking medications that cause hallucinations or delusions, there must be some evidence to prove that the medications involved actually have those side effects.[[54]](#endnote-54)

**REHABILITATION AFTER CREDIBITY IS ATTACKED**

A witness may not take the stand and then introduce evidence that she said the same thing on other occasions. That is improper bolstering of the witness and it is not allowed ***unless*** the cross-examination attacks the witness’ credibility in some manner.[[55]](#endnote-55) But there is an important point here that is widely misunderstood and which deserves our attention.

 If the cross-examination attacks the witness’ credibility because of her reputation for truthfulness or because she was previously convicted of a felony, prior consistent statements are not admissible. However, if the witness’ credibility is attacked and a prior consistent statement logically rebuts that attack, it is admissible. Lawyers (and judges) have largely misread the statute and have made an assumption that is not actually in the law. Rule 801(d)(1)(A) exempts a testifying witness’ prior consistent or inconsistent statement from the definition of hearsay if such a statement qualifies under O.C.G.A. § 24-6-613 as a prior consistent or inconsistent statement. So, we need to look at the language of Rule 613(c).

A prior consistent statement shall be admissible to rehabilitate a witness if the prior consistent statement logically rebuts an attack made on the witness's credibility. A general attack on a witness's credibility with evidence offered under Code Section 24–6–608 or 24–6–609 shall not permit rehabilitation under this subsection. If a prior consistent statement is offered to rebut an express or implied charge against the witness of recent fabrication or improper influence or motive, the prior consistent statement shall have been made before the alleged recent fabrication or improper influence or motive arose.

Please notice the punctuation at the end of the first sentence. Lawyers and judges have missed that first period and have repeatedly said that a prior consistent statement is not admissible unless there is an allegation of recent fabrication or improper influence or motive. That is not true![[56]](#endnote-56) A prior consistent statement is admissible if it logically rebuts any attack made on the witness’ credibility. For example, assume the testifying witness is cross-examined and it is alleged that she may have trouble remembering exactly what happened a long time ago. A prior consistent statement, made closer in time to the events in question, would be admissible if it logically rebuts the charge made on cross-examination.[[57]](#endnote-57) So do not be fooled into refusing to admit testimony of a prior consistent statement when the parties object because the cross-examination did not allege recent fabrication or improper motive.

1. *Jones v. State*, 299 Ga. 40, 43 (2016); *Gilmer v. State*, 339 Ga. App. 593 (2016); *Shelton v. State*, 251 Ga. App. 34, 38 (2001). [↑](#endnote-ref-1)
2. *Jones v. State*, 292 Ga. 593, n.6 (2013)(GBI agent may not testify that a witness was telling the truth); *Gosnell v. State*, 247 Ga. App. 508, 510 (2001), overruled on other grounds by, *State v. Lane*, 308 Ga. 10 (2020)(“Although a medical expert may testify that certain symptoms or history described by a child are consistent with the child having been molested, an expert cannot directly or indirectly vouch for the victim’s credibility. [↑](#endnote-ref-2)
3. O.C.G.A. § 24-6-608; [↑](#endnote-ref-3)
4. *Jones v. State*, 299 Ga. 40, 43 (2016); *Shelton v. State*, 251 Ga. App. 34, 38 (2001); *U.S. v. Rivera*, 780 F.3d 1084 (11th Cir. 2015). [↑](#endnote-ref-4)
5. *Curry v. State*, 243 Ga. App. 712 (2000)(at rape trial, victim denied smoking crack just before the incident and collateral evidence is admissible to prove this fact by calling another witness to dispute the victim’s testimony). [↑](#endnote-ref-5)
6. O.C.G.A. § 24-6-608(b); *U.S. v. Matthews*, 168 F.3d 1234, 1244 (11th Cir. 1999); *Hand v. South Ga. Urology Center, P.C.*, 332 Ga. App. 148 (2015), disapproved on other grounds by *Phillips v. Harmon*, 297 Ga. 386 (2015). [↑](#endnote-ref-6)
7. *Moody v. State*, 279 Ga. App. 440, 444-445 (2006). [↑](#endnote-ref-7)
8. *Taylor v. State*, 302 Ga. 176, 180 (2017); *Wynn v. State*, 2022 WL 1750715 (Ga. 6/1/2022). [↑](#endnote-ref-8)
9. *Taylor v. State*, 302 Ga. 176, 180 (2017), citing *Francis v. State*, 266 Ga. 69 (1995) and *Parks v. State*, 300 Ga. 303 (2016). [↑](#endnote-ref-9)
10. These “deception misdemeanors” do **not**include misdemeanor theft (*Clements v. State*, 299 Ga. App. 561 (2009)); misdemeanor shoplifting (*Martin v. State*, 300 Ga. App. 39 (2009)); misrepresentation of a controlled substance as a controlled substance (*Blanch v. State*, 293 Ga. App. 750 (2008)). However, a prior conviction for giving false information to a law enforcement officer **may** be used (*Habersham v. State*, 289 Ga. App. 718 (2008)). If in doubt, do not allow a misdemeanor conviction unless it is clearly a crime based upon dishonesty or false statement. [↑](#endnote-ref-10)
11. As part of the § 403 analysis, the court should consider whether the witness is a friend or family member of the defendant (guilt by association). This is not a paramount concern but one which should still be considered. *Quiroz v. State*, 291 Ga. App. 423 (2008). [↑](#endnote-ref-11)
12. *Allen v. State*, 286 Ga. 392 (2010). Calculating 10 years, the beginning point is the date of conviction or the date actual confinement ended (probation does NOT equal “confinement”). The end date is date of testimony and date conviction offered. *Smith v. State*, 331 Ga. App. 296 (2015). [↑](#endnote-ref-12)
13. O.C.G.A. § 24-6-609(d); *Hooper v. State*, 284 Ga. 824, 825 (2009). However, be aware that if a character witness is called and testifies to the good character of the defendant, that witness can be asked if he / she was aware that the defendant entered a nolo plea (or juvenile adjudication) to certain offenses. *Redman v. State*, 281 Ga. App. 605 (2006). [↑](#endnote-ref-13)
14. O.C.G.A. § 24-6-622. [↑](#endnote-ref-14)
15. Sometimes pardons are granted because of “good behavior” and sometimes they are granted based upon “actual innocence.” Prior convictions which have been pardoned based upon “actual innocence” are not admissible, but a pardoned conviction based upon good behavior may be admitted. *Haupt v. State*, 290 Ga. App. 616 (2008). If there is no evidence presented as to the cause of basis on the pardon, simply rule it inadmissible—it is not worth reversal. [↑](#endnote-ref-15)
16. *Abercrombie v. State*, 297 Ga. App. 522 (2009). The probative value will usually be lower than would be present when applied to an ordinary witness, but a crime involving dishonesty (i.e., *crimen falsi*) is highly relevant. But where the defense has introduced prior convictions of the State’s witnesses, the probative value may be increased. *US v. Pritchard*, 973 F.2d 905, n.6 (11th Cir. 1992). [↑](#endnote-ref-16)
17. *Clay v. State*, 290 Ga. 822, 836 (2012); *Wayne v. State*, 326 Ga. App. 202 (2014). If the conviction is less than 10 years old, the court is required to make an on-the-record finding that the probative value substantially outweighs its prejudicial effect but is not required to list the specific factors it considered in making that determination. The court is **required** to list those specific factors if the case is more than 10 years old. [↑](#endnote-ref-17)
18. *Clay v. State*, 290 Ga. 822, 838 (2012); *Wayne v. State*, 326 Ga. App. 202, 205 (2014). The court is required to find that the interest of justice requires admission of a conviction over 10 years old and must list the specific factors it considered in making that determination. *Clay*, 290 Ga. at 837. “This analysis includes [but is not limited to] the following factors: (1) the nature, i.e., impeachment value of the crime; (2) the time of the conviction and the defendant’s subsequent history; (3) the similarity between the past crime and the charged crime, so that admitting the prior conviction does not create an unacceptable risk that the jury will consider it as evidence that the defendant committed the crime for which he is on trial; (4) the importance of the defendant’s testimony; and (5) the centrality of the credibility issue.” *Smith v. State*, 331 Ga. App. 296, 299-300 (2015). However, not required where the conviction is less than 10 years old. [↑](#endnote-ref-18)
19. *US v. Georgalis*, 631 F.2d 1199, n.3 (5th Cir. 1980); *Wilson v. Attaway*, 757 F.2d 1227, 1244 (11th Cir. 1985). [↑](#endnote-ref-19)
20. O.C.G.A. § 24-8-803(8)(A). § 24-9-920 (authentication) and § 24-10-1015 (best evidence). *See Adams v. State*, 229 Ga. App. 381 (1997). *See also Johnson v. State*, 233 Ga. App. 301 (1998). [↑](#endnote-ref-20)
21. *Upshaw v. State*, 300 Ga. 442 (2017); *Terrell v. State*, 276 Ga. 34, 43 (2002); *Vincent v. State*, 264 Ga. 234, 235 (1994); *Willett v. Stookey*, 256 Ga. App. 403 (2002) (error to include a copy of the indictment with record of conviction for child molestation where indictment included “highly prejudicial” specific details of the crime). *Cater v. State*, 289 Ga. 51 (2011) (the indictment should not be included in the certified copy). [↑](#endnote-ref-21)
22. *Parker v. State*, 339 Ga. App. 285, 292 (2016). [↑](#endnote-ref-22)
23. O.C.G.A. § 24-8-806; *US v. Bovain*, 708 F.2d 606 (11th Cir. 1983). [↑](#endnote-ref-23)
24. *Lindsey v. State*, 282 Ga. 447, 450 (2007); *Mullins v. Thompson*, 274 Ga. 366 (2001). [↑](#endnote-ref-24)
25. *Lopez v. State*, 267 Ga. App. 178 (2004). A disciplinary report does not disprove facts testified to by the officer and is not a prior conviction. Such a report also does not go to general bad character as it is, at best, evidence of a specific “bad act” which is not generally admissible unless related in some way to the issues in the case. *See Wise v. State*, 321 Ga. App. 39, 46-47 (2013). [↑](#endnote-ref-25)
26. *State v. Abernathy*, 289 Ga. 603, 609 (2011)(fact that witness and defendant were involved in a romantic relationship admissible to show bias); *Letlow v. State*, 222 Ga. App. 339 (1996)(fact that witness in child molestation trial had a child that had been molested by another person in a wholly unrelated matter is admissible to prove bias). [↑](#endnote-ref-26)
27. *Chrysler Group. LLC v. Walden*, 303 Ga. 358 (2018)(CEO’s compensation admissible to establish bias, as a witness, in favor of Chrysler); *Golden v. State*, 276 Ga. App. 538, 543 (2005)(fact that criminal defendant filed ante litem notice of his intent to sue the city because of the conduct of the officers involved in his arrest in this case is admissible in the underlying criminal proceeding as evidence of the defendant’s financial interest in the outcome of the trial). However, fact that parent of child allegedly molested was herself molested as a child inadmissible in the case where the child was the alleged victim unless there is some foundation that the parent improperly influenced the child’s testimony. See *Morris v. State*, 341 Ga. App. 568 (2017), *Mann v. State*, 244 Ga. App. 756 (2000). [↑](#endnote-ref-27)
28. *Virger v. State*, 305 Ga. 281 (2019)(defendant’s past violence against witness admissible to prove that testimony beneficial to defendant was motivated by a fear of retaliation); *Allen v. State*, 345 Ga. App. 599 (2018)(child’s delay in reporting molestation can be explained by violence by defendant against child victim); See *Cannon v. State*, 288 Ga. 225 (2010); *State v. Enich*, 337 Ga. App. 724 (2016); *Cunningham v. State*, 240 Ga. App. 92 (1999). [↑](#endnote-ref-28)
29. *U.S. v. Abel*, 469 U.S. 45, 52 (1984). [↑](#endnote-ref-29)
30. *Harrison v. State*, 251 Ga. App. 302 (2001); *Cochran v. State*, 281 Ga. 4 (2006). [↑](#endnote-ref-30)
31. *Kell v. State*, 280 Ga. 669 (2006); *Scott v. State*, 305 Ga. App. 710 (2010). [↑](#endnote-ref-31)
32. *Williams v. State*, 290 Ga. 533 (2012); *Palmer v. State*, 303 Ga. 810 (2018). [↑](#endnote-ref-32)
33. O.C.G.A. § 24-6-608(b) specifically allows for specific instances of conduct of a witness to be proven when those facts are indicative of the witness’ bias toward a party. *Simmons v. State*, 266 Ga. 223 (1996); *Walker v. State*, 308 Ga. App. 176, 181 (2011)(before a witness may be impeached on claim of bias, a foundation must be laid as to the witness’ feelings toward the party). [↑](#endnote-ref-33)
34. *Walker v. State*, 308 Ga. App. 176, 181 (2011); *U. S. v. Abel*, 469 U.S. 45, 51 (1984). [↑](#endnote-ref-34)
35. *Giglio v. U.S.*, 405 U.S. 150 (1972); *Strother v. State*, 305 Ga. 838 (2019)(applies to even informal agreements); See § 14:3 of *Ga. Rules of Evidence*, Milich (2020-2021 ed.). [↑](#endnote-ref-35)
36. Too many appellate cases to cite. See § 14:3 of *Ga. Rules of Evidence*. [↑](#endnote-ref-36)
37. Paul S. Milich, Georgia Rules of Evidence, § 14:6, pp. 476-77 (West Publishers 2021-2022 Ed.). [↑](#endnote-ref-37)
38. O.C.G.A. § 24-7-701. [↑](#endnote-ref-38)
39. O.C.G.A. § 24-6-608(b). [↑](#endnote-ref-39)
40. The trial court should conduct a § 24-4-403 analysis and permit the cross examination if the credibility of the witness is a key issue in the case, counsel has reliable facts as a basis for the inquiry, the prior act is truly probative of the witness’s truthfulness, and usefulness of the inquiry is not otherwise outweighed by any prejudicial effects, including confusing the jury or wasting time. *Douglas v. State*, 340 Ga. App. 168, n.12 (2017). [↑](#endnote-ref-40)
41. Examples of admissible extrinsic evidence include prior instances of perjury, forgery, fraud, disbarment, prior finding by court of no credibility, lying to the police, etc. [↑](#endnote-ref-41)
42. On the other hand, prior instances such as drug use, theft, a professor inviting students to his party, etc. are inadmissible. [↑](#endnote-ref-42)
43. Paul S. Milich, Georgia Rules of Evidence, § 14:4, pp. 450-51 (West Publishers 2021-2022 Ed.). [↑](#endnote-ref-43)
44. Georgia’s hearsay rule does not exclude the out-of-court statements of witnesses who testify and are available for cross-examination. By showing that the testifying witness’s prior out-of-court statements contradict or are inconsistent with his trial testimony, the relevance of those statements for impeachment purposes is established and it then becomes admissible. Paul S. Milich, Georgia Rules of Evidence, § 14:4, pp. 451 (West Publishers 2021-2022 Ed.). [↑](#endnote-ref-44)
45. One can impeach a witness under O.C.G.A. § 24-6-613 only with the witness’s own statements, not the statements of third persons. *Willett v. State*, 223 Ga. App. 866 (1996). [↑](#endnote-ref-45)
46. Paul S. Milich, Georgia Rules of Evidence, § 14:4, pp. 450-51 (West Publishers 2021-2022 Ed.). [↑](#endnote-ref-46)
47. O.C.G.A. § 24-6-613(b). [↑](#endnote-ref-47)
48. Paul S. Milich, Georgia Rules of Evidence, § 14:4, pp. 457 (West Publishers 2021-2022 Ed.); O.C.G.A. § 24-6-613(b). [↑](#endnote-ref-48)
49. O.C.G.A. § 24-6-613(c); Paul S. Milich, Georgia Rules of Evidence, § 14:8, pp. 483-85 (West Publishers 2021-2022 Ed.). [↑](#endnote-ref-49)
50. Lawyers and judges have frequently misread O.C.G.A. § 24-6-613 to say that a prior consistent statement is not admissible unless there is an allegation of recent fabrication or improper influence or motive. This is not the law; a prior consistent statement is admissible if it logically rebuts any attack made on the witness’s credibility. [↑](#endnote-ref-50)
51. Paul S. Milich, Georgia Rules of Evidence, § 14:4, pp. 453 (West Publishers 2021-2022 Ed.). [↑](#endnote-ref-51)
52. *U.S. v. Dennis*, 625 F.2d 782, 795 (8th Cir. 1980) (rejected on other grounds by, *U.S. v. Hawkins*, 765 F.2d 1482 (11th Cir. 1985)); Paul S. Milich, Georgia Rules of Evidence, § 14:4, pp. 457 (West Publishers 2021-2022 Ed.) [↑](#endnote-ref-52)
53. *Rewis v. State*, 109 Ga. App. 83 (1964). [↑](#endnote-ref-53)
54. *Daker v. State*, 243 Ga. App. 848 (2000). [↑](#endnote-ref-54)
55. *Walters v. State*, 335 Ga. App. 12, 14 (2015). [↑](#endnote-ref-55)
56. *Walters v. State*, 335 Ga. App. 12, 14 (2015). [↑](#endnote-ref-56)
57. Paul S. Milich, Georgia Rules of Evidence, § 17:15, pp. 648-649 (West Publishers 2018-2019 Ed.). [↑](#endnote-ref-57)