

LIMITING INSTRUCTION NON-HEARSAY STATEMENT: EFFECT ON THE LISTENER

Note: This charge addresses the one situation where a witness testifies to what the witness was told or heard that caused the witness or another to do something.

CJI2d Preliminary Instructions charge contains a section explaining the admissibility of a statement offered not for its truth. If that instruction is given, and an in-trial limiting instruction is necessary, referring the jury simply back to the preliminary instruction charge may be appropriate.

Otherwise, whether instructed in the preliminary instructions or not, the court may deem it appropriate to give the following charge.

Members of the jury, the witness testified to hearing a statement of another.¹

Normally, that testimony, known as hearsay, is not permitted. There is an exception to that rule when the witness testifies that he/she (or another) did something because of what he/she (or that other person) heard.

In that circumstance, it does not matter who uttered the statement, or how the speaker gathered the information for the statement, or even whether the statement is truthful and accurate. It matters that someone uttered words and the witness [or another] did something on hearing those words.

So, in that instance, you may not consider what the witness heard for the truth of the words spoken. You may consider the words only for the reason they are offered – that is, to explain what the witness [or another] did after hearing the words.

¹ See Guide to NY Evidence, Rule 8.00 (Definition of Hearsay).