

1 Q. Did you give a written statement that night?

2 A. Yes, sir.

3 Q. All right.

4 MR. MIMS: Your Honor, may I have just a moment?

5 MR. LUCAS: I would object. We didn't go into this  
6 matter on cross-examination. We would say this is  
7 inappropriate redirect.

8 MR. MIMS: Your Honor, may we approach the bench?

9 THE COURT: You may.

10 (DISCUSSION AT SIDEBAR OUTSIDE THE HEARING  
11 OF THE JURY WITHOUT THE DEFENDANT PRESENT)

12 MR. MIMS: Your Honor, Mr. Buckingham gave a written  
13 statement immediately after this incident. And, under Rule  
14 801(d) -- let me find the exact portion here.

15 THE COURT: What does it say?

16 MR. MIMS: It's consistent with his testimony, and  
17 the rule says -- I'm citing Rule 801.

18 MR. LUCAS: He's available. It's not hearsay.

19 MR. MIMS: He's right; it's not hearsay. And here's  
20 why, a statement that meets the following conditions is not  
21 hearsay: The declarant testifies and is subject to  
22 cross-examination about a prior statement, and the statement --

23 THE COURT: Wait a minute. Wait a minute. Testifies  
24 and is subject to examination by -- of a prior statement?

25 MR. MIMS: When he testifies and he's cross-examined,

## APPENDIX B

1 then the rule says the statement is consistent with the  
2 declarant's testimony and is offered to rebut an express or  
3 implied charge that the defendant -- declarant recently  
4 fabricated it or acted from a recent improper -- testifying  
5 essentially when he attacks his credibility and saying you're  
6 lying because you're getting a deal on your charges.

7 I'm allowed to put this statement into evidence in order  
8 to rebut his accusation under Rule 801(d)(1)(B).

9 THE COURT: Just a minute. Let me see. (d)(1)(B)?

10 MR. MIMS: Yes, sir.

11 THE COURT: (Perusing document). (d)(1)(B)(1)?

12 MR. MIMS: Yes, sir.

13 THE COURT: (Perusing document). What do you say to  
14 that, Mr. Lucas?

15 MR. LUCAS: We'd point out, once again, this is  
16 redirect. We didn't go into this matter on cross-examination.  
17 Improper redirect.

18 MR. MIMS: He did, Your Honor. When he attacks the  
19 credibility based on saying he's changed it because he's  
20 getting a deal.

21 MR. LUCAS: I never said anything about him changing  
22 it.

23 MS. BRADLEY: Or recently fabricated it.

24 MR. LUCAS: I just said that this is his story, and  
25 he's getting a deal on it.

1                   MR. MIMS: He says he's lying; that he's getting a  
2 deal. I'm allowed to show, way before the deal occurred, he  
3 told the same story.

4                   THE COURT: I understand the purpose. But I don't  
5 know. It sounds pretty applicable to this situation,  
6 Mr. Lucas. I'm going to let it in and give you something to  
7 appeal on if you want to.

8                   MR. LUCAS: Thank you, Your Honor.

9                   (END OF DISCUSSION AT SIDEBAR OUTSIDE THE HEARING

10                   OF THE JURY WITHOUT THE DEFENDANT PRESENT)

11                   MR. MIMS: May I proceed, Your Honor?

12                   THE COURT: You may.

13 BY MR. MIMS:

14 Q. Mr. Buckingham, do you remember giving a statement on  
15 September 12th of 2013?

16 A. Yes, sir.

17                   MR. MIMS: May I approach the witness, Your Honor?

18                   THE COURT: You may.

19                   MR. MIMS: (Passing document).

20 BY MR. MIMS:

21 Q. Mr. Buckingham, whose handwriting is on that statement?

22 A. That's mine, sir.

23 Q. All right. You gave that statement within 24 hours of the  
24 events of the night of September 11th?

25 A. Yes, sir.