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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT LEXINGTON

UNITED STATES OF AMERICA,	- - -	Case No. 5:20-CR-00063-1
	.	5:20-CR-00063-2
Plaintiff,	.	
	.	Lexington, Kentucky
- v -	.	
	.	Tuesday, October 11, 2022
DOUGLAS WILLIAM VANCE and	.	8:57 a.m.
MOLLY IRENE MCKINNON,	.	
	.	JURY TRIAL DAY 5 OF 7
Defendants.	.	

- - -
TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE DANNY C. REEVES
UNITED STATES DISTRICT COURT JUDGE
- - -

For the United States:	JAMES T. CHAPMAN, ESQ. GREGORY ROSENBERG, ESQ. Assistant U.S. Attorney United States Attorney's Office 260 West Vine Street, Suite 300 Lexington, Kentucky 40507
For the Defendant Douglas William Vance:	JEFFREY A. DARLING, ESQ. Nichols Walter PLLC 3120 Wall Street, Suite 210 Lexington, Kentucky 40513
For the Defendant Molly Irene McKinnon:	BRANDI N. LEWIS, ESQ. Baldani Law Group 300 West Short Street Lexington, Kentucky 40507
Court Reporter:	LINDA S. MULLEN, RDR, CRR Official Court Reporter 101 Barr Street Lexington, Kentucky 40507

Proceedings recorded by mechanical stenography, transcript produced by computer.

1 (Proceedings in open court, October 11, 2022, 8:57 a.m.)

2 THE COURT: All right. Thank you. The jury is not
3 present, I understand we're still -- have one juror that's on
4 his way up.

5 There's one issue I wanted to take up with the parties
6 before we start with the jury this morning.

7 Last week during opening statements and then during
8 examination of several witnesses, counsel for Ms. McKinnon had
9 raised an issue essentially of coercion and duress, that
10 Ms. McKinnon had been essentially forced to take certain
11 actions based upon pressure applied by Mr. Chamblee. I wanted
12 to discuss that with the parties before the jury comes in
13 today.

14 Of course, there is an instruction that is sometimes given
15 in cases in which similar claims have been made, justification
16 defense. It's an affirmative defense and it does require the
17 establishment of five elements, and I wanted the parties to be
18 able to discuss that issue before we certainly proceed with the
19 defendants' case.

20 Have the attorneys discussed this issue in connection with
21 the jury instruction?

22 MS. LEWIS: I'm aware of it and I know the burden is on me
23 to establish those factors in order to get the instruction.

24 THE COURT: Are you aware what the five elements are that
25 have to be established?

1 MS. LEWIS: Yes, Your Honor.

2 THE COURT: And one element is that the defendant had no
3 reasonable legal alternative to violating the law, a chance
4 both to refuse to do the criminal act and also avoid the
5 threatened harm.

6 MS. LEWIS: Yes, I'm aware of that factor as well, Your
7 Honor.

8 THE COURT: All right. I have had at least one case
9 previously in which a defendant attempted to assert
10 justification as a defense in a drug case. And the defendant
11 could not establish that element. And in some circumstances a
12 reverse instruction can be given, that the defense can be
13 stricken and the jury can be advised that the elements have not
14 been established. I just wanted to make sure counsel was aware
15 of that.

16 MS. LEWIS: Thank you, Judge.

17 THE COURT: I'm sorry?

18 MS. LEWIS: Thank you for making us aware of that.

19 THE COURT: All right.

20 (Jury entered courtroom at 9:02 a.m.)

21 THE COURT: Good morning, everyone. The record will again
22 reflect that all members of the jury are present. Defendants
23 and all counsel present in the courtroom at this time.

24 We'll continue with the direct examination of FBI Special
25 Agent Hubbuch. If you would like to come on up and I'm going

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1 to ask the clerk to re-administer the oath before you testify.

2 **CHRISTOPHER HUBBUCH, GOVERNMENT WITNESS, SWORN**

3 THE COURT: Thank you. Mr. Rosenberg, you may continue
4 with your examination of the witness.

5 MR. ROSENBERG: Thank you, Your Honor.

6 CHRISTOPHER HUBBUCH

7 DIRECT EXAMINATION

8 BY MR. ROSENBERG:

9 Q. Good morning, Agent Hubbuch.

10 A. Good morning.

11 Q. Do you recall on Friday you reviewed some bank statements
12 sent by Doug Vance to Dell Jagers of Kentucky River
13 Properties?

14 A. Yes.

15 Q. Do you recall Mendie Hogan of the Shumard Family Office
16 testifying about her receiving bank statements as well?

17 A. I do.

18 Q. And who did she receive those from?

19 A. From Molly McKinnon.

20 Q. So I want to pick up with looking at some of those
21 statements, compared to statements you received directly from
22 Wells Fargo.

23 MR. ROSENBERG: We would like to show to the jury what's
24 already been admitted as Government's Exhibits 203 and 701.

25 THE COURT: Yes, sir.

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1 BY MR. CHAPMAN:

2 Q. Do you see that on your screen, sir?

3 A. Yes.

4 Q. Can you tell us what statement from account 7353 of
5 Nex-Gen Industries we're looking at?

6 A. We're looking at the September -- basically the September
7 statement, September 1, '16 through September 30th of '16.

8 Q. And the portion highlighted, what transaction is reflected
9 here?

10 A. That is a September 27th incoming wire transfer of \$30,000
11 from Dragon Head Technologies, which is Allan Deware.

12 Q. I would like to call your attention to Exhibit 701,
13 received from Mendie Hogan.

14 Does this purport to be from the same statement, from the
15 same Nex-Gen Industries account?

16 A. It does, for the same date range.

17 Q. Does the \$30,000 deposit from Dragon Head Technologies
18 appear in the statement sent to Mendie Hogan?

19 A. Not in that date range.

20 Q. And remind us, whose entity is Dragon Head Technologies?

21 A. Again, Allan Deware.

22 MR. ROSENBERG: I want to look back at the Wells Fargo
23 statement.

24 Q. What transaction occurred on September 30th of 2016?

25 A. A \$50,000 incoming wire transfer from Dragon Head

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1 Technologies.

2 Q. Does that transaction appear in the statement sent by
3 Ms. McKinnon to Ms. Hogan?

4 A. No, it does not.

5 MR. ROSENBERG: I want to go forward to October of 2016.

6 Q. What transaction appears in the Wells Fargo records you
7 received?

8 A. The same account on October 20th of 2016, there was an
9 incoming wire transfer of \$15,000 from Dragon Head
10 Technologies.

11 Q. And does that transaction appear in the statement sent by
12 Ms. McKinnon?

13 A. No.

14 Q. Moving forward to December of 2016, what two transactions
15 are noted here on December 1st?

16 A. An incoming wire transfer of \$25,500 from Kenneth M.
17 Shumard and a \$10,000 incoming wire transfer from Dragon Head
18 Technologies.

19 Q. In the statement version sent by Ms. McKinnon to Mendie
20 Hogan, which of those transactions appeared?

21 A. Only the Kenneth Shumard \$25,500 transaction.

22 MR. ROSENBERG: Now I want to stay in this account, and
23 we'll stay on this date.

24 Q. Did the genuine records you received from Wells Fargo show
25 where some of the money received from Mr. Shumard and

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1 Mr. Deware went to in December of 2016?

2 A. Yes.

3 Q. Do you recognize the name Joan Faybik?

4 A. I do.

5 Q. And was Ms. Faybik an authorized signer on the 7353
6 account?

7 A. She was added as an authorized signer I believe in --
8 sometime in 2016.

9 Q. And remind us what Mr. Vance told you about Ms. Faybik.

10 A. On several interviews, Ms. Faybik was an investor and was
11 the investor that -- that was going to be in for the long haul
12 with Doug Vance.

13 Q. Did Ms. Faybik also contribute money to Mr. Vance's
14 entities?

15 A. Yes.

16 Q. Was there evidence of that in the 7353 account?

17 A. Yes.

18 MR. ROSENBERG: I want to look back at just a couple of
19 dates prior to the Shumard and Dragon Head Technologies wire
20 transfers.

21 Q. What happened on November 30th in the 7353 account?

22 A. It was an incoming wire transfer from Joan Faybik in the
23 amount of \$7,000.

24 Q. Did you also see money going the other way, to Ms. Faybik?

25 A. I did.

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1 Q. And in what ways did you see that money going to her?

2 A. There were two ways. One would be a wire transfer back to
3 Ms. Faybik, and the other would be ATM withdrawals, non-Wells
4 Fargo withdrawals in her hometown of New Kensington,
5 Pennsylvania.

6 Q. Did you see examples of those withdrawals in December of
7 2016?

8 A. Yes.

9 Q. What were some of the amounts of these withdrawals?

10 A. Basically every time I've seen it in the bank statements,
11 it's been a \$300 withdrawal. I attribute the \$3.50 to an ATM
12 fee, but a \$300 withdrawal.

13 Q. What was the other format of Ms. Faybik receiving
14 transfers?

15 A. Wire transfers.

16 Q. Were there wire transfers that also occurred in early
17 December 2016?

18 A. Yes. A \$1,900 wire transfer on December 2nd, a \$100
19 transfer on December 2nd.

20 And a \$400 transfer on December 5th, 2016.

21 MR. ROSENBERG: I would like to move a little bit later in
22 2016.

23 Q. What happened on December 23rd?

24 A. Dragon Head Technologies wire transferred \$20,000 into the
25 Wells Fargo 7353 account.

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1 Q. Now, where did you see some of this money go to?

2 A. Subsequently, a few days later, there was a \$3,000
3 withdrawal made in a branch store, and then an online transfer
4 to Vance's checking account ending in 7357.

5 Q. Where else did the money go?

6 A. Similarly with the Joan Faybik withdrawals, there were
7 three withdrawals on the 27th in New Kensington, Pennsylvania,
8 of \$300 each.

9 Q. Did this all occur on December 27th?

10 A. Yes.

11 Q. Was there another transaction that occurred from the
12 Nex-Gen Industries account on December 27th?

13 A. Yes. There was a purchase -- actually purchased on 12/24
14 at Samuel's Jewelers in Cedar Bluff, Virginia, which I know to
15 be associated with Mr. Vance, the area where he lived or lives,
16 it posted on December 27th, it was a purchase in the amount of
17 \$1,955.65.

18 Q. And that came from the Nex-Gen Industries business
19 account?

20 A. It did.

21 MR. ROSENBERG: Move forward to March of 2017.

22 Q. What transactions came in on March 6th and March 7th?

23 A. On March 6th, there was an incoming wire transfer from
24 Allan Rolfes of \$12,500.

25 And on the 7th, an incoming wire transfer from Kenneth

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1 Shumard in the amount of \$15,789.

2 Q. Where did you see money flow out of on the 6th and the
3 7th? Or flow to from this account on the -- after the 6th and
4 7th?

5 A. So on seven occasions, there were transfers from the
6 7353 account to the 7357 account, total amount of \$25,200.

7 Q. And that 7357 account, what is that account?

8 A. That is the personal checking account of Doug Vance and
9 Heather Vance.

10 Q. What transaction did you see in that account on March 7th?

11 A. On March 7th, there was a cashier's check obtained from
12 that account made payable to the Tazewell County Circuit Court
13 in the amount of \$10,000.

14 Q. Where is Tazewell County?

15 A. That is where Doug Vance lives.

16 Q. Moving forward to April '17, what occurred on April 4th
17 and April 7th?

18 A. Could you repeat that?

19 Q. What happened on April 4th and April 7th?

20 A. On April 4th and April 7th, there was an incoming wire
21 transfer from Dragon Head Technologies of 9,000, and an
22 incoming wire transfer of \$35,000 from Keith Shpakoff in the
23 7353 account.

24 Q. And again, what happened with funds from account 7353 in
25 the days following those deposits?

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1 A. There were five transfers between 4/7 and 4/11 to the
2 personal account, 7353, in the total amount of \$40,700.

3 Q. And on April 11th, what occurred in the 7357 account?

4 A. Heather Vance withdrew \$11,200.

5 MR. ROSENBERG: Let's go forward to the next month, May of
6 2017.

7 Q. What sort of wire transfer occurred on May 26th?

8 A. A \$65,000 incoming wire transfer from Kenneth Shumard.

9 Q. Can you tell us about some of the transactions that
10 followed that?

11 A. On the same day, \$5,000 was transferred to 7357, personal
12 account.

13 And then five days later, \$14,000 was transferred to the
14 7357 account.

15 Q. Did Ms. Faybik also receive funds on May 26th and the days
16 that followed?

17 A. As we discussed previously, this indicates two different
18 ways in which she received money. There was a \$1,700 wire
19 transfer to Joan Faybik's account.

20 And then there were six ATM withdrawals between 5/26 and
21 5/31 of 2017 in the amount of \$300 each.

22 MR. ROSENBERG: Going forward to June of 2017 and now
23 we're looking at Government's Exhibit 202.

24 Q. What account is Government's Exhibit 202?

25 A. This is the NexGen Energy Partners account at Whitaker

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1 Bank.

2 Q. What incoming transaction occurred on June 5th?

3 A. It was an \$86,000 incoming wire transfer from GGC Funding,
4 LLC.

5 Q. And where did that money move to?

6 A. Some of that money moved out about a week later in wire
7 transfers to the Wells Fargo Nex-Gen Industries account 7353,
8 on June 12th, \$16,500. And on June 14th, \$12,000.

9 Q. And based on both the bank records you received and the
10 testimony that was given earlier in this case, between the
11 Whitaker account and the NGI Wells Fargo account, which one did
12 the Shumard folks have better access to?

13 A. To the Whitaker Bank account.

14 Q. And so the money moved -- some of the money moved from
15 that Whitaker account to the Wells Fargo account?

16 A. Yes.

17 Q. What happened to it, some of the money, once it was in the
18 Wells Fargo account?

19 A. There was -- between June 12th and June 14th, \$17,600 was
20 transferred to Doug Vance's personal Wells Fargo account, 7357.

21 And from June 12th to June 16th, there were five ATM
22 withdrawals up in New Kensington, Pennsylvania, in the amount
23 of \$1,500.

24 MR. ROSENBERG: Switching back to Exhibit 203 and going
25 forward to July of 2017.

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1 Q. What money came in around July 14th?

2 A. That's when Kentucky River Properties wire transferred
3 \$43,350 into the 7353 account.

4 Q. And what transactions did you see in the days following
5 that money coming in from Kentucky River Properties?

6 A. A few days later, a total of \$20,000 was transferred to
7 the 7357 personal account.

8 And between the 17th and the 21st, seven \$300 ATM
9 withdrawals occurred up in New Kensington and Lower Burrell,
10 Pennsylvania.

11 MR. ROSENBERG: Going forward two weeks in that same
12 account.

13 Q. What happened on the 27th?

14 A. Similarly, there was an incoming wire transfer from
15 Kentucky River Properties in the amount of \$91,842.97.

16 A day later and a few days after that, a total of \$19,000
17 was transferred to Vance's personal 7357 account.

18 And during that same date range, six \$300 ATM withdrawals
19 occurred up in Pennsylvania.

20 MR. ROSENBERG: Going forward another month to August of
21 2017.

22 Q. What happened on August 3rd?

23 A. On August 3rd, another Kentucky River Properties incoming
24 wire transfer to 7353 in the amount of \$34,807.03.

25 Q. And what transactions came out of that account in the week

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1 that followed this incoming money from Kentucky River
2 Properties?

3 A. A \$10,000 transfer to 7357 on 8/7.

4 And then 8/11, two transfers to 7357 for 2,000 and 1,000
5 respectively.

6 Q. Were there also ATM withdrawals?

7 A. Yes. There were nine ATM withdrawals up in New
8 Kensington, Lower Burrell, Pennsylvania, from August 4th to
9 August 11th in the amount of \$2,700.

10 MR. ROSENBERG: Now I want to show what's been admitted as
11 Government's Exhibit 713.

12 Q. Looking back at statements sent by Ms. McKinnon to Mendie
13 Hogan, were there statements that purported to be from this
14 same 7353 account for August of 2017?

15 A. Yes.

16 Q. And do you know -- was there a sizable deposit on the 1st
17 of August in these records?

18 A. Yes, it indicates a deposit of \$218,750.

19 MR. ROSENBERG: I would like to look now at Exhibit 203.

20 Q. Is this for the same August 2017 period?

21 A. Yes, the actual account statement.

22 Q. And does that deposit of \$218,750 appear in the genuine
23 Wells Fargo statement?

24 A. No.

25 Q. I think we looked at this August 3rd statement -- or

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1 transaction from Kentucky River Properties, correct?

2 A. Yes.

3 Q. Did that transaction appear in the statement sent by
4 Ms. McKinnon?

5 A. No.

6 Q. I think we looked at these withdrawals from the 7353
7 account on August 7th and August 11th, correct?

8 A. Yes, those are the actuals.

9 Q. Did those withdrawals to Mr. Vance's personal checking
10 account appear in the statements sent by Ms. McKinnon?

11 A. The 10,000 does not.

12 Q. What about the 2,000 and the 1,000?

13 A. And that does not either.

14 MR. ROSENBERG: Now I would like to show Government's
15 Exhibit 120A, which is already in evidence.

16 Q. Do you recall seeing this email from Ms. McKinnon to Dell
17 Jagers?

18 A. Yes.

19 Q. And remind us from the testimony who Dell Jagers is.

20 A. He was one of the members of the board of directors for
21 Kentucky River Properties.

22 Q. And what sort of documents did Ms. McKinnon send
23 Mr. Jagers in this email?

24 A. Balance sheet, trial balance and P&L.

25 Q. What year are these ones related to?

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1 A. 2016.

2 Q. And what was the sales of product income and total income
3 in the report she sent for 2016?

4 A. Indicates almost \$800,000, 787,000 and some change.

5 Q. Now, in your review of the account records from Nex-Gen
6 Industries for 2016, did you see sales of product income at --
7 records consistent with sales of product income in that amount?

8 A. From the records that I have, no.

9 Q. From the records you have, what did the overwhelming
10 majority of the incoming money to the 7353 account come from?

11 A. What I consider investors and lenders, with some sales of
12 product but small amounts.

13 Q. In a separate email, did Ms. McKinnon also send statements
14 for 2017?

15 A. Yes.

16 MR. ROSENBERG: And this would be Government's Exhibit 21.

17 Q. What was the total income in that statement?

18 A. 1.44 million, approximately.

19 Q. And same question for the year 2017, did you see evidence
20 in the bank records consistent with sales of product income of
21 \$1.4 million?

22 A. No.

23 MR. ROSENBERG: Your Honor, may I tender what's been
24 marked Government's Exhibit 204C to the witness?

25 THE COURT: Yes, sir.

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1 BY MR. ROSENBERG:

2 Q. Agent Hubbuch, have I handed you a set of bank statements
3 from Wells Fargo?

4 A. Yes.

5 Q. What account does that pertain to?

6 A. It's the 7357 account.

7 Q. And whose account was that?

8 A. That was the personal account of Doug Vance and Heather
9 Vance.

10 MR. ROSENBERG: Your Honor, we move to admit Government's
11 Exhibit 204C.

12 THE COURT: Any objection?

13 MS. LEWIS: No objection.

14 THE COURT: United States Exhibit 204C is admitted.

15 (United States Exhibit 204C was admitted.)

16 MR. ROSENBERG: I want to turn back to Government's
17 Exhibit 205.

18 Q. Which is now on your screen. What account is reflected
19 here?

20 A. This is the Nex-Gen LLC account at Wells Fargo ending in
21 8404.

22 Q. So is this a different account from the Nex-Gen Industries
23 account we were just reviewing?

24 A. Yes.

25 Q. And when was this Nex-Gen LLC account established at Wells

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1 Fargo?

2 A. On March 6th of 2018.

3 Q. Who are the two customer names listed?

4 A. Nex-Gen LLC and Douglas W. Vance.

5 Q. What was the address listed for Nex-Gen LLC?

6 A. That's what I know to be Mr. Vance's or was his home
7 address in Richlands, Virginia.

8 Q. How many employees did Mr. Vance disclose Nex-Gen LLC
9 having?

10 A. Three.

11 Q. What did he list as the annual gross sales?

12 A. 250,000.

13 Q. By March of 2018, where was Nex-Gen operating?

14 A. In Chavies, Kentucky, at the Trus Joist facility.

15 Q. How did Mr. Vance describe his relationship to Nex-Gen
16 LLC?

17 A. Owner with control of the entity.

18 Q. Let's go to the first bank statement in this account,
19 March 2018.

20 What happened the day after the account was opened?

21 A. Koch Minerals wire transferred \$50,000 into the account.

22 Q. What about the following month, on April 25th?

23 A. Another Koch Minerals incoming wire transfer of \$50,000.

24 Q. What was the account balance before that transfer from
25 Koch Minerals?

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1 A. It was slightly negative.

2 Q. The next day, what transfer happened in the amount of
3 \$25,000?

4 A. It was a transfer to Stephen W. Gooch.

5 Q. And have we seen in evidence emails with Mr. Gooch?

6 A. We have.

7 Q. From Government's Exhibit 172, what did Mr. Gooch report
8 to Ms. McKinnon, copying Doug Vance on the 25th of April?

9 A. That he had initiated an ACH, automated clearinghouse
10 withdrawal, for \$25,000.

11 MR. ROSENBERG: I want to go forward to June of 2018.

12 Q. On June 15th, what money came into this Nex-Gen LLC
13 account?

14 A. Another incoming wire transfer from Koch Minerals for
15 \$75,000.

16 Q. Could you describe the two highlighted transactions that
17 occurred that same day?

18 A. On the same day, \$5,000 was transferred to the 7357
19 personal account of Mr. Vance.

20 And a withdrawal was made of \$65,390, in a branch or a
21 store.

22 Q. I would like to call your attention to Exhibit 205A,
23 page 7. What was in this part of the Wells Fargo record for
24 account -- for this cashier's check? Excuse me.

25 A. This is -- they provided us with a list and copies of

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1 cashier's checks that were obtained from the account.

2 Q. And do you recall seeing this particular cashier's check
3 elsewhere in evidence?

4 A. Yes.

5 Q. Who received this cashier's check?

6 A. This was received by the Shumard Family Office folks and
7 deposited into the NexGen Energy Partners account at Bank of
8 America.

9 Q. And what was the remitter put on this check?

10 A. AK Holdings.

11 Q. And did you discuss this and related checks with
12 Mr. Vance?

13 A. I did.

14 Q. And what did he admit about the nature of this check?

15 A. Well, he denied that -- he said they hadn't sold anything
16 to AK.

17 Q. I want to look at Government's Exhibit 152. What was
18 being represented by Ms. McKinnon to Mr. Chamblee with Doug
19 Vance copied in this March 2018 email?

20 A. Basically that product had been shipped to AK Steel in the
21 amount of 500 tons.

22 Q. Is that consistent with the later statements Mr. Vance
23 made to you about AK Steel?

24 A. That's inconsistent. He denied that.

25 Q. In your review of Mr. Vance's email records from Yahoo,

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1 did you see any email to Mr. Chamblee correcting the
2 representation made here about AK Steel hauling 500 tons?

3 A. No.

4 Q. Now, you interviewed Mr. Vance on a few occasions,
5 correct?

6 A. Three times, yes.

7 Q. And I believe we touched on the discussion you had about
8 Ms. Faybik, correct?

9 A. Yes.

10 Q. Did you also discuss Ms. Faybik's family and a family
11 friend and their relation to Mr. Vance?

12 A. I believe so.

13 Q. What was -- what was discussed?

14 A. That she has a son, Jason Faybik, and a nephew, she
15 considers him a nephew who is not actually his nephew, but
16 agreed to -- actually, bought in and invested with Doug Vance.

17 Q. What is reflected here in Exhibit 205A?

18 A. This is a cashier's check made payable to Joan Faybik from
19 Douglas W. Vance in the amount of \$3,500 which occurred on
20 September 25th of 2018.

21 Q. I think you said \$3,500?

22 A. I'm sorry, \$35,000.

23 Q. \$35,000?

24 A. Yes, my apologies.

25 Q. Now, one of your -- did one of your interviews with

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1 Mr. Vance occur on September 24th?

2 A. Yes, that was the day before this cashier's check was
3 obtained.

4 Q. In that call with -- or interview with Mr. Vance, did you
5 discuss Joan Faybik?

6 A. I believe we discussed Joan Faybik in all three
7 interviews.

8 Q. This \$35,000 sent to her the day after your interview, how
9 did that amount compare to the other transfer amounts to
10 Ms. Faybik that you saw in the records?

11 A. This was significantly larger than any other withdrawals
12 or transfers into her account.

13 MR. ROSENBERG: I want to switch over to Government's
14 Exhibit 213.

15 Q. What records are in Government's Exhibit 213?

16 A. The Community Trust Bank account records for V4 Carbon,
17 account ending in 3282.

18 Q. When was this account opened?

19 A. On or about April 13th of 2017.

20 Q. And who were the approved parties on this account?

21 A. Molly McKinnon and Allan Deware.

22 Q. On May 8th, what transaction occurred?

23 A. This was the last wire transfer from Allan Deware, I
24 believe, in the amount of \$60,000 into the Community Trust
25 account.

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1 Q. What check was written about a week later?

2 A. It was a check for \$6,000 payable to Molly McKinnon and
3 signed by Molly McKinnon.

4 Q. Did you review and estimate totals of certain categories
5 of credits and debits in the account across the account records
6 you reviewed?

7 A. Yes, from the comprehensive and the withdrawal credit and
8 deposit summary spreadsheet that Forensic Accountant Troy
9 McCracken had generated for me at my request, I did some
10 totals. He already had totals but I combined a few.

11 Q. With respect to the Shumard Family Office, approximately
12 how much money did you total from the Shumard-related entities?

13 A. It was over \$1.1 million, which is consistent with Mendie
14 Hogan's testimony.

15 Q. How about from Dragon Head Technologies or Allan Deware?

16 A. Almost \$400,000, 373,5.

17 Q. From Kentucky River Properties?

18 A. 170,000.

19 Q. And from Koch or Koch Minerals?

20 A. That's 605,000.

21 Q. Is that consistent with the loan documentation between
22 Koch and Nex-Gen?

23 A. Absolutely.

24 Q. What about Keith Shpakoff and Joan Faybik?

25 A. Keith Shpakoff is the nephew I referred to earlier of Joan

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1 Faybik, there was \$98,000 incoming. And from Joan Faybik,
2 \$42,500 incoming. That only represents the time period that we
3 had records for in the account.

4 Q. Did Mr. Vance describe Ms. Faybik as an early investor?

5 A. Yes.

6 Q. Prior to the other investors discussed in this case?

7 A. I believe so. But I'm aware that she invested previously,
8 prior to June of 2016.

9 Q. I want to switch over to debits or money coming out of
10 accounts.

11 Can you walk us through the differences in amounts --
12 first, just the difference between branch withdrawal by Vance,
13 branch withdrawal, Heather Vance, and then just general branch
14 withdrawal?

15 A. So the way that the bank statements appear when they are
16 transferred by BankScan into the spreadsheet, it will dump a
17 description. And those descriptions are typically common
18 across the type of deposit for the bank. But some banks
19 describe them differently and sometimes they are described
20 differently.

21 So what I did is I took the -- this is on the spreadsheet
22 that Mr. McCracken prepared for me. The totals of what's
23 indicated as a branch withdrawal by Doug Vance, withdrawals by
24 Doug Vance, branch withdrawals by Heather Vance and then a
25 cumulative total of cash withdrawals and ATM withdrawals.

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1 And then there is another one that's just called branch
2 withdrawal. So these are the moneys that were taken out either
3 by cash, ATM or at the branch.

4 Q. The cash ATM withdrawals, would that also include those
5 ATM withdrawals we saw in Pennsylvania?

6 A. That would include that. I did not deduct those from that
7 total.

8 Q. How much were the branch withdrawals by Doug Vance?

9 A. Over 400,000.

10 Q. And then were there additional transfers or withdrawals to
11 Doug Vance?

12 A. Another 111,000.

13 Q. And what about branch withdrawals by Heather Vance?

14 A. About 171,000.

15 Q. How much money did you see transferred to Stephen Gooch,
16 the attorney?

17 A. \$37,500.

18 Q. And how much in payments to the Tazewell County Circuit
19 Court?

20 A. That I was able to confirm, 25,000.

21 Q. Were there transfers back to Mr. Shpakoff and Ms. Faybik?

22 A. Yes, Mr. Shpakoff received \$18,000 in return during the
23 time period where we had records. And Joan Faybik received
24 \$50,000 -- \$50,600 in return over the time period.

25 Q. What about Mr. Shumard and the GGC Funding entity?

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1 A. Ken Shumard received about 48,700, and GGC Funding
2 received about 16,000.

3 Q. How do those amounts compare to the amounts put in by
4 Mr. Shumard and GGC Funding?

5 A. They are nominal. And I believe testimony was that they
6 were interest payments, returns.

7 MR. ROSENBERG: I would like to switch gears from the bank
8 records at this point and tender to the -- just to the witness
9 what's been marked as Government's Exhibit 151.

10 Q. Agent Hubbuch, let me know when that appears on your
11 screen.

12 A. It's up now.

13 Q. What type of document is this?

14 A. It's an email.

15 Q. And who is it between?

16 A. It's from Doug Vance at the Nexgen.industries account to
17 Molly McKinnon at the ngicarbon account.

18 Q. And down in the email chain, are there discussions
19 referencing Nex-Gen Industries bank statements?

20 A. Yes.

21 MR. ROSENBERG: Your Honor, we move to admit Government's
22 Exhibit 151.

23 THE COURT: Any objection?

24 MS. LEWIS: No objection.

25 THE COURT: United States Exhibit 151 is admitted.

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1 (United States Exhibit 151 was admitted.)

2 BY MR. ROSENBERG:

3 Q. I want to start with the June 24th, 2:26 p.m. email from
4 Ms. McKinnon.

5 Do you see that?

6 A. I do.

7 Q. What did Ms. McKinnon report Mendie was hounding her for?

8 A. Bank statements, NGI bank statements.

9 Q. And could you read for us just the sentence starting with,
10 "I copied them to my jump drive...."?

11 A. "I copied them to my jump drive....the one that burned in
12 the fire....and shredded my copies. I don't have any copies of
13 them on my laptop because Mendie said I wasn't allowed to have
14 any NGEF docs on my computer."

15 Q. Did Ms. McKinnon also report to Mr. Vance questions from
16 Gary?

17 A. Yes.

18 Q. And who do you -- who does Gary refer to?

19 A. Gary is asking about --

20 Q. Sorry. Who does Gary refer to?

21 A. Who does Gary refer to? Gary Chamblee.

22 Q. What's the first question Ms. McKinnon reports from Gary
23 Chamblee?

24 A. That Gary wants "Cabot's contact info and how many tons
25 were sold."

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1 Q. What's the second question?

2 A. He wants "the AK Steel contact" information.

3 Q. Were AK Steel and Cabot entities reported as customers of
4 Nex-Gen?

5 A. Yes.

6 MR. ROSENBERG: Let me scroll up.

7 Q. Did Mr. Vance acknowledge this information from
8 Ms. McKinnon?

9 A. He did. He said, "Okay. See if you can push call back
10 till Tuesday."

11 MR. ROSENBERG: Now I would like to tender just to the
12 witness Government's Exhibit 170.

13 Q. Do you see that document?

14 A. I do.

15 Q. Again, could you describe what it is and who are the
16 relevant parties on it?

17 A. It's an email from Molly McKinnon at the ngicarbon account
18 to Doug Vance at the nexgen.industries account, dated May 8th,
19 2018.

20 Q. What's the subject line at the top?

21 A. NGI customers - don't send to Dave yet.

22 Q. What is Mr. Severson's first name, Mr. Severson of Koch
23 Industries?

24 A. Dave or David.

25 MR. ROSENBERG: Your Honor, we move to admit Government's

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1 Exhibit 170.

2 THE COURT: Any objection?

3 MS. LEWIS: No objection.

4 MR. DARLING: No.

5 THE COURT: United States Exhibit 170 is admitted.

6 (United States Exhibit 170 was admitted.)

7 BY MR. ROSENBERG:

8 Q. Remind us what the date on this email was.

9 A. May 8 of 2018.

10 MR. ROSENBERG: Now I want to switch over briefly to
11 Exhibit 171, which is already in evidence.

12 Q. And what's the date of this email from Ms. McKinnon to
13 Mr. Dave Severson?

14 A. May 11th of 2018.

15 Q. How does that compare to the email in 170?

16 A. Three days after.

17 MS. LEWIS: If we could look at bullet point number 3 in
18 her email to Mr. Severson?

19 Q. How does she describe these documents she's sending him?

20 A. NGI Actual Sales and Total Outstanding ARs, Accounts
21 Receivables.

22 Q. Could you read for us the sentence that starts "Regarding
23 sales"?

24 A. "Regarding sales, I have only included confirmed sales on
25 this spreadsheet. The pro forma will include projected sales

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1 based on current negotiations."

2 MR. ROSENBERG: Now let's go back to 170.

3 Q. And looking at the middle-of-the page email from
4 3:58 p.m., could you read the first three sentences at the top
5 above where it says Notes?

6 A. "Here is the revised customer list and sales breakdown."

7 "Have not sent either to Dave yet."

8 "Some prices look weird because I had to match Actual
9 Sales that I gave him and info that you gave him."

10 Q. Unlike Exhibit 171, is Mr. Severson on this email?

11 A. No.

12 Q. The statement about "Some prices look weird because I had
13 to match Actual Sales that I gave him and info you gave him,"
14 in what way should prices be changed or manipulated to match
15 other information if what is being reported is a true report of
16 sales to real customers?

17 A. Only if there was an error made in an original document.

18 Q. Otherwise, should prices be changing?

19 A. They should match. No.

20 MR. ROSENBERG: Go up to the top of the page.

21 Q. Could you read the sentence Ms. McKinnon wrote at 1450 --
22 or excuse me, 16:50?

23 A. At 16:50, "I haven't done a cash flow analysis based on
24 these sales yet so let me do that before you send to anyone
25 just in case I need to revise."

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1 Q. Can you identify the attachments that were included with
2 this email?

3 A. There were two. A customer list as of 5/8/2018, and NGI
4 sales as of 5/8/2018.

5 Q. Now, if these attachments, these documents accurately
6 reflected real sales to real customers, what would there be for
7 Ms. McKinnon to revise before sending to Dave Severson?

8 A. There shouldn't be any revisions.

9 MR. ROSENBERG: If we could stay on that exhibit and go to
10 page 4?

11 Q. Is this one of the attachments Ms. McKinnon sent to
12 Mr. Vance?

13 A. Yes.

14 Q. And have we seen similar tables like this in emails sent
15 to Mr. Severson?

16 A. Yes.

17 Q. And is AK Steel listed as a customer in this chart of
18 actual sales?

19 A. Actual sales, no.

20 Q. Well --

21 A. I'm sorry, hold on. Bear with me -- yes, AK Steel is.

22 Q. What about Nucor?

23 A. Nucor is as well.

24 Q. And do you see a customer listed as Washington?

25 A. Yes.

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1 Q. Have you seen documents in this case referring to a
2 purported customer consistent with that name?

3 A. Washington Mills, yes.

4 MR. ROSENBERG: If we could go up to page 3?

5 Q. Was this also a document sent in this email from
6 Ms. McKinnon to Mr. Vance?

7 A. Yes.

8 Q. And have you seen this table in emails sent to
9 Mr. Severson?

10 A. Yes.

11 Q. And who is, for example, the first customer listed in this
12 table?

13 A. AK Steel.

14 Q. And where was sales to AK Steel, where were those
15 purportedly shipped?

16 A. To the Ashland facility.

17 MR. ROSENBERG: Next I would like to tender to just this
18 witness Exhibit 149.

19 Q. Please describe what kind of document this is and who are
20 the parties.

21 A. It's an email from Molly McKinnon to Doug Vance dated
22 October 7, 2018.

23 Q. What is the subject line?

24 A. Koch Email.

25 MR. ROSENBERG: Your Honor, we move to admit Government

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1 Exhibit 149.

2 THE COURT: Any objection?

3 MS. LEWIS: No objection.

4 THE COURT: United States Exhibit 149 is admitted.

5 (United States Exhibit 149 was admitted.)

6 BY MR. ROSENBERG:

7 Q. Is Mr. Severson of Koch on this email?

8 A. No.

9 Q. Based on the parties that are on it, and the subject line
10 and the body, what did you understand this email to be?

11 A. It appears to be Molly sending Doug the content of what
12 she intends to send Dave, or one of them intends to send
13 Dave -- actually, what she would intend to send Dave, it's
14 signed Mac.

15 Q. Can you review the first paragraph and then give us a
16 brief summary of what's being represented there?

17 A. The first full paragraph?

18 Q. The first full.

19 A. Not the first sentence, correct?

20 Q. Not the first sentence, first full paragraph.

21 A. Basically discussing what the proposal is for expanding
22 the business to include 20 total machines and the amount of
23 upfront money they would need.

24 Q. So based on this description, who purportedly is going to
25 provide financing or funding to Nex-Gen?

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1 A. Koch.

2 Q. Well, let's read --

3 A. Wait a minute.

4 Q. -- the first sentence here?

5 A. Okay.

6 Q. "I have been" -- follow with me. "I have been presented
7 with an opportunity through one of my buyers to help accelerate
8 our growth and propel the business to where I know it needs to
9 be."

10 And it says, "Their proposal entails providing the entire
11 amount needed upfront to build additional machines and bring
12 our equipment inventory to a total of 20 machines."

13 A. Okay. It's basically saying that another buyer is
14 interested in investing or loaning into the business, and that
15 they intend to purchase product.

16 Q. And in what volumes is this purported buyer intending to
17 purchase from Nex-Gen?

18 A. Initially 10,000 tons per month. And then ramping up to
19 15,000 tons per month.

20 Q. Now, when -- when was this email sent from Ms. McKinnon to
21 Mr. Vance?

22 A. October 7, 2018.

23 Q. How many interviews had you done with Mr. Vance prior to
24 this email?

25 A. Two.

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1 Q. Did Mr. Vance reference this purported proposal in either
2 of those interviews?

3 A. No.

4 Q. Did you see any evidence of this proposal in your review
5 of Mr. Vance's email account records?

6 A. No.

7 MR. ROSENBERG: Could I have just a moment, Your Honor?
8 Your Honor, subject to redirect, we will pass the witness.

9 THE COURT: All right. Thank you.

10 Mr. Darling?

11 CROSS-EXAMINATION

12 BY MR. DARLING:

13 Q. Good morning, Agent Hubbuch.

14 A. Good morning.

15 Q. I know we've met. I know we know each other. I'm Jeff
16 Darling, I represent Doug Vance in this. I don't have a lot of
17 questions for you.

18 It appears that your main role in this case was to
19 subpoena and compile documents; is that fair?

20 A. And to conduct interviews and analysis, correct.

21 Q. And regarding that, how did this case first come to you?

22 A. A complaint that was received down in Jacksonville,
23 Florida was referred up to us because that's where the business
24 entity was located.

25 Q. And based on that -- when you say came "up to us"?

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1 A. Came to the Louisville division, down at the London
2 resident agency.

3 Q. So your London agency or your London office is part of the
4 Louisville division?

5 A. Yes.

6 Q. And you were assigned as a case agent?

7 A. Another agent had originally received the complaint and he
8 moved to headquarters, so I was assigned the complaint.

9 Q. Who was that?

10 A. That was Matt Holskey.

11 Q. How long did he have the case before you took it over?

12 A. He never had the case. The complaint just sat in
13 unaddressed work at the time.

14 Q. So for how long did it sit unaddressed?

15 A. Maybe six months.

16 Q. Is there a reason for that?

17 A. Workload.

18 Q. You indicated that you interviewed Mr. Vance two or three
19 times?

20 A. Three times.

21 Q. Three times?

22 A. I had spoken to him maybe more than that, but that's
23 because he would call me and want an update. We wouldn't have
24 any substantive discussion.

25 Q. And you -- the government played snippets out of an

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1 interview. Was that all conducted -- was that all snippets of
2 the same interview?

3 A. They were. It was the interview on December 17th of 2018.

4 Q. As I said, we heard snippets. How long was the complete
5 interview?

6 A. Exactly, I don't know, but maybe 30 minutes. Roughly
7 30 minutes.

8 Q. Were the other -- I'm just talking about the two that you
9 listed as statements, not just the update phone calls --

10 A. Yes.

11 Q. -- were either of those other two statements recorded?

12 A. No.

13 Q. You have the statements and summarized them in what you
14 referred to as a 302?

15 A. That's correct.

16 My first interview of him was actually out at the Chavies
17 facility.

18 And then my second was prior to him indicating that he had
19 an attorney, and he called me and I just interviewed him when
20 he called me wanting an update.

21 Q. That was one of the questions I was going to ask. How
22 many times had you been to the Trus Joist property in Chavies,
23 in Perry County?

24 A. As of now, a couple of times. But that was the first time
25 I had actually been to the facility was when I interviewed him

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1 the first time.

2 Q. Did you go to the facility specifically for the purpose of
3 interviewing Doug Vance?

4 A. I did.

5 Q. Did you do anything else while you were out there?

6 A. No.

7 Q. Did you look around?

8 A. Well, it's not difficult to look around because there's
9 not much to look around at.

10 Q. Describe what you -- what you observed just physically
11 about the facility.

12 A. Physically, there was one, what Doug described as a --
13 Mr. Vance described as an operating calciner and then two more
14 that were under construction. There wasn't an employee to be
15 found anywhere. Because I did ask if I could talk to, you
16 know, an employee. But no one was available.

17 Q. Did you ask for a specific employee or just an employee?

18 A. He may have referred to the general manager but I don't
19 recall.

20 Q. So did you interview anyone else connected with Nex-Gen at
21 the facility?

22 A. Eventually, I did.

23 Q. Okay. I'm talking about the first -- that first day.

24 A. No.

25 Q. At what point did you go back to the facility to interview

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1 other people?

2 A. After I had obtained additional information in my
3 investigation. To talk to other people?

4 Q. Yes.

5 A. It wasn't until after the indictment.

6 Q. Had you been back to the facility between the time that
7 you interviewed Mr. Vance and you went back after the
8 indictment?

9 A. I don't believe so.

10 Q. So when you went back after -- post-indictment, did you
11 interview people?

12 A. I did.

13 Q. Who did you interview?

14 A. I interviewed Robert Brigman. And the general manager,
15 help me with his name.

16 Q. I'm not going to do that.

17 A. I'll think of it in a minute.

18 Q. Did you notice anything different about the Trus Joint
19 facility at that time from the first time you were there?

20 A. I noticed there was graphite all over the floor and there
21 weren't but two employees there at the time.

22 Q. Was -- you mentioned that the first time you went, there
23 were a couple of calciners or machines that were in progress of
24 being built?

25 A. That's what Mr. Vance described them as, in the process of

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1 being built.

2 Q. Did they look any different when you went back after
3 indictment?

4 A. I know there was at least one machine sitting there on my
5 second visit. But I don't recall if there were -- I don't
6 believe there are more.

7 Q. Were any machines operating? Any machine operating?

8 A. I've never seen one operating.

9 Mike Miller is the general manager.

10 Q. Right. You have -- you have introduced copies of a lot
11 of -- of Doug Vance's accounts, correct?

12 A. Yes, both email and bank accounts.

13 Q. Did you subpoena any other -- did you subpoena any bank
14 records from Molly McKinnon?

15 A. No.

16 Q. Did you try?

17 A. Other than the V4 Carbon and Carbon Holding -- the two
18 Community Trust bank accounts.

19 Q. Now, we've seen an awful lot of the Yahoo emails from Doug
20 Vance's --

21 A. Yes.

22 Q. -- account. Did you email -- or I'm sorry.

23 Did you subpoena or attempt to subpoena Molly McKinnon's
24 email account?

25 A. I attempted to try to locate who the ISP and the -- where

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1 I could go to get those emails. Because fortunately Doug used
2 Yahoo, which is easy to find. But Molly did not. And the
3 servers that I attempted to find where her email accounts were,
4 I didn't have any luck. But I did try to locate emails for
5 her.

6 Q. With regard to the Yahoo emails, did you examine or did
7 you determine any IP addresses that were used to send these
8 emails?

9 A. If I did, I don't recall.

10 Q. So as you're sitting here, you can't say that all of these
11 emails were sent from the same computer?

12 A. No.

13 Q. And, for example, if I pop up on my laptop there Yahoo,
14 and put in Doug Vance's user name and password, I could send
15 somebody an email using his email account, correct?

16 A. You could if you had the password and get on any computer,
17 correct.

18 Q. But Yahoo is one of those like gmail and hotmail that you
19 can access from anywhere?

20 A. Yes.

21 Q. With regard to Ms. McKinnon's, we don't know because you
22 don't know where that came from?

23 A. I don't know where the emails reside.

24 Q. You testified your role in this case was you interviewed a
25 lot of people, and we the lawyers have seen the 302s that you

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1 prepared for many of these people. You've subpoenaed bank
2 accounts, you subpoenaed the Yahoo.

3 What other investigation did you do?

4 A. I have interviewed both witnesses that I might consider
5 victims and witnesses that are just telling me where money went
6 or money came from.

7 Q. To be fair, a lot of these witnesses that gave money to
8 Nex-Gen did not identify themselves as victims, right?

9 A. I know that several have stated that they weren't, didn't
10 consider themselves victims based on what they articulated to
11 me.

12 Q. They made -- they made investments and it didn't pan out,
13 in their mind?

14 A. I think more so because they believed in what they were
15 being told.

16 Q. What other investigation did you do?

17 A. I mean, I did an analysis of the bank records, followed
18 the money.

19 Q. So you interviewed people, both victims and not victims,
20 you interviewed people you considered to be witnesses. You,
21 two times, went to the Trus Joist site, both times with the
22 intention of interviewing people, right?

23 A. Yes.

24 Q. Not for any other reason?

25 A. I mean, I had never seen the site before, I had other

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1 cases up in Coal Fields Industrial Park where that is, but I
2 have never seen the Trus Joint facility. It was my initial
3 assessment of the facility.

4 Q. And you subpoenaed the records that we've talked about at
5 length?

6 A. Yes. Opportunity, the interview of Doug Vance was an
7 opportunity. It was earlier on, I had a number of records.
8 Molly was not there or I would have interviewed Molly as well.

9 And after my first interview of Mr. Vance, the only reason
10 that I interviewed him on multiple occasions was because he
11 continued to call me and want to clear things up. So that was
12 the nature of that ongoing communication with Mr. Vance.

13 Q. Okay. Thank you.

14 MR. DARLING: That's all I've got.

15 THE COURT: Thank you.

16 Ms. Lewis?

17 CROSS-EXAMINATION

18 BY MS. LEWIS:

19 Q. Good morning, Agent Hubbuch. I'm Brandi Lewis, I
20 represent Molly McKinnon, obviously.

21 A. Good morning.

22 Q. Now, as Mr. Darling just talked about, you did review the
23 bank records in this case?

24 A. The ones that I have, yes.

25 Q. You, with your comprehensive spreadsheet, I guess, that

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1 Mr. McCracken created and that you reviewed, it didn't include
2 the Bank of America records, did it, for NGEF?

3 A. It did, yes.

4 Q. Did you subpoena any of the records of Mr. Chamblee or any
5 of the other investors?

6 A. No.

7 Q. Were you aware that Mr. Chamblee opened another bank
8 account at Brand Bank?

9 A. No.

10 Q. But if you had looked into his records, you would have
11 turned that up most likely?

12 A. It's not typical to look into the bank records of victims
13 initially. If I had a reason to, I would have.

14 Q. I'll restate that. If Brand Bank was part of NGEF, one of
15 their business accounts, you didn't look into that?

16 A. I wouldn't have gone to that level of detail. It would
17 have been my first point of deposit into the subjects'
18 accounts.

19 Q. So wouldn't it have created a more complete picture if you
20 put together all of the accounts that were in issue?

21 A. I have to tell you there were a lot of things that I could
22 have done and strings that I could have pulled to get a more
23 complete financial picture. But I believe that I had
24 sufficient information.

25 Q. And along those same lines, you didn't get Ms. McKinnon's

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1 bank records either, did you?

2 A. No.

3 Q. With your analysis of all of these deposits, did you look
4 into whether some of these were just personal loans, gifts?

5 A. Personal loans? I'm not aware of any personal loans.

6 Q. Because you didn't look into that?

7 A. I didn't go further. Can you clarify that question?

8 Q. Well, based on the spreadsheet where you have breakdowns
9 of deposits and withdrawals, as to the deposits, you didn't
10 break it down as far as whether anything was a personal loan
11 to, say, Mr. Vance or to any of these accounts that he had
12 access to?

13 A. I didn't have any reason to believe that there was
14 incoming personal loan money.

15 Q. Okay.

16 A. So no, I didn't follow up on that.

17 Q. In these totals, that could have been possible?

18 A. It's always possible, but I don't believe so.

19 Q. The government showed you a check to Ms. McKinnon for
20 \$6,000.

21 Do you recall that?

22 A. Yes.

23 Q. Are you aware that she was supposed to be paid a salary
24 and have expenses and per diem reimbursed?

25 A. Yes, I believe it was testimony that some amount was to be

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1 paid. I don't know if it was 3,000 a month or 2,500, but yes.

2 Q. From your review of the bank records, that's certainly not
3 present, is it?

4 A. Honestly can't confirm that. I mean, I don't see checks
5 and wire transfers specifically that would be routine every
6 month payroll. Again, there is a lot of cash and withdrawals
7 that I can't account for. And Molly is known to have dealt in
8 cash, they have admitted to dealing in cash.

9 Q. And Ms. Francis testified that employees were paid in
10 cash?

11 A. Yes.

12 Q. Other employees, other than Ms. McKinnon?

13 A. Yes.

14 Q. There's been testimony that vendors were paid in cash.

15 A. I don't know about vendors being paid in cash.

16 Q. Okay.

17 A. If you want to say trucking companies, possibly. But
18 payroll, I remember testimony.

19 Q. There were several notations on the spreadsheet of unknown
20 source or unknown expense. Did you do any further digging to
21 try to figure out what those were for?

22 A. No, at some level with the amount of money, the smaller
23 expenses. Yes, was there a business being operated of some
24 variety? Yes. So I didn't feel the need to get so granular in
25 my records to show every single outgoing expense.

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1 Q. So you would agree that you did see several withdrawals,
2 checks, what have you, to actual vendors?

3 A. Yes.

4 Q. So there was a business going on?

5 A. There was an attempt at a business, yes.

6 Q. And you did see machines when you visited the plant?

7 A. I did.

8 Q. You are aware that Mr. Vance wasn't always reimbursed for
9 his expenses and per diem as agreed with his partners in NexGen
10 Energy Partners?

11 A. I can't testify to that, I don't know.

12 Q. You testified about a lot of ATM withdrawals and we saw
13 some of those. Are you aware others at the plant had access to
14 the debit cards?

15 A. I have no visibility to that, no.

16 Q. And then based upon that same information of those ATM
17 withdrawals, you can't say who made those, can you?

18 A. No. I just know who the authorized signers are and where
19 those ATM withdrawals are made.

20 Q. And again, it's not really possible to tell if those are
21 business related or personal, right?

22 A. No, other than my assessment of the withdrawals in
23 Pennsylvania that wouldn't have any legitimate business
24 purpose.

25 Q. Did you account for the cashier's checks or note their

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1 purpose on your spreadsheet?

2 A. In some instances I indicated the cashier's check, who it
3 was made payable to.

4 Q. But not all instances was it noted?

5 A. No, it wasn't.

6 Q. You are aware at some point there was a logging operation
7 that Mr. Vance was engaged in?

8 A. Yes.

9 Q. Did you look into how much income was generated from that
10 operation?

11 A. I did. I believe he was selling -- selling and buying, he
12 was selling to Mountain Top Timber Products.

13 Q. Okay.

14 A. And also purchasing some from them. None of that was
15 reflected in any of the financial statements that were shown as
16 exhibits. But yes, I'm aware of that.

17 Q. And then in your review of these records, was there any
18 way to determine if Mr. Vance used his own personal funds to
19 help fund the business accounts?

20 A. Well, I certainly don't see any significant deposits
21 into -- the cash flow, the money flow doesn't show that, no.

22 Q. But do you recall there were in fact some of those?

23 A. I believe there were deposits that were made. Some of
24 those appear to be vendor checks. But as far as from his --
25 any other accounts or any other sources of income, I didn't see

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1 that.

2 Q. Last question on this, Agent Hubbuch. Again, you didn't
3 see several large transfers to Ms. McKinnon, other than what
4 would perhaps appear to be her salary or income?

5 A. No.

6 Q. I want to talk about Mr. Chamblee now. He is a CPA.
7 Do you recall that?

8 A. That's his testimony, yes.

9 Q. And you -- his testimony was he's involved in several
10 businesses.

11 Do you recall that?

12 A. He said 20 maybe.

13 Q. When you spoke to him previously, he said that, I believe,
14 they registered the business in October of 2016?

15 MR. ROSENBERG: Objection, Your Honor. Calls for hearsay.

16 THE COURT: Sustain the objection.

17 BY MS. LEWIS:

18 Q. In the testimony we heard about how NexGen Energy Partners
19 was set up, it didn't follow the normal business plans, did it?

20 A. I can't testify to what normal is in that regard. So I --
21 I don't know.

22 Q. Well, usually when funding for a new business starts,
23 would it be fair to say the EIN number is received?

24 A. I have never started a business, I've never -- yeah, I can
25 see delays for different reasons especially since we're dealing

CHRISTOPHER HUBBUCH - CROSS

1 with multistate parties.

2 Q. Are you aware Mr. Vance didn't receive the operating
3 agreement to sign until December 2016?

4 A. I learned that in the testimony, yes, and yes, I was aware
5 of that.

6 Q. And you're certainly aware that the Shumard Group started
7 funding in August of 2016?

8 A. Correct.

9 Q. You are aware they didn't start the Bank of America
10 account for NexGen Energy Partners until about ten months
11 later, right?

12 A. Approximately, yes.

13 Q. So if Mr. Chamblee didn't want his partners to know about
14 Mr. Vance's logging operation, that would possibly be a way to
15 hide that, by not having a connected account at that point.

16 Would you agree with that?

17 A. You said if? Can you restate the question?

18 Q. I'll try.

19 If Mr. Chamblee was trying to hide the fact that Mr. Vance
20 was still engaged in logging from his partners in the Shumard
21 Group, wouldn't it make sense that he would want to prevent
22 them from having access to a bank account?

23 A. Well, if what you're saying is true, which I don't believe
24 it is, then that might be a reason.

25 Q. And no one from the Shumard Group asked for financial

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1 documents until months later after the business was in
2 operation, right?

3 A. I believe they wanted visibility into the accounts, but
4 weren't able to get Mr. Vance to transfer accounts like they
5 wanted. And he continued to use his Wells Fargo account to do
6 business.

7 Q. But they continued to deposit money into that Wells Fargo
8 account, correct?

9 A. Yes. And presumably from the representations that were
10 made as far as the business itself.

11 Q. And the Shumard Group had majority ownership in NGEF, if
12 you recall?

13 A. They did, but they weren't located on the ground in
14 Chavies.

15 Q. They could have started their own bank account for NGEF,
16 right?

17 A. They could have. I don't fully know the back and forth
18 between Mr. Vance and Chamblee and the other partners as to why
19 that occurred.

20 Q. Were you aware that the Bank of America account was
21 connected to Mr. Chamblee's personal account?

22 A. No.

23 Q. In your review of all the bank records, did you note that
24 Mr. Chamblee was paid, I believe it was 35,000 to his personal
25 account at one point?

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1 A. I wasn't focused on that, so no.

2 Q. So you didn't follow up to see if there was any internal
3 documentation approving that?

4 A. No.

5 Q. Were you aware that Mr. Chamblee initiated communication
6 with Ms. McKinnon through an app called Silent Circle?

7 A. Never heard of it, no.

8 Q. Were you aware that he also initiated communication with
9 her through an app called WhatsApp?

10 A. No. It was never discussed.

11 Q. He didn't mention that to you?

12 A. Never.

13 Q. Did your investigation uncover that Mr. Chamblee was
14 trying to solicit other investors, like Ken McCoy?

15 A. That wasn't part of my investigation, so no, I wasn't
16 aware of it.

17 Q. Did your investigation turn up that Mr. Chamblee was
18 trying to establish a joint venture with Jeff Dimick?

19 A. I knew he had a relationship with Dimick, that he had some
20 potential investment in a joint venture, I did learn that
21 through discussions with him, yes.

22 Q. And Mr. Dimick was applying for grants for millions of
23 dollars for his technology? Did you learn about that?

24 A. Eventually, yes, I heard that, which wouldn't be uncommon
25 for investments in other technologies related to this.

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1 Q. Mr. Chamblee testified that Ms. McKinnon was let go.

2 Do you recall that?

3 A. Yes.

4 Q. But yet he kept her on to train somebody else?

5 A. Yes.

6 Q. Okay.

7 A. When you say "let go," I think she was transitioned out.

8 But yes, he said "let go."

9 Q. Did your investigation reveal that Ms. McKinnon lives with
10 her sister?

11 A. At some point, I believe I learned that. I'm not sure --
12 I know she was in Port Charlotte and then back in with her mom
13 in the Atlanta area, and possibly with her sister. But I don't
14 have the details.

15 MS. LEWIS: May I have just a moment, Your Honor?

16 THE COURT: Yes, ma'am.

17 MS. LEWIS: Thank you.

18 BY MS. LEWIS:

19 Q. Agent Hubbuch, I want to show you what's previously been
20 marked as Defense Exhibit 114. This was already admitted.

21 MS. LEWIS: May I have a moment to help her?

22 Q. Is that document on your screen, Agent Hubbuch?

23 A. It's working on it. It is.

24 Q. Do you recognize this document?

25 A. It's a Bank of America statement for the NexGen Energy

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1 Partners account.

2 Q. What month is this for?

3 A. July 2018 statement.

4 Q. All right.

5 MS. LEWIS: If we could go to page 3, please?

6 Q. Agent Hubbuch, the first withdrawal on July 3rd, what is
7 that -- who is that from and to?

8 A. That is a transfer from NexGen Energy Partners to NexGen
9 Energy Partners.

10 Q. All right. So it appears to be an intercompany transfer?

11 A. I really don't have the details of that so I'm not sure.

12 Q. But Gary Chamblee is certainly not listed, is he?

13 A. Not in this. But the detail statement, the transfer
14 detail might indicate that.

15 Q. All right. And then just while we're here, above that for
16 deposits, who are those from?

17 A. Deposits from Clorox.

18 Q. So that's indicative that there actually was sales of
19 product to Clorox?

20 A. There was -- this would be consistent with sales of the
21 test loads.

22 Q. All right.

23 MS. LEWIS: Then I want to go to Government's previously
24 admitted Exhibit 202, page 97. We'll go to page 97.

25 Q. Do you recognize this document, Agent Hubbuch?

CHRISTOPHER HUBBUCH - CROSS

1 A. It appears to be page 97 of Government's Exhibit 202, the
2 Whitaker Bank account statement.

3 MS. LEWIS: If we could go to page 98, please.

4 Q. Do you note there is no overdraft fees or return fees?

5 A. Not for that statement period, yes.

6 MS. LEWIS: If we go to page 100 of that same statement?

7 Q. In the top right corner, could you see who that check is
8 made payable to?

9 A. Charles Miller.

10 Q. All right. What is the date on that check?

11 A. The June 1st, 2018 --

12 Q. Right.

13 A. -- check?

14 Q. And it's noted that it's for pay?

15 A. Yes.

16 Q. And then on the same page, do you see check number 5509?

17 I believe it's at the bottom.

18 A. Now, I do.

19 Q. All right. Who is that payable to?

20 A. Zenus Fields.

21 Q. Check number 5509, on the right?

22 A. 550 -- I'm sorry, 5509. Yeah. Mike Miller.

23 Q. What is the date of that check, Agent Hubbuch?

24 A. June 8, 2018.

25 Q. What is the amount and date?

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1 A. The amount is \$600, date is June 8th, 2018.

2 Q. All right. So we established he was paid on June 1st and
3 June 8th?

4 A. There's when the checks are written.

5 Q. That's when they are dated?

6 A. I mean, that's when they are dated, yes.

7 Q. There are no checks in this section we've seen dated for
8 June 6th, 2018?

9 A. If you scroll back up, please. It goes from June 1st to
10 June 8th.

11 MS. LEWIS: Now let's look at page 90 of the same
12 exhibit -- or actually, page 91, please.

13 Q. This is the July statement from 2018, Agent Hubbuch?

14 A. Yes.

15 Q. And again, there is no overdraft fees or return item fees
16 on this statement?

17 A. No.

18 MS. LEWIS: If we could look at page 93, the bottom
19 corner?

20 Q. In the bottom left corner, do you see check number 5559?

21 A. I do.

22 Q. Who is that payable to?

23 A. Charles Miller.

24 Q. So also known as Mike Miller?

25 A. Correct.

CHRISTOPHER HUBBUCH - CROSS

1 Q. And what is the date of that check?

2 A. 6/6/2018.

3 Q. All right. So we just noted from looking at the bank
4 statements, he was paid on -- well, checks were written dated
5 June 1st, June 8th, and now June 6th, correct?

6 A. Yes.

7 Q. So really wouldn't have made a lot of sense if he received
8 a paycheck for three dates within eight days now, would it?

9 A. I have no idea how they did their check writing.

10 Q. Well, do you recall Mr. Miller testifying they were paid
11 on Fridays, checks were written on Friday?

12 A. I do.

13 Q. So if he were paid three times within eight days, that
14 doesn't comport with his testimony.

15 A. He testified that he didn't think he would write the
16 incorrect date on a check.

17 Q. Did you happen to go back and look up what date June 6th
18 was, what day it fell on?

19 A. No.

20 Q. Okay.

21 A. I believe you.

22 Q. And we know this relates to that \$5,600 transfer that we
23 initially spoke about on the Bank of America statement, right?

24 A. It's in that time frame, yes. It's on that statement,
25 yes.

CHRISTOPHER HUBBUCH - CROSS

1 Q. So it does appear funds were certainly used for payroll?

2 A. Yes.

3 MS. LEWIS: Nothing further at this time. Thank you.

4 THE COURT: All right. Thank you.

5 Let me see if there is any redirect of the witness.

6 MR. ROSENBERG: Briefly, Your Honor.

7 THE COURT: Counsel, why don't you come up for just a
8 moment before we go through redirect?

9 (Bench conference on the record.)

10 THE COURT: Generally I would be taking our morning break
11 about now, but I don't want to take a break for a couple of
12 questions and then take another break if the government's about
13 to close.

14 So how much time do you have on redirect?

15 MR. ROSENBERG: Redirect will be very brief. And I did
16 want to raise, there was one exhibit from the 100 series that I
17 don't think we got into evidence. It's Government's
18 Exhibit 174. This is an email from McKinnon to Vance regarding
19 scale tickets.

20 THE COURT: Let me see if there is an objection to that.
21 All right.

22 MR. ROSENBERG: Obviously, if they want to cross on that,
23 we will have no objection to that.

24 THE COURT: We'll go ahead and finish redirect before we
25 take our break.

CHRISTOPHER HUBBUCH - REDIRECT

1 I'll remind counsel if there are any issues of judicial
2 notice, ask me to take that up before you close your case.

3 MR. ROSENBERG: Yes, Your Honor.

4 (Bench conference concluded.)

5 THE COURT: Thank you. Ladies and gentlemen, we will
6 attempt to complete this witness before we take our morning
7 break. Thank you.

8 Mr. Rosenberg.

9 REDIRECT EXAMINATION

10 MR. ROSENBERG: Can we tender just to the witness
11 Government's Exhibit 174?

12 BY MR. ROSENBERG:

13 Q. Do you see a document on your screen, sir?

14 A. It is an email from Molly McKinnon to Doug Vance dated
15 June 23rd of 2018.

16 Q. Is there a subject line?

17 A. Scale Ticket.

18 Q. And is there attachments?

19 A. It's -- the attachment is called Fairbanks Scale Ticket
20 blank.

21 MR. ROSENBERG: Your Honor, we move to admit Government's
22 Exhibit 174.

23 THE COURT: Any objection?

24 MS. LEWIS: No objection.

25 THE COURT: Exhibit 174 will be admitted.

CHRISTOPHER HUBBUCH - REDIRECT

1 (United States Exhibit 174 was admitted.)

2 BY MR. ROSENBERG:

3 Q. What's the first line of this email?

4 A. "Here is one I found online, (gif)" format, "and one I
5 made up, (Excel)."

6 MR. ROSENBERG: If we could look just briefly at the first
7 attachment?

8 Q. Agent Hubbuch, what's depicted in this first attachment?

9 A. That purports to be a blank weigh on Fairbanks Scale Form
10 333A in the bottom left corner.

11 Q. Have you seen already in evidence versions of this
12 document but with data filled in?

13 A. Yes.

14 Q. And where have you seen that?

15 A. Those were sent to Gary Chamblee.

16 MR. ROSENBERG: You can take that down.

17 Q. Agent Hubbuch, you were asked about some equipment being
18 at the site in Chavies, correct?

19 A. Yes.

20 Q. And you were asked about there being some payments made to
21 vendors in the bank records, correct?

22 A. Yes.

23 Q. Did the truth or falsity of any of the misrepresentations
24 that you were investigating turn on the existence of some
25 equipment?

CHRISTOPHER HUBBUCH - REDIRECT

1 A. No.

2 Q. And did the truth or falsity of any of the
3 misrepresentations you were investigating depend on whether
4 some payments at some point were made to vendors?

5 A. No.

6 Q. You were also asked about whether you saw large transfers
7 directly to Molly McKinnon in the bank records, correct?

8 A. Yes.

9 Q. You didn't see large transfers to Ms. McKinnon, correct?

10 A. No.

11 Q. Did you see large sums of cash withdrawn from Nex-Gen
12 accounts?

13 A. I did.

14 Q. And are you able to account for where all of the cash
15 necessarily went?

16 A. No.

17 Q. You were also asked about whether it would make sense for
18 there to be multiple paychecks to employees like Mike Miller
19 within a period, I think, of eight days.

20 Do you remember that question?

21 A. Yes.

22 Q. Would that make sense if there was backpay owed to him?

23 A. It would absolutely make sense if they were trying to
24 catch up on previous payrolls that weren't met.

25 Q. Was there testimony in this case from multiple employees

CHRISTOPHER HUBBUCH - REDIRECT

1 about paychecks bouncing or paychecks being late?

2 A. Yes.

3 Q. Counsel for Mr. Vance asked you about whether you got IP
4 records showing what computer sent particular emails from
5 Mr. Vance's Yahoo account.

6 Do you recall that question?

7 A. Yes.

8 Q. And I think he asked you whether someone else could have
9 logged into those Yahoo accounts and sent emails.

10 Do you remember that?

11 A. Yes.

12 Q. In any of your three interviews with Mr. Vance, did he
13 report someone making unauthorized access of his email
14 accounts?

15 A. No.

16 Q. Did he report anyone sending emails purporting to be him?

17 A. No.

18 Q. In any of the emails in the account records you received,
19 were there any such emails from Mr. Vance advising folks that
20 someone had logged into his account and sent unauthorized
21 emails?

22 A. No.

23 MR. ROSENBERG: Your Honor, nothing further.

24 THE COURT: All right. Thank you.

25 Mr. Darling? Ms. Lewis?

1 MS. LEWIS: Nothing further, Your Honor.

2 MR. DARLING: Nothing further.

3 THE COURT: Thank you.

4 Let's see. Before we take our break, does the United
5 States have additional witnesses it will be calling in the
6 case?

7 MR. CHAPMAN: No additional witnesses, Your Honor.

8 At this time we would ask the Court to take judicial
9 notice that Fayette, Perry, and Jessamine Counties are within
10 the Eastern District of Kentucky.

11 THE COURT: Ladies and gentlemen, I will take judicial
12 notice of the fact that Fayette County, Perry County, and
13 Jessamine County are all located within the Eastern District of
14 Kentucky.

15 When the Court takes judicial notice of a fact, you may
16 accept that fact as proven without any further proof being
17 offered but you're not required to do so.

18 Government rests at this time?

19 MR. CHAPMAN: With that, Your honor, the government rests.

20 THE COURT: Thank you.

21 Ladies and gentlemen, we will take our morning break at
22 this time. Please keep in mind the admonitions you were given
23 previously. Please don't discuss the case among yourselves
24 while we are in recess. We will take about a 20-minute recess
25 this morning.

1 (Jury left courtroom at 10:47 a.m.)

2 THE COURT: Thank you. Please be seated. You can step
3 down.

4 The United States having announced close of its case in
5 chief, at this time I will hear from the defendants as to any
6 motions they would like to make.

7 Mr. Darling.

8 MR. DARLING: Very briefly, Your Honor. I would ask the
9 Court pursuant to Rule 29 to enter a judgment of acquittal on
10 behalf of Mr. Vance. I believe that the evidence as presented
11 is insufficient to show that he is guilty of the offense
12 charged, and in particular, that the government has not
13 presented sufficient evidence that would overcome their duty to
14 show that he did not act in good faith in any of his actions.

15 I feel overall the evidence is lacking, both in intent,
16 scope, and that he did not act in good faith. So I would ask
17 the Court to enter judgment of acquittal on his behalf.

18 THE COURT: All right. Thank you.

19 Ms. Lewis.

20 MS. LEWIS: Your Honor, I would make the same motion
21 pursuant to Rule 29 for judgment of acquittal based upon the
22 evidence not showing Ms. McKinnon's intent and the lack of
23 thoroughness of the investigation as just presented.

24 THE COURT: All right. Thank you.

25 Without response from the United States, I do find that

1 there is sufficient evidence to submit all counts charged in
2 the indictment to the jury.

3 When the Court considers a motion for judgment of
4 acquittal, it does consider the evidence in the light most
5 favorable to the nonmoving parties.

6 The first count in the case does charge both defendants
7 with conspiring to commit the crime of wire fraud.

8 There is also individual charges, Counts 2, 3 and 4 charge
9 both defendants with substantive offenses.

10 Count 5 charges only Defendant Vance, while Count 6
11 charges only Defendant McKinnon.

12 And Count 7 is the separate charge involving conspiracy to
13 commit money laundering under Title 18, Section 1956(h).

14 With regard to the individual counts, Count 2 alleges that
15 both defendants committed wire fraud on or about July 5, 2018,
16 when they caused an automated clearinghouse deposit of \$5,600
17 to be transmitted from Chamblee to the Whitaker Bank account
18 for NexGen Energy Partners.

19 Count 3 alleges that the defendants committed wire fraud
20 on or about October 18th, 2017, when they caused a wire deposit
21 of \$15,000 to be transmitted from Shumard to Whitaker Bank
22 Account for Nex-Gen Partners, LLC.

23 And then Count 4 alleges that the defendants committed
24 wire fraud on or about June 5th, 2017, when they caused a wire
25 deposit of \$86,000 to be transmitted from GGC Funding to the

1 Whitaker Bank account for NexGen Energy Partners, LLC.

2 Considering all the testimony that has been presented, as
3 well as the exhibits that have been introduced, there is
4 sufficient evidence that all elements of wire fraud have been
5 shown with regard to these counts.

6 The elements are listed as, first, the defendant knowingly
7 participated in or devised a scheme to defraud in order to
8 deprive another of money or property, that is a scheme to
9 induce lenders and investors to loan money and invest in
10 business ventures under false pretenses.

11 There is sufficient evidence to establish that element is
12 met with regard to the defendant charged with regard to these
13 counts.

14 Second, the scheme included a material misrepresentation
15 or concealment of a material fact. Again, there is sufficient
16 evidence.

17 Third, the charged defendant had the intent to defraud.
18 There is overwhelming evidence that both defendants engaged in
19 a scheme to defraud as charged in Count 1, but then also the
20 individual wire fraud charges as well. But they acted together
21 to do this, but there is separate evidence that individual
22 defendants had the intent to defraud as charged in these
23 counts.

24 Fourth, that the defendant used or caused another to use
25 wire fraud communications in interstate commerce in furtherance

1 of the scheme. Again, there is sufficient evidence to meet
2 this fourth element as well.

3 With regard to the individual counts, Count 5, with regard
4 to Defendant Vance, concerns wire fraud committed allegedly on
5 or about September 16th, 2017, when he transmitted an email
6 containing falsified Nex-Gen Industries banking records to Dell
7 Jagers. Again, all of those elements are met with regard to
8 this count.

9 And then finally, Count 6 alleges that McKinnon committed
10 wire fraud on or about June 26th, 2017, when she transmitted an
11 email providing false financial reports to Dell Jagers. All
12 elements are met with regard to this count. There is
13 sufficient testimony to submit those matters to a jury.

14 It would be for the jury to determine whether there would
15 be good faith. And while that is the burden of the United
16 States to establish the defendants did not act in good faith,
17 it has provided sufficient evidence that a jury certainly could
18 conclude that neither defendant acted in good faith here and
19 that their actions were all within the scope of the agreement
20 that is outlined in the first count, the conspiracy charge.

21 So I do find that there is sufficient evidence to submit
22 those first six counts to the jury.

23 And likewise, I do find that there is sufficient evidence
24 that the defendants engaged in conspiracy to launder money as
25 alleged in Count 7.

1 Without going over all four elements, they are listed in
2 the preliminary instructions and the -- excuse me -- the draft
3 jury instructions that were tendered to them earlier for their
4 consideration, they do include the defendant conducted or
5 attempted to conduct a financial transaction.

6 A financial transaction involved property that represented
7 the proceeds of wire fraud.

8 Third, the defendants knew the property involved in the
9 financial transactions represented the proceeds of some form of
10 unlawful activity.

11 And fourth, that the defendants had the intent to promote
12 the carrying on of wire fraud or knew the financial transaction
13 was designed in whole or in part to conceal, disguise -- excuse
14 me -- to conceal or disguise the nature, location, source,
15 ownership, or control of the proceeds of wire fraud.

16 Again, there is more than sufficient evidence to submit
17 this particular count to the jury, so I will deny the motion
18 for judgment of acquittal under Rule 29 of the Federal Rules of
19 Criminal Procedure. All seven counts will be submitted for the
20 jury's consideration.

21 See if we have any other issues to take up before we take
22 our break.

23 MR. CHAPMAN: Not from the United States.

24 MR. DARLING: No, Your Honor.

25 THE COURT: Mr. Darling, have you made a determination yet

1 as to presentation of proof?

2 MR. DARLING: I'm sorry?

3 THE COURT: Have you made a determination as to
4 presentation of proof before we take our break?

5 MR. DARLING: Only insofar as Mr. Vance will testify.

6 THE COURT: All right. All right. Earlier you told me
7 you believed it would take probably 60 minutes for testimony
8 and -- his testimony.

9 MR. DARLING: 60 to 90, depends how it goes.

10 THE COURT: All right. Well, we will need to break at 12
11 today, so we may not quite -- we may not be quite finished with
12 testimony, but I do need to take a break at 12 today.

13 MR. DARLING: Understood.

14 THE COURT: All right. Thank you.

15 We will be in recess for the balance of our break.

16 (A recess taken from 10:56 a.m. to 11:11 a.m.)

17 THE COURT: All members of the jury are present.
18 Defendants and all counsel are present as well. The United
19 States having announced close of its case in chief, we'll
20 proceed now with presentation of proof on behalf of Douglas
21 Vance.

22 Mr. Darling.

23 MR. DARLING: Thank you, Your Honor. I'll call Doug
24 Vance.

25 THE COURT: Thank you.

DOUGLAS W. VANCE - DIRECT

1 **DOUGLAS W. VANCE, DEFENDANT, SWORN**

2 THE COURT: All right. Thank you.

3 Mr. Darling.

4 MR. DARLING: Thank you, Your Honor.

5 DOUGLAS W. VANCE

6 DIRECT EXAMINATION

7 BY MR. DARLING:

8 Q. State your name, please.

9 A. Douglas W. Vance, V-a-n-c-e.

10 Q. Now, Doug, if you can get that microphone and get it a
11 little bit closer to you. You're a little soft spoken at
12 times, I want to make sure everybody can hear you.

13 A. Is that better?

14 Q. Good.

15 Mr. Vance, where do you live?

16 A. Richlands, Virginia, Southwest Virginia.

17 Q. And who do you live there with?

18 A. My wife. And currently there's three of my kids residing
19 in the same apartment complex and about five grandbabies.

20 Q. I'm having a little trouble. You need to speak up and try
21 to speak clearly.

22 A. I live in an apartment in Richlands, Virginia. And -- but
23 there's four apartments in the one building, and so I have a
24 son in one apartment, and daughters in the two other apartments
25 and then some grandbabies.

DOUGLAS W. VANCE - DIRECT

1 Q. In the apartment where you live, who lives there with you
2 in that apartment?

3 A. Just me and my wife.

4 Q. Just you and your wife?

5 A. Yes, sir.

6 Q. How big of an apartment is that?

7 A. Two bedroom, living room, kitchen, bathroom.

8 Q. How long have you lived there?

9 A. Since about 2010.

10 Q. Are you employed at this time?

11 A. Basically work for my brother as a mechanic. He logs.

12 Q. Where did you grow up?

13 A. Richlands, Virginia.

14 Q. How far did you go in school?

15 A. Ninth grade.

16 Q. Did you ever get a GED?

17 A. Yes, sir.

18 Q. When did you do that?

19 A. When I turned 18.

20 Q. Any college or anything after your GED?

21 A. No, sir.

22 Q. Any kind of technical school or anything like that?

23 A. Just worked in the coal mines.

24 Q. How old were you when you started to work in the coal
25 mines?

DOUGLAS W. VANCE - DIRECT

1 A. 18.

2 Q. Did you do anything before that, work wise?

3 A. Yeah, mowed grass and, you know, stuff all kids do.

4 Q. How long have you and your wife been married?

5 A. Get me in trouble on that one. I would say 12 years.

6 Q. Her name is Helen?

7 A. Heather.

8 Q. Heather. Do you have any children together?

9 A. No, sir.

10 Q. You mentioned these children that you have.

11 A. I had three by a previous marriage, she had two. And then
12 when we got together, you know, we just -- I had custody of all
13 my kids, she had custody of hers, so we just raised all five
14 kids together.

15 Q. How old are your biological children?

16 A. I had two that's -- or one that's 27 -- 26. One that's
17 24. And one is 19 -- 18.

18 Q. How old are her children?

19 A. 26, 24.

20 Q. How old are you?

21 A. Pretty sure I'm 54, or will be 54 this year.

22 Q. These children that live -- I call them children.

23 A. They are grown adults.

24 Q. They are grown adults -- that live in the apartment
25 complex, is there a reason you all live in the same complex

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1 together?

2 A. I mean, other than being convenient, you know. And then
3 when we want just the family to have the whole complex so there
4 wasn't strangers around the grandbabies.

5 Q. Looking at your grown children, do they work?

6 A. Yes, sir.

7 Q. What do they do?

8 A. Zach, my oldest boy, is a coal miner.

9 Zander, my younger boy, he works for hanging cable.

10 My two oldest daughters, one has become a registered
11 nurse.

12 The other one is an online sales rep.

13 And then my last, youngest daughter, Madison, she's
14 currently incarcerated.

15 Q. Prior to living in this apartment, where did you live?

16 A. I lived up in the holler, we had about 200 acres of
17 property, in a doublewide. It's in the same town.

18 Q. You had 200 acres of property and a doublewide trailer?

19 A. Yes, sir.

20 Q. I guess the seven of you lived together?

21 A. Yes, sir.

22 Q. Who owned the property?

23 A. I did.

24 Q. You don't own it anymore, right?

25 A. No, sir.

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1 Q. What happened?

2 A. I was cutting timber when the housing market crashed and
3 so I took a bad beating in 2008. And then it just kept
4 carrying from there, and then finally in 2012, I think they
5 foreclosed.

6 Q. So during the decade of the 2000s, between 2000 and 2010,
7 your profession, your job was cutting timber?

8 A. Yeah, I was a contractor for Georgia Pacific.

9 Q. With, I'm sorry, Georgia Pacific?

10 A. Yes, sir.

11 Q. Did you have your own business that did this?

12 A. Yes, sir.

13 Q. What was it called?

14 A. I think at the time it was V2 Logging or Vance Logging.

15 Q. Did you own any equipment that allowed you to do this?

16 A. Yes, sir.

17 Q. What sort of equipment did you need?

18 A. Typically, you got a couple dozers, excavator, skidder,
19 log loader. We had a couple of trucks.

20 Q. How long had you been engaged in this type of work?

21 A. I worked underground for probably about 12 years and then
22 started logging. So probably about 10.

23 Q. So when you say you worked underground, you mean in the
24 coal mines?

25 A. Yes, sir.

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1 Q. And you started doing that when you were 18?

2 A. Yes, sir.

3 Q. So when you were 30 or so, you --

4 A. About 32, 33, I started logging. Well, I had some logging
5 on the weekends, just on a small scale, when I worked in the
6 mines.

7 Q. So you were engaged in logging for years?

8 A. Yes, sir.

9 Q. Okay. And you said the housing crash in 2008?

10 A. Yeah, log prices dropped dramatically and fuel prices went
11 high. And it just got really bad really quick. Construction,
12 due to construction, I assume.

13 Q. Did you ever stop logging altogether?

14 A. Yeah, when I lost everything.

15 Q. You began to mention in 2012 a foreclosure.

16 A. Yes, sir.

17 Q. What was foreclosed on?

18 A. They foreclosed on the property. I owned a few pieces of
19 equipment and I had leased a few pieces of equipment. So the
20 property was what the bank had foreclosed on.

21 Q. This equipment, was it all on this 200-acre tract of
22 property?

23 A. At that point the only thing I had left was an excavator
24 and a rock hammer.

25 Q. Excavator and a rock hammer?

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1 A. Yes, sir.

2 Q. What's a rock hammer?

3 A. A rock hammer goes on the end of an excavator boom. It's
4 to chip up rock if you hit cliff.

5 Q. You said due to the lack of business the bank foreclosed
6 on the 200 acres?

7 A. The acreage and the house, the doublewide.

8 Q. Do you remember how much you owed on it?

9 A. \$220,000, maybe.

10 Q. Tell the jury about the foreclosure, just how did that
11 happen.

12 A. I think, you know, I just -- I think I just tried to hang
13 on too long. And you know, the payments was pretty high. They
14 was two or \$3,000 a month. When I didn't have any income, I
15 just, you know, kept trying to hang on. Eventually, I just
16 lost it. I mean, it was a process. They just show up and run
17 you off.

18 Q. At some point you were actually removed from the property?

19 A. Well, we voluntarily removed. I mean, they asked us to so
20 we left.

21 Q. They asked you? Did they ask you nice?

22 A. I mean, I didn't want them to drag me off, but I mean --

23 Q. Right. When you left the property, what were you allowed
24 to take with you?

25 A. They had -- basically the only thing -- I probably could

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1 have took anything that I wanted to take, but I couldn't afford
2 to take everything. So I had a auction company -- you know, we
3 had owned -- we cleared it with the bank, you know, we had
4 owned everything on the inside of the structure.

5 And so I had a banker guy come up and I had an auctioneer
6 guy come up and we sold him everything that was -- you know,
7 refrigerator and furniture for \$600, I think. The bank was
8 okay with that.

9 And we took our clothes.

10 Q. When the bank foreclosed, did they take an interest in the
11 real property and everything on it?

12 A. I don't really know how it works. I just know we got
13 foreclosed on.

14 Q. Well, you had mentioned that at the time of the
15 foreclosure, you had two pieces of equipment on the property.

16 A. Yes, sir.

17 Q. Were you able to take, remove those pieces of equipment
18 from the property?

19 A. I mean, I could have if I could have afforded to. But I
20 just didn't have the money to at the time.

21 Q. Did you own those or lease those?

22 A. I had previously owned them, but I had borrowed some money
23 against them.

24 Q. So you still held the title but somebody else had a --

25 A. A lien.

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1 Q. -- what we call a lien or security interest?

2 A. Yes, sir.

3 Q. Not the same bank that foreclosed --

4 A. No, sir.

5 Q. -- on the property?

6 At any point -- did the bank or financial company that had
7 the lien on the equipment, at any time did they take that --
8 did they assert that lien and take the equipment off the
9 property?

10 A. No, sir. The day before we left, I called that particular
11 bank, a rep from that bank and I had met him at the gate. We
12 had a gate to the property which was open.

13 And I requested that he go with me so I could show him
14 where the excavator and the rock hammer was and he declined.
15 He said they didn't want the equipment, they just wanted to get
16 paid.

17 And so I said, well, I'm leaving here tomorrow. I'm sure
18 when they sell the property, you know, I won't be allowed back
19 here and I can't afford to move it. Here it is, if you want to
20 come and get it.

21 Q. So the company that had the liens on the equipment, you
22 informed them that that equipment was on the property that you
23 had been foreclosed on?

24 A. Yes, sir.

25 Q. And they said they didn't want the equipment, they wanted

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1 the money?

2 A. Yes.

3 Q. So when you left the property and were not allowed to
4 return, you left that equipment on the property?

5 A. Yes, sir.

6 Q. Now, when you say you couldn't afford to move it, I mean,
7 describe these pieces of equipment for the jury.

8 A. You know, an excavator you typically see on a big truck.
9 A rock hammer would have probably fit in the back of a large
10 pickup truck.

11 But you know, that wasn't the only problem. I mean, you
12 can't sit an excavator in the middle of town, you know, so we
13 were going to a little apartment.

14 But typically you can move an excavator for about 800 to
15 \$1,200 if you're moving it close. And again, a rock hammer
16 would have been something I put in the back of a big pickup.

17 Q. So they're not something that you and your just son pick
18 up and toss up in the back of a pickup truck and drive away?

19 A. No, sir.

20 Q. All right. So what was the consequence of you leaving
21 those pieces of equipment on the property?

22 A. The end result?

23 Q. Yeah.

24 A. Yeah. Well, finally in 2014, the bank decided to charge
25 me with fraudulent conversion.

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1 Q. Now which bank?

2 A. That would have been the bank that had the equipment.

3 Q. Okay.

4 A. And they were basically taking me to court every three or
5 four months to see if I had paid the bank the 65,000 that was
6 owed. And that went on for like a year or two.

7 Q. Now, this 65,000, was that the lien on both of the pieces
8 of equipment?

9 A. Yes, sir.

10 Q. Do you have an idea what they would be worth?

11 A. That was a -- a John Deere 490 excavator. I mean, auction
12 value probably would have been 15 or 20. Used value probably
13 would have been 50. New value probably would be, you know,
14 couple hundred thousand.

15 Q. But you -- but it would have been difficult for somebody
16 to auction those off and receive the \$65,000 that was owed on
17 them?

18 A. Oh, yes, sir.

19 Q. Couldn't happen?

20 A. No.

21 Q. Do you know whether or not that lien company ever tried to
22 get together with the bank that foreclosed on the property
23 about getting that equipment?

24 A. No, it was just basically constant pressure on me to pay
25 it off.

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1 Q. And you owed about \$65,000 on the two pieces?

2 A. Yes, sir.

3 Q. Were you able to make payments on that?

4 A. You know, after I got charged and basically pled guilty to
5 this fraudulent conversion, then they set it up on restitution.
6 And if I had wanted to pay the restitution, it would have took
7 me about 50 years to pay it off. So I buckled down and paid it
8 all off and cleared it all up.

9 Q. Okay. So to be clear, just so the jury understands what's
10 going on here, the lien company charged you with something
11 called fraudulent conversion in the State of Virginia?

12 A. Yes, sir.

13 Q. In state court?

14 A. Yes, sir.

15 Q. And you ultimately pleaded guilty?

16 A. Yeah. I got tired to going to court every three months.
17 And you know, I got up that morning we were going back for
18 review and, you know, they were real -- you know, I don't like
19 this stuff, I can't lie to you, you know, makes me a nervous
20 wreck.

21 But you know, I was -- you know, it was a rough time, I
22 was depressed, anxious. You know, I just got tired of going to
23 court. And I just said, you know, I asked my attorney, what do
24 I do, if I just plead guilty to this, what happens? And he
25 said more than likely the judge will drop it down to a

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1 misdemeanor charge, set you up on restitution payments to where
2 they can give you enough time to pay it. And you know, you
3 will be on probation until you pay the restitution off.

4 Q. Is that what happened?

5 A. No, sir.

6 Q. What happened?

7 A. The judge hit the gavel and gave me ten years.

8 Q. So you ultimately pleaded guilty to a felony offense?

9 A. Yes, sir.

10 Q. Now, I'm assuming that you did not serve ten years?

11 A. No, sir. The judge, he was real kind about it. He give
12 me suspended nine years and six months. And he said pay my
13 restitution really good, he would drop the six months down to
14 30 days. And he inevitably let me do a few weekends and
15 community service. But you know, I cleared it all up.

16 Q. So did you pay the restitution?

17 A. Yes, sir.

18 Q. So ultimately out of that, how many -- how long did you
19 end up doing in jail?

20 A. I think I done maybe nine weekends, 18 days.

21 Q. Are you still on probation for that?

22 A. No, sir.

23 Q. Once you paid off the restitution, your probation ended?

24 A. Yes, sir.

25 Q. This would have been back at the time you pleaded, 2014 or

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1 so?

2 A. Yeah, I think -- I think I completed -- I don't have any
3 reference, but I think I got through all of that right about
4 the time all this got started.

5 Q. All right. Now, when you were forced to leave your
6 property, where did you move -- where did you and your family
7 move to?

8 A. To the apartment we are at now.

9 Q. And you were able to secure these apartments that all
10 seven of you lived in?

11 A. Yeah. When we first moved there, we actually moved in
12 with my wife's mom, which was renting an apartment there.
13 There was other renters. And then somebody moved out and me
14 and Heather moved into that apartment.

15 So it took just years, you know, to get the whole family
16 there, but we finally did.

17 Q. So the first place you had to move into was with your
18 wife's mother?

19 A. Yes, sir.

20 Q. How was that?

21 A. She's okay. I mean, it was okay.

22 Q. Everybody got along?

23 A. Yes, sir.

24 Q. Good.

25 All right. So what kind of work did you start doing?

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1 Clearly couldn't log anymore.

2 A. Yeah, the -- so people got to telling me about eBay and I
3 had like, you know, just biochar stuff people were talking
4 about. And it kind of made sense to me, because, you know, I
5 cut timber and I know about coal. And so I got to making
6 biochar in a paint can with a Coleman stove.

7 Q. Okay. Now, you do mumble a little bit.

8 A. Yes, sir.

9 Q. So --

10 A. I was making this -- I was making a product called biochar
11 in a paint can with a Coleman stove. I would put it in a paint
12 can, poke a couple holes in it, set it on the Coleman stove,
13 cook it.

14 Q. Before you go any further, you used the term "biochar."

15 A. Yes, sir.

16 Q. What is biochar?

17 A. It can be many things, really. You know, it can be used
18 for agriculture, it can be used for carbon black. It can be
19 used as -- I don't like to refer to it as a coal replacement
20 because I'm from the coalfields, so

21 You know, it could be used to blend back with a low rank
22 coal to improve the qualities. It just has a lot of uses.

23 Q. What are you -- you say you made biochar. What did you
24 need to start with in order to process to turn it into biochar?

25 A. I used a one-gallon paint can and a Coleman stove that I

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1 had, and some wood chips.

2 Q. Wood chips?

3 A. Yes, sir.

4 Q. All right. So if you've got a one-gallon paint can and
5 you put it on a Coleman stove and put wood chips in there, how
6 long do you leave it in there before it would be something that
7 you could use as biochar?

8 A. I got it down to where, about an hour.

9 Q. How many Coleman stoves did you have?

10 A. Just one. I had a few buckets, so I would -- you got to
11 let them cool off too. I made basically a five-gallon bucket a
12 day and sold it on eBay for like a hundred dollars.

13 Q. So you would make about five gallons a day?

14 A. Yes, sir.

15 Q. Put it on eBay?

16 A. Yes, sir.

17 Q. Now, when people would buy it on eBay, would they come
18 pick it up from you or did you have to ship it?

19 A. I had to ship it.

20 Q. What you did ship it in?

21 A. Usually a five-gallon bucket.

22 Q. Did you have any -- I mean, I buy and sell little stuff on
23 eBay and I see something I want from a certain seller, but did
24 you have certain buyers that bought stuff from you on eBay
25 regularly?

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1 A. Yeah. I mean, it was a lot of mom-and-pop shops, flower
2 shops. At that particular time, you know, a lot of people was
3 pushing renewable energy.

4 Q. Pushing what energy?

5 A. Renewable energy.

6 Q. Renewable. Okay. How long did you sell this on eBay?

7 A. You know, occasionally up until about a year ago, we would
8 still sell some on eBay.

9 Q. Well, at some point did you figure out a way that you
10 could make this biochar in larger amounts than a gallon at a
11 time on a Coleman stove?

12 A. Yes, sir. I was always a mechanic in the coal mines or
13 equipment operator. And I had worked on a couple of asphalt
14 plants, you know, repairs. And so I went from a one-gallon
15 paint can to a five-gallon pan to 55-gallon drum and just kept
16 evolving, until I got to the point that I built what I refer to
17 as Junior, a small unit that was designed.

18 Q. Okay. So you graduated from one-gallon paint cans to
19 five-gallon paint cans, and then you said a 55-gallon drum?

20 A. Yes, sir.

21 Q. How did you heat that?

22 A. Same way. Usually just built a fire and cook it over in
23 it.

24 Q. So you weren't heating a 55-gallon drum with a Coleman
25 stove, you were actually building a fire?

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1 A. Yes, sir.

2 Q. Did you have to do anything, treat it or anything, or the
3 heat took care of the process?

4 A. It's the oldest technology in the world. I mean, you
5 know, people in the Amazon done it. American Indians do it.

6 You know, kind of like a retorter kiln, a lot of people in
7 India, they still do the same thing with coconut shells. They
8 will dig holes and put it in there, catch it on fire, throw a
9 little dirt on. Over a course of a couple days, it carbonizes
10 and stuff's out.

11 Q. So if you have a 55-gallon drum over an open fire, and you
12 put in -- you fill it with wood chips?

13 A. Yeah, about halfway up.

14 Q. About halfway?

15 A. Yeah.

16 Q. So once it's completed, what's left in your drum?

17 A. You get a lot of reduction, you know, it's about, you
18 know, three pounds of wood chips to make one pound of char.

19 Q. So were you still selling it on eBay or did you develop
20 any other ways to sell this?

21 A. Yeah, I was still selling on eBay. You know, we got to
22 where I was selling like a super sack sometimes to nurseries
23 and whatnot, between my home and down in Bristol, Tennessee or
24 up in West Virginia.

25 Q. What's a super sack?

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1 A. It's about a 4-by-4-by-4 bag, canvas bag.

2 Q. So were you making money doing this?

3 A. I mean, it was a start. You know, it was tough to crawl
4 your way back out of a hole.

5 Q. You mentioned something about you built a piece of
6 equipment, I think you called it Junior.

7 A. Yeah. It was a small one, just a 12-inch diameter drum,
8 10 foot long, that I knew the design that I wanted for my big
9 one and so I built a small one, you know, because I could
10 afford to at that point. I just couldn't afford to build the
11 big one.

12 Q. At some point you made a big one though?

13 A. Yes, sir.

14 Q. What did you call that?

15 A. The Big One.

16 Q. Just the Big One? Okay. You called the one Junior, I
17 didn't know if there was a name for it.

18 I know eventually we'll get to some of these pieces of
19 equipment that have names, like calciner and that sort of
20 thing.

21 A. Yes, sir.

22 Q. I want to know what we're talking about.

23 So the bigger one, how much could you cook at any one time
24 in that?

25 A. You know, just depends on what product you're doing and to

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1 what degree you're doing.

2 I have heard a lot of talk about all these volumes. But
3 it's a lot more technical than that. It's -- just depends on
4 what I'm doing. You know, if I'm going to make a torrefied
5 wood product on the big one, you know, my production capacity
6 may be -- through-put could vary, but my end result on
7 torrefied wood product may be as high as three-quarters of a
8 ton an hour. Where like char, thoroughly cooked char, you
9 know, may be 500-pound an hour, you know.

10 So the concept was never to have one unit that produced
11 great deals of volume. The concept was to have many units,
12 each producing a little bit of volume.

13 Q. So we know what you're talking about, when you say
14 three-quarters of a ton, that's 1,500 pounds, right?

15 A. Yes, sir.

16 Q. And you were making different things, different products?

17 A. Yes, sir. There is a multitude of products. You know,
18 some people want a product, what they call a torrefied wood.
19 It's like -- you probably -- you know, Kentucky, familiar with
20 whiskey.

21 So one product that I really liked was what they call a
22 roasted white oak wood chip. And that's a high dollar item
23 that, you know, winemakers and whatnot would buy. I can make
24 that stuff pretty quick. I just throw the white oak in there
25 and just brown it up a little bit. A lot of different

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1 products.

2 Q. Where did you acquire the wood?

3 A. Typically, I could get that at Walmart.

4 Q. Okay.

5 A. Smokers and wood chips and chunks.

6 Q. Now, I know you previously made a living logging.

7 A. Yes, sir.

8 Q. Did you ever get your own raw materials that way?

9 A. I did when I got to Kentucky.

10 Q. Okay. But not while you were still in Virginia?

11 A. No, sir.

12 Q. All right. Just kind of go through how -- how the
13 business evolved, you know, got a little bigger, got a little
14 more involved.

15 A. Well, I was getting my sales up to about five, \$600 a day.
16 I had a buddy that had a building. I was working out of the
17 back yard of the apartment and it was a real small area.

18 And a friend of mine just had recently -- he was
19 struggling, and he lost his trucking company but he still had a
20 garage. And so I rented it off of him, kind of helped him out
21 and helped me out too.

22 I moved down there and I started building Junior. And
23 people would come in -- you know, I run some product through
24 it, and people would come in and like the process, so then I
25 started building a bigger unit. And just stopped right there

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1 in the garage in Virginia and that was about 2015.

2 Q. So when you say garage --

3 A. Well, it was a building.

4 Q. I've got a garage that I park two cars in.

5 A. About the size of this place.

6 Q. About the size of the courtroom?

7 A. Yes, sir.

8 Q. Was everything done inside at this time?

9 A. You know, just depends on weather. If it's cold, you do
10 it inside; if it's warm, you do it outside.

11 Q. It was something you could -- you could burn this stuff
12 down inside this garage?

13 A. Yes, sir.

14 Q. At any time were you -- were you doing this as Doug Vance?
15 At some point did you form a company?

16 A. Yeah, I had -- you know, any company, when you're trying
17 to develop an idea and, you know, get a sense of direction, I
18 mean, you go through all kinds of things.

19 But you know, when I finally seen that the product had
20 momentum and I really decided I want to pursue it, not go back
21 to the coal mines or logging, you know, I had dreamed of it
22 being like a vertically integrated company.

23 Q. I'm sorry, dreamed of being what?

24 A. It kind of being a vertically integrated company.

25 Because, I mean, I know how -- I dealt with a lot of sawmills

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1 and, you know, people will have you do a large investment, you
2 know, in this area, like you want to bring your equipment here,
3 they agree to -- well, we'll sell you all your wood chip
4 supplies for 30 bucks a ton.

5 Well, once they get you depending on them, then the price
6 goes up to 50. Business is a constant juggle. And so I wanted
7 my company to be vertically integrated where I had a say so in
8 everything from the production of the raw material all the way
9 to the finished product, you know.

10 Q. Okay.

11 A. Even manufacturing the units. You know, I built my own
12 equipment that I used to make carbon.

13 Q. So you're in a garage that you're renting from a buddy of
14 yours about the size of this courtroom. How many -- I don't --
15 do you call them machines? I mean, these -- the Junior and the
16 Big.

17 A. Yeah, I had Junior. And then the first one was a mid-size
18 one, little different design. I didn't really like it. So you
19 know, I built three or four various prototypes, I guess, until
20 I finally settled in on

21 Q. So once you finally got the size you liked, how many did
22 you build?

23 A. As of right now, there's probably, not counting Junior,
24 two other prototypes. There's ten in existence.

25 Q. So you've got ten of these in the garage?

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1 A. No, not then. Then I only had one.

2 Q. You just had the one?

3 A. Yes, sir.

4 Q. I think we --

5 A. Yes, sir.

6 Q. You got ahead of me.

7 By the time you got more, where did you move your business
8 to?

9 A. Dave had an opportunity to sell the property I was on and,
10 you know, I didn't want to hold him up. And I had been
11 dreaming about Trus Joist since basically 2010. An opportunity
12 presented itself to go there so I went straight there.

13 Q. Tell me about Trus Joist. How did you even know about it?

14 A. I was familiar with Weyerhaeuser, a lot of these chip
15 companies and logging companies or sawmills because of my
16 previous years logging. And I knew the process. And I knew
17 that, you know, Trus Joist had these two huge rotary dryers.
18 And it's the only set basically I know of on the East Coast,
19 maybe even America that are not in operation.

20 Q. So what's a rotary dryer?

21 A. It's kind of what I build, it's just these are really big
22 ones.

23 Q. When you say "really big"?

24 A. Way bigger than my big one.

25 Q. Way bigger than what?

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1 A. My big one.

2 Q. If you're standing in front of one, how big is it?

3 A. They are 20 foot in diameter and 100 foot long. They
4 are -- the whole structure is about seven stories tall. It's a
5 nice setup.

6 Q. And what kind of -- I mean, what kind of product did you
7 put into these dryers?

8 A. Well, I never got to that point, you know.

9 Q. Right.

10 A. That was the plan.

11 Q. Okay. So anyway, you hear about Trus Joist and you knew
12 there was this equipment on the property.

13 How did you actually get there? I don't mean did you
14 drive. I mean what -- tell the jury how you ended up from --

15 A. I went and talked to, you know, the previous groups, you
16 know, and said, you know, I would like to buy this property
17 and, you know, this is what I plan to do. And I went and
18 talked to the landowner.

19 I had some friends that worked there in the -- what do you
20 call it, business development for Hazard. Talked to them. And
21 anyway, they worked out a deal where I could lease the property
22 from the landowner at that time, and so I leased it under an
23 agreement that I would lease it for six months and try to have
24 it bought in that six months.

25 And started moving my equipment in there and set up to,

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1 you know, manufacture more equipment, to produce product, and
2 try to get, you know, good quality customers in there, do
3 showcases and such, you know, for customers.

4 Q. Now, we've seen some diagrams of the Trus Joist property.

5 A. Yes, sir.

6 Q. Did your lease cover the entire property?

7 A. No, sir. At first it was just the scale house and they
8 had a little Quonset hut down at the bottom. And I think that
9 when the wintertime hit, he got to feeling sorry for me and
10 said I could go over to the big building.

11 Q. Did your lease payment increase when you did that?

12 A. No, sir. The six months, he honored the agreement, it was
13 10,000 a month.

14 Q. Was there any -- any other production going on on the Trus
15 Joist property, other than what you were doing?

16 A. Not at that time, I don't think. He was in the process of
17 actually disassembling everything. And so he wasn't too
18 encouraged about having other people on the property.

19 Q. And I take it you were never able to purchase the
20 property?

21 A. No, sir, I sure tried.

22 Q. Pardon?

23 A. I sure tried.

24 Q. What kind of money were we talking about to purchase the
25 property?

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1 A. I probably could have got it for about two.

2 Q. Two?

3 A. Two million.

4 Q. Two million?

5 A. Yes, sir.

6 Q. Instead you just continued to lease it?

7 A. Yeah. We leased it for six months and couldn't make good
8 on the purchase. And you know, had picked up a little bit of
9 momentum. And I went back to him again and asked him for an
10 extension, and he said yes but doubled the rent.

11 Q. He said yes -- oh, he doubled the rent?

12 A. Yes, sir.

13 Q. Could you swing that?

14 A. It was tough.

15 Q. Yeah. All right. So what -- you're at Trus Joist now?

16 A. Yes, sir.

17 Q. Were you doing anything back in Richlands?

18 A. I had left two of the prototypes back there. So it was --
19 had a couple of buddies working for me. They are doing various
20 things, mostly R&D.

21 Q. But you, yourself, you were working at Trus Joist in
22 Hazard?

23 A. Yes, sir.

24 Q. How far is it from Richlands to Hazard?

25 A. On a good morning, I can make it in about two and a half,

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1 three hours.

2 Q. Were you going down there every day or were you staying in
3 Hazard?

4 A. No, sir, I stay in Hazard.

5 Q. You have a place there, stay on the property or what?

6 A. Through the summer I stay on the property most of the
7 time. I had a hammock.

8 Q. You had an aunt?

9 A. A hammock.

10 Q. A hammock?

11 A. Yes, sir.

12 Q. Okay.

13 A. And when it was colder, if it got cold, I stayed at a
14 hotel.

15 Q. How long were you doing business there?

16 A. I was at Trus Joist from last part of 2016 until, I guess,
17 the last part of 2018.

18 Q. All right. Now, there were some circumstances that
19 involved this case that happened in between that time, right?

20 A. Excuse me?

21 Q. Who did you get involved with to try and increase your
22 business?

23 A. Pretty much everybody that's been here.

24 Q. Who was the first one?

25 A. I would say the Shumards.

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1 Q. How did you and the Shumards get together?

2 A. I met them through Ms. McKinnon.

3 Q. Through who?

4 A. Ms. McKinnon.

5 Q. Molly?

6 A. Yes, sir.

7 Q. Prior to being -- meeting them through Molly, did you know
8 the Shumards or anything about them?

9 A. No, sir.

10 Q. Let me ask you this first. How did you know Molly
11 McKinnon?

12 A. I think I met her through a mutual acquaintance. You
13 know, I thought a lot about that. I feel like it was Andrew
14 Nolan, but I couldn't really swear, but somebody.

15 Q. Under what circumstances, business-wise or --

16 A. Yeah. Yeah. Andrew -- you know, by this time, I knowed a
17 lot of people. And you know, everybody wants your -- to use
18 your equipment to do something different. And so, you know,
19 it's -- and so you can talk to a lot of interesting people.

20 Q. Now, when you say your equipment, the equipment that you
21 were using making char, was that equipment that you built or
22 was it equipment that was on the Trus Joist property?

23 A. It was equipment I built.

24 Q. Were you using any equipment that was on the Trus Joist
25 property when you got there?

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1 A. No, sir.

2 Q. All right. So how long after you met Molly McKinnon did
3 she put you and the Shumards together?

4 A. I don't really know. A few months, I guess.

5 Q. How were you contacted about this arrangement?

6 A. I'm assuming a phone call.

7 Q. Okay.

8 A. I really couldn't tell you.

9 Q. We know that you were living in Richlands, Virginia, you
10 were operating something in Hazard.

11 A. I hadn't moved -- I met the Shumards before I moved to
12 Hazard. I was still in Richlands.

13 Q. Just doing the char --

14 A. Yeah. When I first met Shumards, they come to the
15 Richlands place. Collectively me and the Shumards moved to
16 Hazard.

17 Q. So I'm trying to get a handle on your business
18 relationship with Molly McKinnon that led to getting together
19 with the Shumards.

20 A. Yeah. Well, it was a situation where, you know, I was
21 kindly willing to bootstrap it, but, you know, if somebody
22 would help me buy Trus Joist, I mean, I was willing to take on
23 an investor or partner, however you want to say it.

24 But you know, if we wasn't buying Trus Joist, I was going
25 to bootstrap my way through it.

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1 So she introduced me or somehow, you know, I got
2 introduced to the Shumards, and you know, that was what we
3 entertained, was buying Trus Joist.

4 Q. Who was the first person with Shumards that you met?

5 A. I would say I met Gary and Ken simultaneously.

6 Q. That's Gary Chamblee and Ken Shumard?

7 A. Yes, sir.

8 Q. Where did you meet them?

9 A. They come to Richlands to see me.

10 Q. Did Molly come with them?

11 A. I believe she was there.

12 Q. So what did you all talk about -- you were in the garage?

13 A. Yes, sir.

14 Q. What did you all talk about?

15 A. Well, they just wanted to better understand the business.

16 You know, I told them what my plan was. And you know, they
17 introduce theirselves as, you know, a bunch that, you know, does
18 investments and partners up with people.

19 And you know, just seemed like a pretty reputable bunch.
20 And I was impressed with their charity work and the good things
21 that it seemed Ken done.

22 And then Ken -- you know, I could understand, you know, he
23 supposedly built this huge business, you know, setting out of a
24 single-wide trailer, you know, destitute. So it was a good
25 story. And you know, I really like Ken.

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1 Q. So did you come to any agreement at that point?

2 A. You know, we wanted to go to Kentucky and they wanted me
3 to show them Trus Joist. So we lined out the -- kind of like a
4 meet and greet for them and the people, you know, that would
5 help facilitate from Hazard, Kentucky.

6 So the next morning, we all went to Kentucky and I showed
7 them the property. And then they went and had dinner, I think
8 with some people there or something.

9 THE COURT: Is this a good place to break, Mr. Darling?

10 MR. DARLING: Certainly, Your Honor.

11 THE COURT: Ladies and gentlemen, we'll take our lunch
12 break at this time until 1:05. Please keep in mind the
13 admonitions that you've been given previously not to discuss
14 the case among yourselves. The jury is excused at this time.

15 (Jury left courtroom at 11:54 a.m.)

16 THE COURT: Have any issues to take up before we recess?

17 MS. LEWIS: No, Your Honor.

18 MR. DARLING: No, Your Honor.

19 THE COURT: All right. Thank you.

20 (A recess was taken from 11:55 a.m. to 1:04 p.m.)

21 THE COURT: Thank you. All members of the jury are
22 present. The defendants and all counsel are present.

23 Mr. Vance, you are reminded you are still under oath.

24 Mr. Darling, you may continue your questions.

25 MR. DARLING: Thank you, Your Honor.

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1 BY MR. DARLING:

2 Q. Doug, I think what we were talking about was the beginning
3 of your relationship with the Shumards.

4 A. Yes, sir.

5 Q. You talked about you met them in Richlands and that you
6 came up to the Trus Joist facility, to look at that.

7 A. Yes, sir.

8 Q. Do you remember who went from Shumards?

9 A. I think it was Gary and Ken.

10 Q. Gary Chamblee and Ken Shumard?

11 A. Yes, sir.

12 Q. You remember being there, of course, yourself. Do you
13 remember anybody else being there as part of that?

14 A. Maybe Ms. McKinnon.

15 Q. Maybe?

16 A. I think so, yeah.

17 Q. You think she was?

18 A. Yes, sir.

19 Q. Okay. Now, your relationship with Shumard, what was the
20 thought regarding the Trus Joist property?

21 A. We were going to buy it, and then I guess collectively own
22 it together. I was going to facilitate it, rehab the big
23 dryers and, you know, just try to create a business.

24 Q. Who was going to put up the financing to purchase the
25 property?

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1 A. They would have.

2 Q. At this point did Nex-Gen Industries exist?

3 A. Yeah.

4 Q. And that was your company, and it was solely owned by you
5 at this point?

6 A. Yes, sir. Well, friends and family had --

7 Q. I'm sorry?

8 A. Friends and family had spent money along the way, but it
9 was --

10 Q. But if we looked at Nex-Gen documents, if you would, it
11 would show you as sole owner?

12 A. It would show sole member, I think, on the state
13 corporation commission papers.

14 Q. So what was going to happen as far as the business
15 relationship with you, Nex-Gen, and the Shumards?

16 A. As far as companies go?

17 Q. Yes.

18 A. They were to start another company that they would have
19 collectively owned. And then I would -- my company would get
20 49 -- 48 percent of whatever company they started, and then I
21 would get 1 percent. So collectively, Doug Vance would have
22 49 percent of whatever company they started.

23 Q. What was the reasoning for Nex-Gen to have 48 percent and
24 you personally to have 1 percent?

25 A. I guess it's more of a paper-type thing. I mean, I don't

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1 understand all that.

2 Q. Was that your idea or theirs?

3 A. No, I -- I'm not a paperwork guy.

4 Q. So that was something that the Shumards suggested?

5 So did that -- did that company ever get formed?

6 A. Excuse me?

7 Q. Did the company get formed?

8 A. Yeah, they started NexGen Energy Partners.

9 Q. So NexGen Energy Partners, the Shumard group owned
10 51 percent of that?

11 A. No -- yes, sir.

12 Q. And 48 percent was owned by Nex-Gen and 1 percent by Doug
13 Vance personally?

14 A. Yeah, 48 percent owned by Nex-Gen and 1 percent owned by
15 Doug Vance.

16 Q. Did you buy -- when I say "you," did this -- did this new
17 company, NexGen Energy Partners, end up purchasing the Trus
18 Joist property?

19 A. No, sir.

20 Q. What happened?

21 A. I don't really know. I mean, I brought them up and let
22 them meet again with all of the powers to be there in Hazard
23 and the people that could be instrumental in helping them. And
24 it just seemed like a real slow process. I don't really know
25 why they didn't buy it.

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1 Q. So this -- who was paying the lease on this property?

2 A. I would say at that point they was.

3 Q. When you say "they," you mean the new company, NexGen
4 Energy Partners?

5 A. Yes, sir.

6 Q. Who contributed money to NexGen Energy Partners?

7 A. As far as? I'm not sure I understand the question.

8 Q. Okay. We've seen -- we've seen documents showing that
9 your contribution to NexGen Energy Partners was equipment?

10 A. Yes, sir.

11 Q. And you agreed with the Shumards that the value of the
12 equipment was \$500,000?

13 A. I can't remember if it was 500 or 250. I would have to go
14 back and look at that document.

15 Q. And cash infusion into the company came from the Shumards,
16 correct?

17 A. Yes.

18 Q. Now, at the time did you know where Shumards got the money
19 to put into this company?

20 A. No. I mean, the understanding I had, they were -- that's
21 what they did. So I mean, I don't know who individually or
22 business wise, they was just an investment group.

23 Q. Did you care?

24 A. Not really.

25 Q. I mean, if it came from Gary Chamblee, Mendie Hogan,

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1 Mr. Shumard himself, did you care where it came from?

2 A. I'm just not wired up that way.

3 Q. Understood. So you didn't buy the property. Did you
4 continue to work the property?

5 A. Yeah. I stayed on the property and, you know, again,
6 trying to create a business. I was manufacturing units. I
7 bought some toll fee work in.

8 You know, we were doing -- you heard about the five-gallon
9 buckets, which is typically what is required of, you know,
10 trying to get a customer. So a lot of that went out. It's a
11 high heat process so it involves a lot of training. So I was
12 trying to bring people in and train them. You know, it was a
13 start-up company.

14 Q. Were you making money?

15 A. Honestly, I don't know that we were intending to make
16 money at that point.

17 Q. What were you intending to do?

18 A. Well, we were intending to get some customers.

19 Q. So you're basically a start-up company?

20 A. Yes, sir. I was manufacturing more units. You know, we
21 had a big area there. We had one unit there that I had brought
22 from Virginia. So it looked like a vacant piece of property, I
23 guess.

24 But, you know, safety and compliance is a big thing. It's
25 just a process. You know, and it's -- you're not trying to

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1 get -- I mean, obviously any customer is a good customer, but
2 when you're dealing with companies like Kingsford, you know,
3 it's a process. And you want to have all your ducks in a row
4 and, you know, nice paint jobs and well-trained people. And
5 it's a long process.

6 Q. Now, at some point did the Shumard people put more money
7 into the company?

8 A. They continually put money into it.

9 Q. Now, for example, you heard Mr. Chamblee testify that he
10 invested an additional 200,000 into the property, into the
11 company?

12 A. Yes, sir.

13 Q. And you heard him testify that that was a loan.

14 A. Yes, sir.

15 Q. Were you aware of that at the time?

16 A. Not at the time, no, sir.

17 Q. What was your understanding of this 200,000 coming into
18 the company?

19 A. Before my first loan agreement with them, I was under the
20 impression that, you know, whatever amount of money it took,
21 you know, the three and a half million that we originally
22 discussed, would be used in whatever fashion we needed to use
23 it to build the company up. And then at that point you would
24 either divvy up equity or whatever.

25 Q. So at what point did you realize, if you ever did, that

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1 these were loans as opposed to equity investment in the
2 property or in the company?

3 A. Yeah, I don't know the exact date, but it was much later
4 on.

5 Q. When you say "much later on," are you talking months,
6 year?

7 A. Months.

8 Q. Months? Who handled these transactions, Shumard money
9 coming into Nex-Gen?

10 A. Most of the time they just wired the money.

11 Q. Wired it into what account?

12 A. Initially, they wired into my business account.

13 Q. What bank is that?

14 A. That would be Wells Fargo.

15 Q. What was Molly McKinnon's role in this new company?

16 A. She was appointed as, I guess, financial oversight by
17 Gary.

18 Q. I'm sorry, as --

19 A. Financial oversight by Gary. She was there to help
20 facilitate you know, whatever.

21 Q. And did she and Gary work together on the financial
22 aspects of the company?

23 A. Yes, sir.

24 Q. Did you have anything to do with that?

25 A. As in what terms? I mean --

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1 Q. Well, in terms of money coming into the company, if
2 Shumards were putting more money in, whether it's a loan or
3 equity --

4 A. No, sir.

5 Q. -- is that something that would be worked out with you or
6 is that more Ms. McKinnon's role?

7 A. Yes, sir.

8 Q. You were the operator of the company?

9 A. Yes, sir.

10 Q. Did you ever get a reason why Shumards never ended up
11 getting the financing together to buy the property?

12 A. No, sir.

13 Q. Was the property going to be owned by NexGen Energy
14 Partners or the Shumards arm of the group?

15 A. I don't know that that was actually ever discussed.

16 Q. Either way, it never got done?

17 A. No, sir.

18 Q. And you don't know why?

19 A. No, sir.

20 Q. So when it was clear that that wasn't going to get done,
21 what was your thoughts about where the company was going?

22 A. I mean, I was, you know, intent to stay in Kentucky. And
23 you know, I had -- everybody was aware of the lease agreement.
24 You know, my obligation to the owner of the property was, you
25 know, give me six months and I'll try to get the property

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1 purchased.

2 I mean, this really didn't make a lot of sense to move
3 everything to Kentucky, start building a business, you know,
4 bring customers in. I didn't want to tuck tail and go back
5 home. So I'm committed to buying the property some way or
6 another.

7 Q. So when it was clear that Shumards were not going to
8 finance the purchase of the property, what did you do?

9 A. I was hoping to, you know, just secure a good contract and
10 then maybe possibly go with, you know, somebody different.

11 Q. By "secure a good contract," what do you mean, contract on
12 the property?

13 A. No, contract for a customer.

14 Q. And what was your arrangement with the owner of the
15 property? You said you had been there six months and the
16 thought was that you were going to be leasing for six months
17 and then purchase?

18 A. Well, yeah, you know, a lot of -- a lot of issues arose
19 before the six month -- before the first one expired.

20 Q. Okay.

21 A. But we were trying to maintain. Then we went in there and
22 did the second six months and the price went up to 20,000 per
23 month on the rent.

24 Q. The rent doubled?

25 A. Yeah. It was the only way I could talk him into giving me

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1 an extension.

2 Q. So did you -- did you last that second six months?

3 A. What?

4 Q. Did your company last that second six months?

5 A. Yeah, we -- we stayed until -- I left personally in the
6 latter part of 2018. By that time, everything was kind of a
7 boil.

8 Q. Was kind of what?

9 A. A boil, a sore spot. So I apologize.

10 But anyway, I got Gary and them a contract to dry aluminum
11 with Anchor Industries.

12 And I told Gary, you know, I'll just go to the house until
13 we figure all this out. But I would like for you to hire all
14 the guys here, you know, and I'll get you this contract. Got
15 him a contract with Anchor. And I went home and tried to
16 regroup. And then Mike Miller called me, I guess about two
17 weeks before Christmas, that Gary had laid them all off.

18 And I told him, I said, well, you know, figure out how to
19 get through until the first of the year and I'll come back.
20 And I went back in January of 2019 and I hired five of the guys
21 back and started drying graphite.

22 Q. Why did you go home, as you put it?

23 A. I was pretty fed up with it at that point.

24 Q. What were you fed up with?

25 A. Well, just, you know, everything. I mean, I had all this

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1 trouble going on and just -- you know, it was just a bad time.

2 Q. Had the Shumard Group made it clear they weren't going to
3 buy this property?

4 A. By this time, yeah. It was bad.

5 Q. So when you left, as you said, you went home, was the --
6 was the facility still operating?

7 A. Yeah. You know, we had kind of deviated from char and I
8 was trying to, in the end, get more toll fee work, we were
9 doing with Miller & Company and several companies who was
10 willing to pay us so much money per ton just to process, so it
11 would have been a service-type agreement.

12 And it just got too hard to, you know, buy coal, bring it
13 in, process it, wait on it, 30 or net 40. It was cash flow
14 intense, you know.

15 Q. So at what point in this process did Gary Chamblee
16 terminate Molly?

17 A. It would have been probably a couple, two or three months
18 before -- about the middle of 2018, I guess.

19 Q. So you left and they continued to operate, at least for a
20 little while, and then they let everybody go --

21 A. Yes, sir.

22 Q. -- just before Christmas?

23 Now, you said at the first of the year you went back.

24 A. Yes, sir.

25 Q. To do what?

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1 A. I felt like I had an obligation to some of the guys, you
2 know, just one of me and Gary's agreements. I said, you know,
3 I'll get you this contract, and I'll just go to the house if
4 you'll give everybody a job.

5 And when he laid them off, I felt, you know, I had an
6 obligation to them. There was still opportunities that existed
7 and obviously I'm still trying.

8 Q. When you came back, was Shumard involved at that point at
9 all?

10 A. I kind of distanced myself from them. I just -- you know,
11 I wasn't talking to them, wasn't dealing with them.

12 Q. Was there anybody from Shumard on the property while you
13 were operating?

14 A. No. Their attorney sent me a cease and desist letter.
15 But I called KRP, and KRP said you're welcome to come back if
16 you want to come back. We done a lease with you, we didn't do
17 a lease with him. So I went back and started operating.

18 Q. Before we get into Kentucky River Properties, we left out
19 a whole person --

20 A. Yes, sir.

21 Q. -- that we need to talk about.

22 A. Yes, sir.

23 Q. And that's Allan Deware.

24 A. Yes, sir.

25 Q. At what point did you and Allan Deware get together?

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1 A. It was early on in the Shumard/Kentucky set up. You know,
2 when they kept dragging their feet about purchasing the
3 property, I was introduced to Allan. I liked Allan. I mean,
4 he is an easy-to-talk-to guy and we seemed to have a lot in
5 common.

6 You know, he said I'll buy it if they don't want to buy
7 it.

8 Q. He said what?

9 A. Buy Trus Joist.

10 Q. So at the point that you and Allan at least began talking,
11 that was after NexGen Energy Partners was formed with the
12 Shumards, correct?

13 A. Yes, sir.

14 Q. How was it that you and Allan Deware got together?

15 A. I don't really recall the exact way. I know that he --
16 him and one of his friends came -- I think I was introduced to
17 him through Ms. McKinnon, who was introduced to him through
18 someone else.

19 But him and a guy named Dave had come to Virginia to meet
20 me. And in the same process, we went to Kentucky and looked
21 around. You know, we drafted up some kind of little
22 handwritten agreement I think they got as an exhibit.

23 Q. So what was the thought with you and Mr. Deware?

24 A. He wanted to pay Shumards off and buy Trus Joist and
25 revert back to, again, trying to create a business.

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1 Q. At the time that you and Mr. Shumard -- you and Mr. Deware
2 were talking about an arrangement, was he aware that you had a
3 company with the Shumards?

4 A. Yes, sir.

5 Q. And your discussion with him was? What was your all's
6 discussion regarding the property itself?

7 A. Well, again, to purchase it.

8 Q. So basically the same type of deal that you had with
9 Shumards, only with somebody else?

10 A. Yes, sir.

11 Q. Was another new company formed?

12 A. Same scenario. They were supposed to start a company and
13 then I would have gotten a percentage of that, or Nex-Gen would
14 have gotten a percentage of that.

15 Q. At some point did you tell anybody with the Shumard Group,
16 I guess Gary Chamblee, that you had somebody coming in to talk
17 about buying them out?

18 A. Yeah, I had several conversations with Gary about that.
19 You know, he was all over the board. I mean, he knew, he was
20 aware of everybody I talked to.

21 Q. So Allan Deware was -- he knew that part of the
22 arrangement would be to pay off the Shumards on their share,
23 right?

24 A. Yes, sir.

25 Q. And the Shumards knew that since they weren't going to buy

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1 the property, that you were working with somebody to come in to
2 buy them out?

3 A. Yes, sir.

4 Q. Did that happen?

5 A. No, sir.

6 Q. Why not?

7 A. That one was a tough one on me. He -- I'm assuming he
8 started getting bad reports. But some of the last
9 conversations I had with him, he had brought some other guy up.
10 He kind of ended the note with, you know, we're not going to
11 buy Trus Joist. Basically pat me on the back and said good
12 luck. But he said, I do want to buy charcoal off of you.

13 Q. I'm sorry, I do want what?

14 A. Charcoal. He wanted to start a retail distribution. He
15 had ties to some type of facility, I guess, where they sell
16 product or -- so he wanted to make a natural lump charcoal, he
17 wanted me to make it, he was going to bag it and put it out for
18 retail.

19 Q. So that was -- that would just be you doing retail work
20 for -- and Allan Deware buy your product?

21 A. Yes.

22 Q. What about the company that had been formed?

23 A. I mean, for lack of better words, I don't really know what
24 to tell you about that, because it just -- I mean, every time I
25 turn around, somebody is forming a company, so I don't know.

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1 Q. How much money had Mr. Deware put in the company?

2 A. I think in total, they figured 370, 380.

3 Q. Were you ever able to get that back to him?

4 A. No. Again, me and him basically just quit communicating.

5 And then a couple of years ago, or a year or so ago, you know,

6 I kindly made my mind up to try to reach out to some of these

7 people and figure out what was owed and try to set something

8 up.

9 So I had Ms. McKinnon set up a call with him or have him

10 call me, which he did. And we briefly discussed it and he --

11 you know, he didn't -- nothing really developed out of it. But

12 it was discussed.

13 Q. So Mr. Deware's involvement in this arrangement, was it

14 kind of after you started with Shumards but before that

15 completely finished?

16 A. Yes, sir. It was a short stint.

17 Q. And he -- he decided for whatever reason he was not going

18 to end up --

19 A. He was respectful about it. I mean, when he decided he

20 didn't want to give the money to buy Trus Joist, I mean, he was

21 kind about it, you know.

22 Q. Well, did he explain why he didn't want to buy Trus Joist?

23 A. It's a big investment, you know. I mean, it's

24 Q. I'm sorry.

25 A. It's a big investment.

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1 Q. Right. He decided that was not the investment he wanted
2 to make?

3 A. Yes, sir.

4 Q. So he was respectful up until the time he went to the FBI?

5 A. Yes, sir.

6 Q. Did you know he was going to do that?

7 A. No, sir.

8 Q. Did that surprise you?

9 A. Actually, I didn't find out about him until discovery.

10 Q. When you say "discovery," you mean after you were indicted
11 and we got information from the government?

12 A. Yes, sir.

13 Q. That would have been long after you were indicted?

14 A. Yes, sir.

15 Q. All right. So Shumards, the arrangement didn't work, it
16 got to the end of the second six-month part of the lease. And
17 at this time how was it that Kentucky River Properties ended up
18 owning the property?

19 A. They come in like Steve said, flew in.

20 Q. Talking about Steve Barker?

21 A. Yes, sir. Flew in a couple of helicopters. And they was
22 with some other company. One of -- I guess one of Will's
23 family members had been involved in some char, he knew the
24 process. And so when he seen what I was doing, he kind of got
25 interested and he started talking to KRP. And the next thing I

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1 know, they are coming around all the time.

2 One thing led to another, inevitably they started
3 negotiating buying the property. And I hooked them up with the
4 landowner, you know, and just let them handle that themselves
5 directly.

6 Q. So when they began negotiations to buy the property, they
7 knew you were already operating on it, correct?

8 A. Yes, sir. I was still there in the midst of operation
9 with Shumards.

10 Q. Had you had discussions with them what would happen to you
11 if they bought the property?

12 A. They said I would be okay.

13 Q. You were going to be able to stay?

14 A. Yes, sir.

15 Q. So this was good for you?

16 A. Yes, sir. They -- you know, I mean, I think -- I don't
17 want to say it, you know, I don't want to make an assumption.
18 But, I mean, I think initially they were anticipating buying it
19 for me, let me rehab the big dryers and then utilizing some of
20 their coal operator's coal. I think that would have been the
21 fair assumption of the overall plan.

22 Q. What was the arrangement that was made for what you would
23 pay on the lease?

24 A. I don't know that we ever settled on any kind of
25 particular dollar amount. You know, there was royalties

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1 discussed on production, which sounded pretty good to me. You
2 know, because if I don't run anything, I don't pay anything.

3 But it was kind of all over the board.

4 Q. But according to what Mr. Barker talked about, that's the
5 deal you ended up with, right?

6 A. Yes, sir.

7 Q. So there was not a set monthly lease payment?

8 A. No, sir.

9 Q. Just royalties based on production?

10 A. Yes, sir.

11 Q. And that's a better deal than 20,000 a month off the top?

12 A. Oh, yes, sir.

13 Q. You heard some discussion about a loan that KRP made to
14 you to build a piece of equipment.

15 A. Yes, sir.

16 Q. Tell us about that.

17 A. So, you know, part of them buying the property, you know,
18 obviously they want to get a better lease payment, royalty
19 payment. So they wanted to help us increase production, you
20 know, because, again, production capacity is low per unit.

21 And in the process of doing that, you know, they -- it was
22 a lot of discussions, a lot of back and forth. But inevitably
23 what they done, and they put in their paperwork, you know, it
24 says they are going to pay \$170,000 for us to design,
25 fabricate, build, or operate and maintain a unit.

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1 You know, it was told to me that, you know, in the event
2 it works out, you know, we'll roll it over into a loan and you
3 can make us easy payments, and take a unit and go to the house.
4 Or maybe we'll keep the unit. You know, it was just -- you get
5 a lot of paperwork.

6 Q. Okay. And you have already indicated you don't like the
7 paperwork.

8 A. No, sir.

9 Q. So they loaned you \$170,000?

10 A. I prefer not to look at it as a loan. I mean, I
11 understand there's a loan agreement. But, you know, typically
12 when a person approaches you and they're going to buy a piece
13 of equipment off of you that you have yet to build, you know,
14 they want some sense of security.

15 And so to me a loan agreement was not a lot to ask from
16 them. You know, it was still us building the unit, that me or
17 them, one would own in the future. So I didn't see that it was
18 a problem.

19 Q. So what did you build?

20 A. I built a unit.

21 Q. Is this what we've been referring to as a calciner?

22 A. Yes, sir.

23 Q. What's a calciner?

24 A. It is a -- the one I designed is about 40 foot long, five
25 foot wide. Basically it's a shell and you have a drum,

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1 three-foot diameter drum running through the center of it. And
2 then you heat -- that drum rotates, you heat the outside of
3 that drum and you process whatever material you're running
4 through the drum.

5 Q. So as opposed to just putting it into something over a
6 fire, it actually is in a rotating tube?

7 A. Yes, sir. Calcining is more of the process, the equipment
8 is actually a rotary kiln.

9 Q. So you built that?

10 A. Yes, sir.

11 Q. Did it work?

12 A. I mean, they all work.

13 Q. All right. You think that's a fair price, \$170,000, for
14 what you built?

15 A. Louisville Dryer builds one, they are just here in
16 Louisville. And their average retail price for my dimensions
17 is about a million two.

18 Q. Is that bigger than what you built?

19 A. Same size.

20 Q. So they gave you \$170,000 and you built one?

21 A. Yes, sir. I was more interested in trying to get my
22 production up.

23 Q. Now, at some point -- I want to jump to the end to make
24 this point. You left, right?

25 A. Yes, sir.

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1 Q. And, I mean, when I say "you left," operations stopped,
2 the whole thing, right?

3 A. No. Again, I got -- I had worked out a deal with KRP that
4 Gary and them could stay, and you know, to see how everything
5 panned out. I got Gary a contract with Anchor to dry
6 aluminum -- not a contract, but, you know, an opportunity,
7 which they did dry some aluminum. Talked Gary into hiring all
8 the guys that was still at the plant. And I went to the house.

9 Q. But you left your calciner there?

10 A. Yes, sir.

11 Q. So --

12 A. At that time there was two -- three, actually. One
13 when -- when they first started bringing aluminum in, I was
14 kindly trying to help facilitate. Because at that time I was
15 doing some work for the University of Kentucky. So I had one
16 unit processing some rare earth minerals for the University of
17 Kentucky.

18 And had Gary and them running the other unit, you know,
19 drying aluminum.

20 And somehow they got their numbers mixed up and overheated
21 the second unit and melted the drum. So that shut down one
22 unit there.

23 Q. This calciner that you built for KRP.

24 A. Yes, sir.

25 Q. Let's just say for a second that it was a loan.

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1 A. Okay.

2 Q. And you never paid back on it, right?

3 A. No, sir.

4 Q. But they just took the calciner back?

5 A. Yes, sir. The last conversation I had with Steve Barker
6 after all this stuff got started, you know, I asked him, what,
7 if anything, I owed them or would owe them. And he at that
8 point decided he wanted --

9 MR. ROSENBERG: Objection, Your Honor.

10 THE COURT: Sustained.

11 BY MR. DARLING:

12 Q. Was that calciner when you left worth more than \$170,000?

13 A. In my opinion, it is.

14 Q. Let's talk a little bit about some of these issues.

15 Let's talk about Kingsford. What arrangement or what
16 business did you do with Kingsford?

17 A. You know, I -- it's a name I grew up with. I mean, I
18 always wanted to, you know, do something with them. And when
19 the opportunity presented itself to showcase, you know, that's
20 what I tried to do.

21 Q. What happened?

22 A. They came in and, you know, again, it's a process. But
23 they agreed to -- we sent them some samples out in California I
24 think, in five-gallon buckets. And they agreed to buy some for
25 a test load.

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1 Q. For what?

2 A. Some test loads.

3 Q. Test load?

4 A. Typically what they do, they'll call the EPA, have the EPA
5 come in and they will run your product. You know, they do a
6 blend of a few products to make a briquette.

7 And they will, for some reason, have the EPA or the FDA or
8 somebody there. It's a scheduling process. It's tight, you
9 know.

10 And we had material there at the plant ready to go. And
11 the trucking company come in and picked up a couple of loads.
12 They were actually light loads.

13 Q. Explain that. Because there was some talk with Ms. Lacy
14 about light loads.

15 A. Yes, sir. So this material is super light, you know, you
16 lose a lot. In the reduction, calcining process, you get a lot
17 of reduction. So coal typically is 45, 50 pounds per cubic
18 foot. You know, this product is less than 20 pounds per cubic
19 foot.

20 So you can't -- you know, there was some discussion about
21 enough product to fill up a coal train or whatever. But you
22 know, it takes a big area to put 10 ton into, you know, because
23 it's super light.

24 But so he come in. The trucking company that was
25 contracted come in to pile. They had the short trailer, so

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1 they hauled two small loads.

2 And at that point, you know, I was a little distraught
3 because I was hoping they could get at least 16, 18 ton per
4 load. That's the only way the numbers really worked. So I
5 asked them to get a bigger trailer, which inevitably they did,
6 and we hauled actually a total of 71.6 ton to them.

7 Q. What was the trucking company that you used?

8 A. RJF.

9 Q. Who owns RJF?

10 A. I can't remember the guy's name. I had a couple of phone
11 calls and emails with him, it's in the discovery. But he owned
12 it and supposedly Gary had some interest in it.

13 Q. That's Gary Chamblee?

14 A. Yes, sir.

15 Q. Okay. So you provided 71.6 tons of product?

16 A. Yes, sir.

17 Q. What was the product?

18 A. It was a coal char.

19 Q. How much did Kingsford, Clorox want?

20 A. 50.

21 Q. Now, you heard Ms. Lacy testify that your facility wasn't
22 up to their standards.

23 A. Yes, sir. I mean, you know, that was common knowledge. I
24 mean, I'm not -- would not, you know, dispute that. I mean, it
25 needed guards on chains. It needed a little better

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1 housekeeping. Things needed to be painted, cleaned up.

2 Customers come in, they like to see all employees, the
3 hard hats, safety glasses. I mean, you know, we weren't --
4 we're by no means compliant.

5 Q. But the bottom line with Kingsford and Clorox is they just
6 didn't accept you all. Your product and safety and that and
7 whatever you felt you could produce, right?

8 A. They did or didn't?

9 Q. Did they or didn't they?

10 A. Yeah. I mean, it was an ongoing process obviously. I
11 mean, you know, there was some hiccups on the trucking side of
12 things and that caused some bad vibes, I guess. But
13 inevitably, as far as I know, they ran the test.

14 I mean, I don't know if they were trying to do two tests
15 or -- but typically what they told me, they invite the producer
16 over and a bunch of people and they'll make briquettes and cook
17 steaks.

18 One of the guys involved in the opportunity, I didn't get
19 to go, I was stuck at the plant. But one of the guys that was
20 allowed, he called me on the phone, we're cooking a steak and
21 the charcoal tastes great. So I'm assuming they completed the
22 first test.

23 Q. But ultimately they did not do business with you?

24 A. No, sir.

25 Q. All right. We've got to talk about Koch Industries.

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1 A. Yes, sir.

2 Q. How did you -- how did you get in touch with them or they
3 get in touch with you?

4 A. They have a interest in a coal operation in Prestonsburg
5 that I knew the guys, you know, for a long time. And you know,
6 in all honesty, I mean, them conversations go back to 2010,
7 '12, '14. You know, I've knowed these guys for a long time.
8 Great coal producers, great people, and Koch owns a portion of
9 that business.

10 So you know, Koch, has always been a dream of mine to work
11 with them. And you know, we had just got to the point at
12 Kentucky, at Trus Joist, that my buddy that works with them, he
13 said look, you know, I want to bring them down and introduce
14 them to you. I think you're there.

15 So obviously I was excited.

16 Q. So you had been talking to these people since 2010, but
17 you never did business with them, right?

18 A. No, sir.

19 Q. And to be fair, Koch Industries is a monstrous company?

20 A. Yes, sir.

21 Q. It's huge, right?

22 A. Yes, sir.

23 Q. And what they are doing here is a small part of what they
24 do?

25 A. Yes, sir.

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1 Q. All right. So they came to the facility?

2 A. Yes, sir.

3 Q. Who came?

4 A. I know Dave Severson did. I'm sure one of the coal
5 operators from Prestonsburg did. I can't really remember. It
6 seemed like there was two or three people, but Dave is the one
7 that I can recall.

8 Q. All right. Tell me what happened when Mr. Severson and
9 whomever else came to the facility.

10 A. You know, it was an interesting conversation. I mean, it
11 took me some time to gather my senses because, you know, Koch
12 is here and I'm just super excited. But, you know, so I was
13 anxious to show them around.

14 And you know, and part of my deal has always been, you
15 know, rehabbing the big dryers. And so I took Koch to the big
16 dryers. And then it was going pretty good. And then I took
17 them and showed them the little dryer, the Big One I call it,
18 but not as big as them.

19 But, you know, they kind of had more interest in my
20 design. And so they agreed at that point, you know, to kindly
21 nurture me along a little bit and help out, you know, and see
22 where we could go, you know. And the only stipulation was I
23 needed to buy the coal from their operation in Prestonsburg.

24 Q. Okay. So there was some, you said, a couple of big dryers
25 that were on the property before you got there?

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1 A. Yes, sir. Just to give you a brief explanation of them.
2 You know, a lot of people produce this product that I produce
3 from petroleum coke. And so you will have some companies like
4 Rich Petroleum, Exxon, you know, certain companies that have
5 big refineries, you know, they make a product called green pet
6 coke. Koch Industries, you know, they get a lot of that.

7 So some of these companies have these big kilns set up,
8 you know, to produce this green pet coke into a calcined pet
9 coke which increases the value.

10 Long story short, at the end of the day, if I could have
11 rehabbed the two big dryers, we would have probably been the
12 third or fourth largest producer of that product in the United
13 States. So that's the attraction to it.

14 Well, when Koch seen the smaller dryers, they thought
15 that, you know, we'd just build more smaller dryers. So with
16 Koch, it kind of deviated away from the big dryers, but we were
17 still focused on the property.

18 Q. Now, if you've got two big dryers and one of them is down
19 for maintenance or repair, what does that do to your
20 production?

21 A. That was kind of Koch's point. You know, I mean, I was so
22 starstruck with the big dryers forever so long, you know, but
23 how can you refute something Koch says?

24 Q. Okay.

25 A. And it was the one company to me that -- you know, because

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1 they do deal a lot in pet coke, they do deal a lot in carbons,
2 and to me, it was a dream come true basically. But they're
3 just super smart. And they got -- you know, I'm nobody
4 compared to people like that. You know, so if they are going
5 to lead me in business, then I'm going to listen.

6 But once Dave said it, I mean, it made a lot of sense, you
7 know, a bunch of small dryers.

8 Q. Right. So the thought was they would bring you their
9 coal --

10 A. Yes, sir.

11 Q. -- from whatever coke operation had it. You would dry
12 it --

13 A. They are going to bring green pet coke from their
14 facilities, which was Koch owned, and then their partnership in
15 Prestonsburg was going to ship us coal. Both products of which
16 we would have calcined to improve overall quality and sale
17 price of it.

18 Q. So that was a plan. So they were on -- they were on both
19 ends of the deal and you were in the middle?

20 A. Yes, sir.

21 Q. And you liked that? I mean, you liked that arrangement?

22 A. You know, it's -- there is a sense of safety, you know.
23 You know you got a supply of raw material, and in the event --
24 you know, Koch does a lot of brokering. You know, they will
25 buy product all over the world and house it and ship it. You

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1 know, they deal in volumes.

2 So to me, Koch was perfect because, you know, they're
3 definitely going to be a supplier, most certainly have got
4 money behind them. And eventually could become a buyer. You
5 know, so it was a -- to me, it was a good opportunity.

6 Q. Okay. Now, you heard Dave Severson testify Friday, I
7 guess it was Friday. Their initial contribution to your
8 company was \$50,000?

9 A. Yes, I think so.

10 Q. And not too long after that, a request was made by
11 somebody on your end for another 50.

12 A. Yes, sir.

13 Q. Was that request made by you -- let me ask you this.
14 We've kind of ignored, for the most part, Molly. What was your
15 all's working relationship?

16 A. I mean, I understood it as my obligation was to facilitate
17 customers. You know, try to figure out, you know, every
18 customer has a different specification, you know. And that
19 different specification can be met -- kind of like fixing an
20 egg, it's an egg on a frying pan. I mean, if I want it
21 thoroughly cooked, you know, I'm going to leave the egg on
22 there longer. If I want it sunny side up, you know, so it's a
23 process. It's something that's got to be documented and it's
24 not something you can run -- it's an all-day process.

25 In other words, you know, I'm trying to figure it out. I

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1 get the machine up to operation, temperature takes a half hour,
2 45 minutes, start running product through it. You know, and
3 you start running it at variable temperatures, variable speeds,
4 resident times, and you're still not going to know what you got
5 until a couple days later because you've compiled all this
6 information, take it to get analyzed.

7 Anyway, to go back to answering your question --

8 Q. Let me ask you, what you just described --

9 A. Yes, sir.

10 Q. -- does Molly know anything about that? Does she know
11 anything about doing that?

12 A. I don't know what she knows now, but --

13 Q. That wasn't what she was going to do with the business,
14 right?

15 A. No, sir.

16 Q. Okay.

17 Go on. You were talking.

18 A. So that was my responsibility, you know, just to manage
19 people, train people. Obviously try to bring customers in,
20 trying to figure out what their specifications are, try to meet
21 their specifications. Even Clorox testified it's a long
22 process.

23 I'm an operations guy.

24 Q. You're operations, so what does Molly do?

25 A. She deals, I mean, does the finance.

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1 Q. Okay. What does that mean to you, she does the finance?

2 A. I mean, I don't know how to explain.

3 Q. To the extent that you know.

4 A. Excuse me?

5 Q. To the extent that you know.

6 A. I mean, finance is a person who handles finances.

7 Q. Okay. If money came in from Koch, for example, who got
8 the money?

9 A. The agreement with Koch, it would have come to my account.

10 Q. Okay. Did Molly McKinnon have access to your account?

11 A. I don't think so.

12 Q. Okay. So what did you do with the money when it hit your
13 account?

14 A. It depends on when it actually came. I mean, it would
15 have been -- it would have been different scenarios, I guess.
16 You know, some money would have been reimbursements back to me,
17 some money would have been fuel, some money would have been
18 parts, some money would have been labor. Who knows.

19 I mean, it just -- I would have to go back and look at the
20 budget. Whatever the money was needed for is what it was sent
21 for.

22 Q. When you say money reimbursed to you, what do you mean?

23 A. Along the way, you know, I had -- you know, one thing
24 that, you know, a lot of people has talked about, you know,
25 nobody had any kind of dibs on any kind of, you know, welding

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1 work I do or, for lack of better words, even -- other than
2 whatever was pledged to them. You know, nobody had anything to
3 do with my manufacturing business or dryers.

4 And so, you know, I would fabricate hoppers, screw
5 conveyors, a lot of the components that went with dryers,
6 calciners. And then of course I logged.

7 So if we had a spot where, you know, there was -- you
8 know, payroll checks had bounced or whatnot, you know, I would
9 cover that. In the process of covering that, you know, I
10 wanted to be reimbursed. So I would take -- I would reimburse
11 myself.

12 Q. So you heard the testimony that over a period of time,
13 Koch ended up contributing a little over \$600,000 --

14 A. Yes, sir.

15 Q. -- to your company?

16 A. Yes, sir.

17 Q. Where did that money all go?

18 A. I would imagine a whole lot of it was absorbed the last
19 couple of units that we built. I left -- I just had received a
20 \$9,000 load of metal that got left there. I know there was --
21 seemed like there was another \$15,000 in metal. I would have
22 to go back and look, but I mean, it was all operating expenses.

23 Q. At some point there was some discussion that Koch was
24 requesting documentation to support further infusion of money,
25 right?

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1 A. Yes, sir.

2 Q. What did they ask for? What did they ask you for?

3 A. Are you talking about the one incident they brought up the
4 other day?

5 Q. Well, I don't know. What's that?

6 A. The Nucor stuff?

7 Q. Sure.

8 A. Yeah. So a lot of times, you'll do -- when you're trying
9 it get a customer, I mean, you'll put together a spec sheet.
10 And it will have -- again, it's going to be tailored more to
11 that customer. And, you know, we wanted to set up.

12 You know, I noticed at the bottom of that, there was a
13 specification or something or other about packaging, so a lot
14 of customers want to know what you can package. And we wanted
15 it set up.

16 At that point if I had to do it by hand on 40-pound bags,
17 I probably would have done it, you know. So I think they
18 requested some type of specification and I think that's what
19 was sent.

20 Q. At any time did you provide them falsified information to
21 support money coming back from Koch to you guys?

22 A. No, sir.

23 Q. What other information did you provide to them?

24 A. Most of my conversations with them was, you know, what
25 we're going to do, where we're going to go. I mean, it was

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1 a -- I think initially with Koch, it was trying to get the
2 volume up. You know, their coal in Prestonsburg is real high
3 quality coal and we wanted to try to utilize it, you know. And
4 so we kind of were trying to figure out which product actually
5 to make that's going to create the most value for their
6 products.

7 And I had a couple of companies I had been doing business
8 with that was going to do that -- that deal in steel mills, so
9 they use green pet coke that's been calcined. So me and Koch
10 felt like, you know, we had the pet coke question answered.
11 You know, we just wanted to pursue enhancing this bituminous
12 coal and getting it to a quality.

13 So we were kind of all over the board with what we were
14 going to do. But we ended up, I think in the end we were going
15 to pursue activated carbon.

16 Q. Okay. Was Koch okay with that?

17 A. Yes, sir.

18 Q. Did that work out?

19 A. Well, all this stuff started so nothing worked out.

20 Q. Now, at the point that Koch had given you all a little
21 over \$600,000, did they get any return on their money?

22 A. No, sir.

23 Q. How much longer did you stay in business?

24 A. I actually -- you know, at this point, all this stuff has
25 started so I was, you know, trying to figure out exactly what

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1 was going on. And you know, it's a -- it's a scary situation
2 but at the same time, you know, you have an obligation to
3 people.

4 And just like with Koch, you know, I mean, I don't want
5 to -- I don't want to shortchange anybody. You know, I'm
6 trying to figure all this stuff out, you know. But obviously,
7 you know, you don't want to accept anything else, you know,
8 because it's already bad, you know.

9 So we parted ways, I mean, I thought decently. And I
10 had -- I think their coal operator guys, you know, vouched for
11 me and said, hey, you know, let him get through this and he'll
12 figure it out.

13 Q. At the time that you parted ways, you said amicably or it
14 seemed okay?

15 A. Yeah, I think they -- you know, I think they had received
16 a call and so they lost their internal support obviously after
17 that. And you know, there wasn't really any sense in me trying
18 to -- you know

19 Q. When you say "all this stuff," you mean you began talking
20 to the FBI and that sort of thing?

21 A. Yes, sir.

22 Q. So who are you doing business with at the point that you
23 began talking with the FBI?

24 A. At that point, I think -- I don't know exactly, maybe we
25 were wrapping up -- we were somewhere with Kingsford at that

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1 point. I didn't know if I personally wanted to pursue
2 Kingsford. But I was steering more toward cold feed at that
3 point so I was doing business with Miller Brothers, Hamilton
4 Carbons, and Chemicoyal.

5 Q. These are all people we have not heard from in this case.

6 A. Yes, sir.

7 Q. All right. Let's talk about a couple of problem areas.
8 Who is Dell Jagers?

9 A. He originally was a consultant for KRP. And I think he
10 later, I think Will later put him on the board.

11 Q. So he is with Kentucky River Properties?

12 A. Yes, sir.

13 Q. Now, you saw yesterday an exhibit or -- yesterday -- the
14 other day, where Dell Jagers had asked for some bank records.

15 A. Yes, sir.

16 Q. And you saw an exhibit, and I'm going to put it up here in
17 a minute, it's Government's Exhibit 153, purportedly from you
18 to Mr. Jagers attaching a bunch of bank records.

19 A. Yes, sir.

20 Q. And then Mr. Hubbuch, Agent Hubbuch, spent a lot of time
21 with those, correct?

22 A. Yes, sir.

23 Q. All right. I've just put Government's Exhibit 153 up.
24 Have you seen -- do you remember seeing that exhibit?

25 A. Yes, sir.

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1 Q. Do you remember seeing that?

2 A. Yes, sir.

3 Q. And the -- it says NGI statements at the top?

4 A. Yes, sir.

5 Q. It says from Doug Vance?

6 A. Yes, sir.

7 Q. Nexgen.industries@yahoo.com?

8 A. Yes, sir.

9 Q. Now we've seen an awful lot of emails out of that
10 account --

11 A. Yes, sir.

12 Q. -- this last week or so, haven't we?

13 That was to Dell Jagers. And it has a bunch of
14 attachments that show bank records in 2017, right?

15 A. Yes, sir.

16 Q. It's very short. Read the email.

17 A. "Dell, attached is five months of bank statements. I'll
18 be heading back to Hazard in the morning and will be sending
19 you a moving forward doc sometime tomorrow. Doug."

20 Q. Did you write that email?

21 A. No, sir.

22 Q. How do you know?

23 A. My signature line most always is "Best, Doug Vance" at the
24 bottom.

25 Q. I'm going to take this down for a second. I'm going to

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1 show you what's been introduced as Government's Exhibit 176.

2 Do you recognize that?

3 A. Yes, sir.

4 Q. That says Sales Summary?

5 A. Yes, sir.

6 Q. That's an email -- it's an email from you to Gary

7 Chamblee, correct?

8 A. Yes, sir.

9 Q. Carbon copied to Molly McKinnon?

10 A. Yes, sir.

11 Q. Read that email.

12 A. "I think she was heading to hotel to send over to you.

13 Best, Doug Vance."

14 Q. "Best, Doug Vance."

15 Let me show you what's introduced as Government's
16 Exhibit 177. Actually remember this one coming into evidence
17 because there was comment on you saying "ten 4."

18 A. Yes, sir.

19 Q. That's you, right?

20 A. Yes, sir.

21 Q. Most of time you respond to me, it's ten 4, right?

22 A. Yes, sir.

23 Q. It says "re catching up." You're responding to an email,
24 you're sending this to Gary Chamblee, and just read the email.

25 A. "Ten 4," exclamation mark, "Best, Doug Vance."

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1 Q. And was that one also carbon copied to Molly McKinnon?

2 A. Yes, sir.

3 Q. Let me go back real quick to 153. This is the one
4 supposedly with all the bank statements.

5 That's just from Doug Vance to Dell Jagers, that's not
6 courtesy copied to anybody, right?

7 A. No, sir.

8 Q. You remember seeing all those banks statements?

9 A. Yes, sir.

10 Q. There were like two or three versions of it.

11 A. Yes, sir.

12 Q. Did you, Doug Vance, fabricate any of those bank
13 statements?

14 A. No, sir.

15 Q. Do you know who did?

16 A. No, sir.

17 Q. Had you ever seen them before?

18 A. Not until discovery.

19 Q. And most importantly, did you send them to Dell Jagers?

20 A. No, sir.

21 Q. In reviewing the discovery in this case, had you seen
22 other emails that you had concerns about?

23 A. Yes, sir.

24 Q. Now, had anyone ever said they were getting into your
25 email account and sending emails on your behalf?

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1 A. No, sir.

2 Q. No one's ever told you one way or the other?

3 A. No, sir.

4 Q. How certain are you that you did not send these bank
5 statements to Dell Jagers as reflected in Government's
6 Exhibit 153?

7 A. 100 percent.

8 Q. Have you ever fabricated any bank statements for this --
9 involved in this business?

10 A. No, sir.

11 Q. Have you ever provided any falsified information to
12 anybody involved in this business to support anything that your
13 company has been doing?

14 A. No, sir.

15 Q. You're not disputing that Allan Deware lost a bunch of
16 money?

17 A. No, sir.

18 Q. You're not disputing that the Shumard Group lost money?

19 A. No, sir.

20 Q. You're not disputing that the Kochs lost money?

21 A. No, sir.

22 Q. Kentucky River Properties seems to have been made whole,
23 but you're not disputing that, you know, things didn't work out
24 the way they wanted?

25 A. No, sir.

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1 Q. Okay.

2 MR. DARLING: Your Honor, I think that's all I have at
3 this time.

4 THE COURT: All right. Thank you.

5 MR. DARLING: Thank you.

6 THE COURT: Counsel, do you all need to approach before we
7 start cross-examination?

8 MR. ROSENBERG: No.

9 THE COURT: All right. You're ready to go.

10 Mr. Rosenberg.

11 CROSS-EXAMINATION

12 BY MR. ROSENBERG:

13 Q. Good afternoon, sir.

14 A. Hello.

15 Q. There's a few subjects I think we'll need to cover this
16 afternoon.

17 Let me just start with your testimony about your prior
18 conviction for a felony count of fraudulent conversion.

19 You remember being asked about that --

20 A. Yes, sir.

21 Q. -- right?

22 A. Yes, sir.

23 Q. And that was in Virginia?

24 A. Yes, sir.

25 Q. Was that Tazewell County?

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1 A. Yes, sir.

2 Q. Did I hear you correctly that the reason you pled guilty
3 was that you basically got tired of dealing with the court?

4 A. It was pretty stressful, yes, sir.

5 Q. It was stressful and so you just pled guilty?

6 A. Yes, sir.

7 Q. So to clarify, is your testimony that you were not in fact
8 guilty of that charge?

9 A. Absolutely.

10 Q. You were not guilty of it?

11 A. No, sir.

12 Q. But you pled guilty?

13 A. Yes, sir.

14 Q. And to plead guilty, you were placed under oath, weren't
15 you?

16 A. I don't recall the process. I mean, I know it -- at that
17 time in my life, I didn't really know a lot about the court
18 system. I'm not saying I -- I'm not trying to take the stupid,
19 you know, I was stupid. It was an educated decision, okay?

20 I didn't understand the actual charge. But it was not
21 like your regular plea agreement where you go in and talk to
22 the prosecutor and work out a plea deal. I just went before
23 the judge and pled guilty.

24 Q. My question is, you told the Court under oath that you
25 were guilty of that offense, didn't you?

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1 A. Okay. Yes, sir.

2 Q. But that's not true, is it? You're telling us today that
3 you weren't guilty.

4 A. Yes, sir.

5 Q. So you've lied under oath to a Court before?

6 A. I guess that's one way of looking at it.

7 Q. But we're supposed to believe you under oath today, right?

8 A. I would hope so.

9 Q. When did you pay off that restitution you talked about?

10 A. It took me some time. I had paid, you know, small
11 payments, big payments. I mean, I was counting the process to
12 where sometimes they were three months out, sometimes they were
13 six months out.

14 You know, the minimum payment on the restitution, I think
15 was 100, \$200 a month. Some months I would have to make the
16 minimum and some months I would make larger payments, but it
17 took me some time to pay it off.

18 Q. Who did you make these payments to?

19 A. Tazewell County Court.

20 Q. And so I don't think -- you talked to me there about
21 amounts and whatnot. But I didn't hear any kind of year. Do
22 you have a ballpark of how long that continued until?

23 A. I would think that I probably started paying them in 2016,
24 maybe. I probably paid it off in '17, '18, maybe. It took
25 some time.

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1 Q. Were you on probation for a time?

2 A. Yes, sir.

3 Q. How long did that probation last?

4 A. They got a little confused, I think, in their paperwork.

5 So I think I was to remain on probation until after -- I paid
6 the restitution. Once the restitution was paid, then I would
7 serve whatever sentence the judge give me, which again, he let
8 me do weekends.

9 So I think I was on probation until after I had done my
10 weekends. But there was some confusion somewhere about that.
11 I never really could get the gist of it, to be honest with you.

12 Q. Were you still on probation when you were paying
13 restitution?

14 A. Yes, sir. I was on probation the whole time.

15 Q. So at least until 2017?

16 A. Yes, sir.

17 Q. You used some of the money you received from Koch
18 Industries to pay that criminal restitution, didn't you?

19 A. Yes, sir.

20 Q. Did you tell Dave Severson that you were going to do that?

21 A. I don't recollect that I had to, because I was taking
22 reimbursements for the expenses I had spent on the business.

23 Q. Did you disclose to Ken Shumard that you had this prior
24 conviction for fraudulent conversion?

25 A. Gary Chamblee knew about it.

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1 Q. But did Ken Shumard?

2 A. I have no clue.

3 Q. You didn't tell him?

4 A. No, sir.

5 Q. When did you tell Gary Chamblee that?

6 A. I think when he came to Virginia -- no, actually in
7 Hazard, Kentucky, when we stayed that night at the Quality Inn.

8 Q. What about Allan Deware, when did you tell him about this
9 conviction?

10 A. He learned about that over a beer at El Mariachi in
11 Richlands, Virginia.

12 Q. Before or after he had invested money with you?

13 A. First time I met him, actually.

14 Q. Mr. Severson at Koch?

15 A. I don't know the conversation ever come up.

16 Q. What about Ms. Joan Faybik?

17 A. She's always knew.

18 Q. And when did you tell Molly McKinnon about it?

19 A. Probably in the first couple of meetings with her.

20 Q. Now, you also used money from Koch to make a number of
21 payments to Stephen Gooch, right?

22 A. Yes, sir.

23 Q. And what were these payments for?

24 A. Where I had lost the property, I was -- they had got -- I
25 don't know. I guess they were pursuing a judgment or had

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1 gotten a judgment, I can't remember, but I was trying to pay
2 that debt off.

3 Q. And so that debt, what did that relate to?

4 A. It was the property that they foreclosed on.

5 Q. Prior to your business in Kentucky?

6 A. Yes, sir.

7 Q. Did you tell anyone at Koch that you were going to use
8 their loan money to pay off a prior judgment?

9 A. I had no obligation to.

10 Q. And that's because this money was yours to keep?

11 A. Any money that I used for a personal debt I had already
12 contributed to the company, so I in turn took it back as a
13 reimbursement to me, yes, sir.

14 Q. And will you be able to show the jury where in the
15 agreement with Koch it says you're allowed to reimburse
16 yourself at will?

17 A. Probably not.

18 Q. Probably not, huh?

19 You heard Mr. Severson's testimony in this case, right?

20 A. Yes, sir.

21 Q. You were listening to it?

22 A. Yes, sir.

23 Q. You recall him testifying that if he had known you were
24 taking this money and paying off personal debts, he wouldn't
25 have lent more money to you, right?

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1 A. I believe that's what he said, yes, sir.

2 Q. Do you have any reason to doubt that that's true?

3 A. I would think it would come down to a situation of
4 circumstance. I think if I explained the situation to
5 Mr. Severson, that, hey, I spent \$25,000 on the business and I
6 would like to reimburse myself that 25,000, it's possible. I
7 don't know.

8 Q. But you never did that, did you?

9 A. No.

10 Q. He had no way of knowing you were doing that?

11 A. Different conversations every day, I don't know.

12 Q. Wasn't in the agreement you all put your signatures on,
13 was it?

14 A. Not that I see, no, sir.

15 Q. There's no email from you to Mr. Severson informing him,
16 I'm paying off my prior criminal restitution, I'm paying off
17 this prior judgment?

18 A. No, sir.

19 Q. But Molly knew you were using the money that way, right?

20 A. I assume, yes, sir.

21 Q. Well, she helped you send the money to Mr. Gooch, didn't
22 she?

23 A. Yes.

24 Q. She knew it was coming from the Nex-Gen LLC account that
25 was receiving the loan money from Koch, right?

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1 A. Yes, sir.

2 Q. So even though the signed agreement didn't say anything
3 about that, you still used the money that way, right?

4 A. Yes, sir.

5 Q. So a signed agreement doesn't really mean much to you,
6 does it?

7 A. I think that's a matter of opinion.

8 Q. It's a matter of opinion whether it means much to you or
9 not?

10 A. Yes, sir.

11 Q. Well, you seem to be the best qualified person to let us
12 know.

13 Does a signed agreement mean anything to you or not?

14 A. Yes, sir.

15 Q. What does it mean?

16 A. Just what I said. It's an obligation.

17 Q. But you don't always keep those obligations, do you?
18 We'll need an answer.

19 A. I do when I can. I don't think any human being can meet
20 every obligation or expectation that's set before them.

21 Q. Now, with respect to this money coming in from Koch, you
22 told Christopher Hubbuch, the special agent, that this was a
23 loan, right?

24 A. Yes, sir.

25 Q. Because you know the difference between a loan and sales,

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1 correct?

2 A. Yes, sir.

3 Q. And just explain that difference to the jury for us.

4 A. A loan is something you acquired that you got to pay back,
5 a sale is something you sold that you don't.

6 Q. So you don't have to pay something back if it's a sale,
7 right?

8 A. Yes, sir.

9 Q. And you told Agent Hubbuch that you had informed Gary
10 Chamblee and the Shumard folks that the money from Koch was a
11 loan?

12 A. Yes, sir.

13 Q. You heard testimony from Mr. Chamblee that he was told the
14 money from Koch was sales.

15 Do you recall him testifying about that?

16 A. Yes, sir.

17 Q. And you heard testimony from Mr. Deware as well, correct?

18 A. Yes, sir.

19 Q. And Mr. Deware also said he was told the money from Koch
20 was sales?

21 A. Yes, sir.

22 MR. ROSENBERG: Can we pull up Government's Exhibit 621?
23 Can we look at the bottom half of the page?

24 Q. This email from Ms. McKinnon to Mr. Deware, this was from
25 May of 2017, right?

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1 A. Yes, sir.

2 Q. And her email says that she's been holding off on many of
3 the bills just waiting on the Koch checks to come in.

4 What checks from Koch were you awaiting in May of 2017?

5 A. I can't speak for Ms. McKinnon.

6 Q. Well, I'm asking you.

7 A. Well, I don't know. I would have to go back and look at
8 the loan agreement.

9 Q. Let's do that.

10 MR. ROSENBERG: Let's go to Government's Exhibit 301.

11 Q. I'm going to ask you to remember the date on this email,
12 May of 2017, all right?

13 A. Yes, sir.

14 MR. ROSENBERG: Let's go to the loan agreement.

15 Q. And that very first line, what date is there?

16 A. March 7, 2018.

17 Q. Now, that's after 2017, isn't it?

18 A. Yes, sir.

19 Q. So any checks Ms. McKinnon was telling Allan Deware about
20 could not have been from a loan agreement that didn't occur
21 yet, right?

22 A. Absolutely not.

23 Q. So I'll repeat my question. What checks were you awaiting
24 from Koch in 2017?

25 A. Apparently none.

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1 Q. There were none, were there?

2 So Allan Deware was told a lie, wasn't he?

3 A. I can't speak for Ms. McKinnon.

4 Q. The statement Ms. McKinnon told to Allan Deware was not
5 true, was it?

6 A. Correct.

7 Q. Did you ever tell Molly that -- Molly McKinnon that
8 Nex-Gen was selling products to Koch?

9 A. Say again.

10 Q. Did you ever tell Molly McKinnon that Nex-Gen was selling
11 products to Koch?

12 A. No, sir.

13 Q. Do you have any idea where she would get the notion that
14 Nex-Gen was selling products to Koch?

15 A. You would have to ask her, sir.

16 Q. As far as you know, she just invented that?

17 A. You would have to ask her.

18 MR. ROSENBERG: Go to Government's Exhibit 627. This has
19 already been admitted. If we go to page 7, zoom in on the
20 middle of the January 24th, 2017 transaction.

21 Q. Do you see accounts receivable report for Koch Carbon,
22 \$6,300?

23 A. Yes, sir.

24 Q. Did Nex-Gen actually sell \$6,300 worth of product to Koch?

25 A. No, sir.

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1 Q. And again, do you have any idea where this information
2 would have come from?

3 A. No, sir.

4 Q. So when this was sent to Allan Deware, that was also not
5 true, correct?

6 Nex-Gen -- no Nex-Gen entity had made these sales to Koch
7 Carbon.

8 A. No, sir.

9 Q. So if I understand right, the reason you could take
10 \$25,000 of Koch's money and pay off your criminal restitution,
11 and another 25,000 and more and send that to Stephen Gooch, was
12 that you were allowed to pay yourself some amount of money,
13 right?

14 A. I was taking back money that I had spent on company
15 expenses.

16 Q. And what money did you use to initially pay for those
17 company expenses?

18 A. A portion of it come from the logging proceeds. A portion
19 of it come from screw halters and hoppers and welding I had
20 done.

21 I mean, I had -- just like everybody else involved in
22 this, you know, they've all got other businesses that they tend
23 to that I don't know nothing about it and, you know, I'm not
24 privy to.

25 I mean, they did know what I was doing, as far as welding

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1 and stuff goes. But they are not privy to none of the money.
2 It's not theirs, it's mine.

3 Q. So none of that money came from Allan Deware or Ken
4 Shumard, Joan Faybik?

5 A. Anything that I spent personally, okay, across the board,
6 was money I earned. And if I took any money from a loan
7 agreement, it was a reimbursement back to me over money I had
8 spent to enhance the production capabilities of Nex-Gen
9 Industries or Nex-Gen LLC.

10 Q. But none of that was disclosed to the people providing you
11 the money, Koch Industries?

12 A. I didn't think that they didn't -- it's not a discussion
13 that ever took place. And nobody initiated the discussion, why
14 would I?

15 MR. ROSENBERG: Let's go to Government's Exhibit 301
16 again. Can we go, I believe it's the last pages, Exhibit A?

17 Q. All right. You signed this agreement, right?

18 A. No, sir.

19 Q. No?

20 A. No.

21 MR. ROSENBERG: Scroll back up, please.

22 Q. So someone impersonated your signature here?

23 A. I wouldn't say they impersonated it. But it's not my
24 actual signature.

25 Q. Is this a different person who hacked into your Yahoo

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1 email and sent emails on behalf of you?

2 A. I have no clue about that.

3 Q. So you never agreed to a loan agreement with Koch

4 Industries is your testimony?

5 A. No, I agreed to them.

6 Q. But you didn't sign for it?

7 A. No, sir.

8 Q. And you don't know who did?

9 A. Yes, sir, I do.

10 Q. Who was that?

11 A. Ms. McKinnon.

12 Q. Well, interesting. Does it say here "attorney in fact for
13 Doug Vance"?

14 A. No, sir.

15 MR. ROSENBERG: Can we go to the -- I think it's either
16 the First or Second Amendment to the loan agreement? Keep
17 scrolling down.

18 Q. This note, your signature or not your signature?

19 A. No, sir.

20 Q. Not your signature. Okay.

21 MR. ROSENBERG: Keep scrolling.

22 Q. Here, what's the signature line here?

23 A. Both of them or just the one?

24 Q. Just for Nex-Gen LLC.

25 A. It says "Molly McKinnon, attorney in fact for Doug Vance"

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1 and below that is "name: Doug Vance. Title: President."

2 Q. So your testimony is sometimes when she signs for you, she
3 signs her own name, other times she signs for you she signs
4 your name?

5 A. Yes, sir.

6 Q. But in all instances, she had authority from you to --

7 A. Yes, sir.

8 Q. -- to agree to this?

9 A. I agreed to the loan documents from Koch.

10 Q. All right. Fair enough.

11 MR. ROSENBERG: Go back to Exhibit A then.

12 Q. So in the agreement you testified you agreed to --

13 MR. ROSENBERG: If we could scroll down and look at Use of
14 Proceeds?

15 Q. Do you see that section?

16 A. Yes, sir.

17 Q. All right. Now, maybe I'm missing it, but where does it
18 say the borrower can use the loan to reimburse prior
19 expenditures?

20 A. It doesn't.

21 Q. It does not. So is this one of those agreements that
22 doesn't really matter to you what it says?

23 A. It says, "to sustain its working capital needs." And part
24 of sustaining its working capital needs is when I need to
25 contribute to the business, I do. And then if I reimburse

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1 myself from any loan, I do.

2 It's the only way I can admit it to you, it's what it is.

3 Q. Now, Mr. Severson was under the impression that neither
4 you nor Molly were taking money out of this business, wasn't
5 he?

6 A. It was never discussed with him, no.

7 Q. You don't know of any reason why he would think you and
8 Molly were not taking money out of business?

9 A. That's a hard question to give a straight answer to. I
10 mean, it's just -- it's the only answer I can give you is the
11 same one I just give you. I mean, if I borrow money, you know,
12 Doug Vance is responsible for this at 10 percent interest.

13 And if I --

14 Q. Let me stop you there. The loan is not between you --
15 between Koch and Doug Vance, is it?

16 A. It's probably between Nex-Gen LLC, but Doug Vance owned
17 Nex-Gen LLC. So at the end of the day, I'm still responsible
18 for it.

19 Q. I'm glad you mentioned that. So it's Nex-Gen LLC. Koch
20 took out -- or obtained some security interests in association
21 with this loan, right?

22 A. I would have to go back and look on that.

23 Q. All right.

24 MR. ROSENBERG: Go back up to start at the first page.

25 Q. Security Interest, do you see that on your page?

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1 A. Yes, sir.

2 Q. "Lender is granted a security interest in the calciner
3 units owned by borrower."

4 A. Yes, sir.

5 Q. So Koch did take a security interest?

6 A. Yes, sir.

7 Q. Now, help me understand. Did Nex-Gen LLC, owned by Doug
8 Vance, own some calciners separate and apart from calciners
9 that were committed to Allan Deware's company?

10 A. Absolutely.

11 Q. Did it own a different calciner that was -- than what was
12 committed to the NexGen Energy Partners?

13 A. Absolutely.

14 Q. So how many calciners were there?

15 A. Ten in total.

16 Q. Ten calciners?

17 A. Yes, sir.

18 Q. Where were they all located?

19 A. Two sat in Ashland, Kentucky. One currently sitting in
20 Virginia. Two are in KRP's property. And another two that's
21 dismantled on KRP's property. A small unit, Junior, I donated
22 to the University of Kentucky, Mr. Rick Honaker. And I'm
23 thinking there is probably another -- the portable one is
24 sitting behind Clinch Valley, it's a welding shop there in
25 Richlands or Claypool Hill, that's one of the prototypes. So

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1 there's ten altogether.

2 Q. Ten altogether?

3 A. Yes, sir.

4 Q. How many of those existed in August of 2016?

5 A. In August of 2016, there would have been four.

6 Q. And those were all committed to which company?

7 A. Three, I think, were committed -- actually, the three
8 portable ones, mobile ones, prototypes, whatever you want to
9 call them, they were committed to Allan. And Junior was
10 committed to Allan.

11 And then two, I think, was committed to Shumards.

12 Q. Now, both your agreements to Allan and your agreements to
13 Shumards both said you would contribute all the assets?

14 A. No, sir.

15 Q. They didn't say that? The agreements did not say that?

16 A. They said current assets.

17 Q. All current assets.

18 A. If I'm building a rotary calciner or rotary dryer, that's
19 not actually an asset of the company. That's something Doug
20 Vance is building to sell for hisself.

21 Q. But the -- there was equipment that existed.

22 A. Yes, sir.

23 Q. How is it possible to commit that same equipment to
24 both --

25 A. It's not.

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1 Q. -- Allan Deware and the Shumards?

2 A. It's not.

3 Q. It's not, is it?

4 All right. Now, I had asked you why Mr. Severson would be
5 under the impression that you and Molly were not taking money
6 out of the business. Right?

7 A. Yes, sir.

8 Q. I think you didn't really have an answer for that, did
9 you?

10 A. No, sir.

11 Q. Let me see if I can maybe give you a suggestion.

12 MR. ROSENBERG: Can we show what's been admitted as
13 Government's Exhibit 129?

14 Q. Are you familiar with this document, sir?

15 A. I would have to see the actual document.

16 Q. Well, this has been admitted into evidence. We're showing
17 it to you. We're showing it to you now.

18 A. Sir, I see it.

19 Q. This was an email from you to Mr. Severson, right?

20 A. Yes, sir.

21 Q. Now, I don't see anywhere where it says "Best, Doug Vance"
22 on it, but you're not contesting that you sent this, are you?

23 A. I don't see anything on here except the heading and who it
24 was from and to. I don't see any -- I don't see anything.

25 Q. You just sent him these attachments, didn't you?

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1 A. I don't see the attachments, sir.

2 Q. We'll scroll to the first page and show you.

3 All right. Do you see that? We'll make it bigger for
4 you.

5 A. Yes, sir.

6 Q. So you sent Mr. Severson this attachment.

7 A. It looks like something I probably would have sent, yes,
8 sir.

9 Q. And you sent it even though your "Best, Doug Vance"
10 signature line wasn't on the underlying email, right?

11 A. I'm assuming, so, sir.

12 Q. So it's not true that every single email you sent has
13 "Best, Doug Vance" on it?

14 A. I don't think I testified that every single email I sent
15 has "Best, Doug Vance." Typically, it does.

16 Q. But wasn't that the entire basis for why you contend the
17 email to Dell Jagers wasn't from you?

18 A. You'd have to have that discussion with Mr. Darling.

19 Q. With Mr. Who?

20 A. Mr. Darling. I mean, I send emails, you know, most of
21 them, most of them are sent, "Best, Doug Vance."

22 Q. You told this jury you were 100 percent certain that you
23 did not send that email to Dell Jagers.

24 A. I did not send that email. I am 100 percent certain. I
25 would have at the minimum put "Doug Vance." I might not have

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1 put "Best," but I probably would have put Doug Vance.

2 Q. On the email to Dell Jagers?

3 A. Yes, sir.

4 MR. ROSENBERG: Let's put a pin in that. First, let's go
5 back to the attachment here.

6 Q. Now, this document you sent to Mr. Severson, what does it
7 say about Doug's salary and Molly's salary?

8 A. Zero, zero.

9 Q. You think it's fair for Mr. Severson to take from this
10 that you and Molly were not taking money out of the loan
11 proceeds?

12 A. There's a difference between salary and reimbursement from
13 money you spent on the operating.

14 Q. You never told him you were getting reimbursements from
15 the Koch money, did you?

16 A. I didn't know that I had to, honestly.

17 Q. All he knows is, Doug, zero dollars; Molly, zero dollars.

18 A. Contingency could have been 2,000. I mean, that could
19 have been it.

20 Q. You took a lot more than \$2,000 now, didn't you?

21 A. Over the course of the whole career, I would say I'm in
22 the hole worse than anybody.

23 Q. You're the victim here, right?

24 A. I don't think anybody's a victim here.

25 Q. Now, you testified about those Nucor spec sheets, didn't

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1 you?

2 A. Yes, sir.

3 Q. And I believe it was your testimony that you never
4 provided falsified information to Koch, Mr. Severson?

5 A. Yes, sir.

6 Q. Right?

7 Remind me, you're admitting that you and Molly created
8 that spec sheet?

9 A. I didn't admit to anything.

10 Q. Oh. So you and Molly did not create the spec sheet that
11 you sent to Mr. Severson?

12 A. If you go back and look at Ms. McKinnon's email -- or her
13 reply or response back to me, and said the one you sent me
14 looked like it came from a seller, so obviously I don't recall
15 the one I sent her, but obviously the one I sent her looked
16 like it came from a seller. So I don't know how to explain
17 that any different than that.

18 Q. Well, we're going to need a little clarity.

19 A. Okay.

20 Q. So the spec sheet that you sent Mr. Severson, is it your
21 testimony that that, in fact, came from Nucor Steel?

22 A. No, sir.

23 Q. It did not?

24 A. No, sir.

25 Q. You and Molly, one of you, made it up, created it?

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1 A. The only thing I know is I did not create it.

2 Q. But you know Nucor didn't create it.

3 A. Yes, sir, I know they didn't.

4 Q. Okay.

5 MR. ROSENBERG: Let's look at, first, the request from
6 Mr. Severson, this has been admitted as Government's
7 Exhibit 143.

8 Q. We've all seen this email. In point 3 of Mr. Severson's
9 email, he asks for, "Official specification sheet from Nucor
10 for the material Nucor intends buy from Nex-Gen."

11 When he said "from Nucor," what did you understand that to
12 mean?

13 A. To be from Nucor.

14 Q. All right. Not something different than a spec sheet that
15 just gets created out of thin air, right?

16 A. I assumed official specification sheet from Nucor will be
17 on Nucor letterhead.

18 Q. Right. With a Nucor logo?

19 A. Right.

20 MR. ROSENBERG: Let's go to Government's Exhibit 148.

21 Q. Who is this email to you from?

22 A. Ms. McKinnon.

23 Q. And this is regarding those Nucor spec sheets, isn't it?

24 A. Yes, sir.

25 Q. She said, "Also, I used logo that is on their website

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1 instead of one in text."

2 Do you see that?

3 A. Yes, sir.

4 Q. So she was telling you that she created these spec sheets,
5 right?

6 A. I assume.

7 Q. Well, don't assume. Is she telling you she created these
8 or not?

9 A. Yes, sir.

10 Q. She is. And she's telling you she used Nucor's logo,
11 right?

12 A. Yes, sir.

13 Q. And you just agreed that using Nucor's logo makes it look
14 like it came from Nucor?

15 A. No.

16 Q. No?

17 A. No, sir.

18 Q. You didn't just testify to that?

19 A. No, sir. I've seen spec sheets. And typically their
20 logos -- the spec sheet will be well designed. Typically, it's
21 going to be on letterhead, you know, what -- there is a
22 difference between logo and a letterhead, so

23 And you know all this. I mean, it's going to have their
24 letterhead up here. It's going to be addressed to somebody.
25 It's going to have a listing of specifications. I mean, that's

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1 not on Nucor's letterhead. It don't even look like a spec
2 sheet -- I mean, I guess it looks like a spec sheet, but it's
3 not on Nucor letterhead.

4 Q. Let's look at one of them.

5 MR. ROSENBERG: Let's go to the next page.

6 Q. Whose logo is on here?

7 A. Nucor.

8 Q. Anyone else's letterhead on there?

9 A. No, sir.

10 Q. Anyone else's logo on there?

11 A. No, sir.

12 Q. Is there anything else on this document to indicate that
13 anyone other than Nucor created it?

14 A. I think originally --

15 Q. Please just answer the question.

16 Is there anything on this document to indicate that
17 someone other than Nucor generated it?

18 A. No, sir.

19 Q. And you agreed with me that Mr. Severson was expecting to
20 receive a spec sheet that came from Nucor, right?

21 A. I agree that he said original certification spec sheet.
22 That's not an original certification spec sheet.

23 Q. Well, let's go back to the email.

24 MR. ROSENBERG: Go back to 143.

25 Q. He said "official specification sheet from Nucor."

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1 A. Yes, sir.

2 Q. Right?

3 A. Yes, sir.

4 Q. You agreed that he expected it to come from Nucor, right?

5 A. Yes, sir.

6 Q. And the spec sheet that Ms. McKinnon sent to you has

7 Nucor's logo, right?

8 A. Yes, sir.

9 Q. And nothing else to indicate that it came from anyone
10 other than Nucor, correct?

11 A. Correct.

12 Q. All right. So you took that spec sheet and you sent it to
13 Dave Severson, didn't you?

14 A. I can't honestly say.

15 MR. ROSENBERG: Let's go to Government's Exhibit 166.

16 Q. Who did you send this email to?

17 A. It's from Doug Vance to Dave Severson.

18 MR. ROSENBERG: Can we go to the first page of the
19 attachment?

20 Q. There is that spec sheet again, right?

21 A. Yes, sir.

22 Q. So you sent the spec sheet that Ms. McKinnon had sent you
23 on to Dave Severson?

24 A. Again, I can't attest to that. Most of the time when I
25 sent an email, it has a signature line that says, "Best, Doug

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1 Vance."

2 Q. So are you really denying to this jury that you sent that?

3 A. I'm not going to accept responsibility for it. I can't
4 actually deny it. I mean, I can't answer your question -- the
5 only way I can answer your question honestly is to say I do not
6 recall sending this email. I do not think I sent this email.

7 Q. Why do you not think you sent this email?

8 A. Because most of my emails will have "Best, Doug Vance" or
9 at the minimum "Doug Vance" on them.

10 Q. That's the reason, and not because it's clear that this
11 was a fabricated document sent to Mr. Severson?

12 A. Sir, I don't know if it's fabricated or it's not. This is
13 not -- if -- based on what Mr. Severson asked, okay, this is
14 not what I would send him anyway. This is typically something
15 that you would put a Nucor logo at the top of it to patch onto
16 a five-gallon bucket and send to Nucor.

17 Because you need to talk to Nucor first to find out the
18 specifications they want.

19 Now, these numbers down here was sent to me by a guy who
20 brokers product to Nucor. They are going to be all over the
21 board because --

22 Q. My question, sir.

23 A. Yes, sir.

24 Q. You're denying to the jury that you sent this Nucor spec
25 sheet to Dave Severson? Yes or no.

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1 A. I can say 100 percent I did not fabricate this. I cannot
2 recollect if I sent it. I do not think I sent it because my
3 signature line is not on the email.

4 Q. Some mysterious person got into your email and was
5 communicating with Dave Severson?

6 A. I don't know that you can call it communication. I mean,
7 there's nothing wrote on it. This is somebody sent him a
8 picture of something.

9 Q. Someone other than you sent that to him?

10 A. I'm thinking so, yes, sir.

11 Q. Just like someone other than you sent the falsified bank
12 statements to Dell Jagers, right?

13 A. I know so, yes.

14 Q. Yeah. It's just amazing each time there is a falsified
15 document sent from your email account, those are the emails
16 that aren't from you, right? Correct?

17 A. Ironic, I assume.

18 Q. Is that a yes?

19 A. Yes, what?

20 Q. That every time a falsified document was sent from your
21 email account, it was sent by someone other than you.

22 A. If it was a falsified document, it most certainly was sent
23 by somebody other than me.

24 Q. But you don't know who?

25 A. No, sir.

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1 THE COURT: Mr. Rosenberg, we can take a break when you
2 get to a convenient stopping point.

3 MR. ROSENBERG: I think right now is a good time.

4 THE COURT: Is now a good time? All right.

5 Ladies and gentlemen, we will take about a 20-minute
6 recess. Please keep in mind the admonitions you were given
7 previously. Please don't discuss the case among yourselves
8 while we are in recess.

9 The jury will be excused for 20 minutes.

10 (Jury left courtroom at 2:45 p.m.)

11 THE COURT: Any matters to take up outside the presence of
12 the jury?

13 MR. ROSENBERG: No, Your Honor.

14 THE COURT: We will be in recess until 3:05 this
15 afternoon.

16 (A recess was taken from 2:46 p.m. to 3:04 p.m.)

17 THE COURT: All right. Thank you. All jurors are
18 present. Defendants and all counsel are present.

19 Mr. Vance, you are reminded you are still under oath.

20 THE WITNESS: Yes, sir.

21 THE COURT: We will continue with cross-examination of the
22 witness, Mr. Rosenberg.

23 BY MR. ROSENBERG:

24 Q. All right. Mr. Vance, I want to ask you about AK Steel.

25 A. Yes, sir.

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1 Q. Specifically, the cashier's checks that were provided to
2 the Shumard folks with AK Holdings in the remitter.

3 Do you know the checks I'm referring to?

4 A. Yes, sir.

5 Q. The money for those checks did not come from sales to
6 AK Steel, right?

7 A. No, sir.

8 Q. They did not.

9 That money actually came out of the Koch loan money,
10 didn't it?

11 A. I would have to get an exact figure on that, but I'm sure
12 most of it did.

13 Q. Most of it came from the Koch loan money, right?

14 A. Yes, sir.

15 Q. And you would agree with me that in the Koch loan
16 agreement, there was nothing in there that said you could take
17 the Koch money and return chunks of it to your other investors,
18 right?

19 A. A portion of that is actually operating capital. That is
20 a company expenditure. You're making a loan payment for the
21 company.

22 Q. Say that again.

23 A. There was a company expense, it was a company loan
24 payment.

25 Q. A company loan payment?

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1 A. Yes, sir.

2 Q. So where in the agreement with Koch does it say you can
3 use Koch's loan money to pay off prior loans?

4 A. Most likely it doesn't.

5 Q. It doesn't, does it?

6 So once again, you've used Koch money in a way not
7 contemplated by that agreement, right?

8 A. I'm sure a portion of it. I don't know how much.

9 Q. Now, did the Shumard folks know that you were paying back
10 their loans as opposed to just reporting and transferring
11 income from sales?

12 A. That's what was expressed to me, yes, sir.

13 Q. They understood that?

14 A. Yes, sir.

15 Q. They knew that this was coming from a new loan, not from
16 sales to AK Steel?

17 A. I don't know -- I never expressed to them where it was
18 coming from, so I couldn't answer that question honestly.

19 Q. Who put AK Holdings in the remitter?

20 A. The bank.

21 Q. Who instructed the bank to put AK Holdings in the
22 remitter?

23 A. That would have been me.

24 Q. You did?

25 A. Yes, sir.

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1 Q. If this money did not come from sales to AK Steel, why did
2 you put AK Holdings in the remitter?

3 A. The way that it was explained to me was that on occasion
4 they would take money from other companies that they had owned,
5 or some portion of it, and they wanted to put that money back
6 so they had to allocate it properly. And they want to keep --
7 I guess to keep track of it that way.

8 Q. Sorry, who is "they"?

9 A. Shumards.

10 Q. So you were instructed by the Shumards to misrepresent
11 what the source of this money was?

12 A. I wouldn't say it was a misrepresentation, no, sir. It's
13 got my account number all over it. I mean, it was -- it
14 obviously come out of my account.

15 Q. Well, the check in the remitter says AK Holdings, right?
16 Fair to say if someone's looking at a check with the remitter
17 as AK Holdings, they might think the money came from
18 AK Holdings?

19 A. I assume that would be a fair statement. I guess.

20 Q. Nowhere on the check does it say anything about loan money
21 from Koch, right?

22 A. I have yet to see the check that says it's loan money from
23 Koch.

24 Q. You agree that statements were made to the Shumard folks,
25 including Gary Chamblee, that sales were being made to

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1 AK Steel?

2 A. I don't know what reports they were getting.

3 MR. ROSENBERG: Can we call up Government's Exhibit 152?

4 Q. See if this refreshes your memory.

5 A. Yes, sir.

6 Q. Do you see in the middle of the page the email from Molly

7 McKinnon to Gary Chamblee?

8 Do you see that?

9 A. Yes, sir.

10 Q. Do you see who is copied on it?

11 A. Yes, sir.

12 Q. Who?

13 A. It's to Gary Chamblee and cc Doug Vance.

14 Q. And what does point number 3 say from Molly's email to

15 Gary that you were copied on?

16 A. "AK Steel started hauling and should have accepted
17 delivery of their 500 tons within the week and we can invoice
18 them."

19 Q. Invoices are issued to people who buy product from you,
20 right?

21 A. Typically, yes, sir.

22 Q. And product, 500 tons of product being delivered, fair to
23 say that's also consistent with a sale occurring?

24 A. Yes, sir.

25 Q. So you agree with me then that Gary Chamblee would be

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1 under the impression that Nex-Gen was selling to AK Steel,
2 right?

3 A. Yes, sir.

4 Q. And he was later provided checks with AK Holdings in the
5 remitter line, right?

6 A. Yes, sir.

7 Q. All of that would be consistent with sales being made to
8 AK Steel, right?

9 A. I can't honestly answer that. I mean, AK Holdings was
10 supposedly a company that they had partial interest in in
11 Macon, Georgia.

12 Q. So AK Holdings had nothing to do with AK Steel; is that
13 your testimony?

14 A. No, sir. I'm just telling you what they told me. I don't
15 know anything about AK Holdings, other than what Mr. Dave
16 Chmielewski said the other day about AK Holdings was a mother
17 company to AK Steel.

18 Q. Well, you know that you and Molly were reporting to
19 Mr. Severson that you were making sales to AK Steel too, right?

20 A. I hadn't reported anything, sir.

21 Q. Well, Mr. Severson said that you gave him the information
22 for the original customer list.

23 Do you recall that?

24 A. I get a lot of inquiries about, you know, customers. I
25 mean, people ask who are customers. It's

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1 Q. Are you denying that you told Mr. Severson that AK Steel
2 was a customer?

3 A. I may have said AK Steel could be a potential customer.

4 Q. But they -- AK Steel was listed as an actual sale, an
5 actual customer in representations to Mr. Severson, weren't
6 they?

7 A. Would that be something I sent? I would like to see that.

8 MR. ROSENBERG: Let's go to, I believe it's Government's
9 Exhibit 171.

10 Q. So this email from Molly to Dave with you copied, going
11 down to point 3, you agree this is represented as NGI actual
12 sales, right?

13 A. What the email says, yes, sir.

14 MR. ROSENBERG: If we could go to the attachments? Let's
15 stop there.

16 Q. You agree this was presented as actual sales, right?

17 A. I'm assuming so.

18 Q. Well, let's not assume. Let's look at the top. What's
19 the label at the very top in the middle?

20 A. It says Actual Sales.

21 Q. Okay. So we don't need to assume, right?

22 A. Yes, sir.

23 Q. It's presented as actual sales?

24 A. Yes, sir.

25 Q. Real sales to real customers?

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1 A. Yes, sir.

2 Q. And is AK Steel listed as one of those real sales to real
3 customers?

4 A. They are indicated in color coded here blue, I would
5 assume, yes, sir.

6 Q. And there is corresponding blue in that table reporting
7 specific tonnage, specific price, and total dollar amount,
8 right?

9 A. Yes, sir.

10 Q. And you were copied on this email, right?

11 A. Apparently so.

12 Q. At what point did you inform Mr. Severson that AK Steel,
13 that wasn't actual sales?

14 A. I don't recall I ever had that conversation.

15 Q. Never did that, huh?

16 Let's turn to Kingsford charcoal. You testified that
17 Nex-Gen did sell some test samples to Kingsford, right?

18 A. Yes, sir.

19 Q. Those were the only sales, just the test samples, right?

20 A. No, we actually sold them --

21 Q. Sawdust?

22 A. Excuse me?

23 Q. Sold them sawdust as well?

24 A. Yes, sir.

25 Q. In terms of coal product, those test samples were the only

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1 sales of coal product you made to Kingsford, right?

2 A. Yes, sir.

3 Q. And that was in 2018, right?

4 A. Yes, sir.

5 Q. I think you said it was maybe 70-plus tons?

6 A. 71.6.

7 Q. 71.6 tons. You didn't get them to them on the schedule as
8 promised though, right?

9 A. Of course not.

10 Q. No. Now, you had previously told Jean Lacy that you were
11 producing 1,500 tons per month, didn't you?

12 A. Yes.

13 Q. That wasn't true, was it?

14 A. It depends.

15 Q. What does it depend on?

16 A. Which product she wanted.

17 MR. ROSENBERG: Well, let's look at Government's
18 Exhibit 184.

19 Q. "Jean, please see attached."

20 Are you denying that you sent this email to Ms. Lacy?

21 A. I would have to see what it is, actually. Calcined coal.

22 Q. So what's your position on this? Is this an email from
23 you?

24 A. If I could see the attachment, I could tell you.

25 Q. Okay.

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1 MR. ROSENBERG: Let's go to the attachment, page 2.

2 Q. All right. Yes or no on whether you sent this email to
3 Jean Lacy?

4 A. This is actually my document, obviously. I don't recall
5 the email. This is something I probably had -- may have done
6 this on my notes on my phone. But yes, I did write this.

7 Q. You drafted this letter --

8 A. Yes, sir.

9 Q. -- to Ms. Lacy. You don't know whether you actually
10 emailed it to her?

11 A. I don't recall if I actually emailed it, but I did draft
12 this letter. Yes, sir.

13 Q. But you agree there is an email from your account to Jean
14 Lacy with this attachment?

15 A. Yeah. "Our current production is 1,500 tons per month and
16 will be increased over the next several months accordingly.
17 Our pricing loaded at the plant is as follows."

18 And then it gives the specifications.

19 Q. Well, you specified that this was calcine coal products,
20 right?

21 A. I said "NGI is now producing calcined coal products at our
22 Hazard location."

23 Q. Right. So that's the 1,500 tons per month, right?

24 A. No, sir.

25 Q. Oh. So where did you refer to a different product other

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1 than calcined coal?

2 A. I didn't.

3 Q. So what does the 1,500 tons refer to?

4 A. It's a combination of anthracite coal and calcined coal.

5 Q. But it doesn't say that, does it?

6 A. It doesn't have to.

7 Q. Well, what does it say, "calcined coal," right?

8 A. The first part says "NGI is now producing calcined coal
9 products at our Hazard Kentucky location." Period.

10 Q. Right. And then you go on to say, "Our current production
11 is 1,500 tons per month."

12 A. It was.

13 Q. Are you telling this jury that someone reading that letter
14 should not believe that you're saying we can do 1,500 tons of
15 calcined coal?

16 A. Someone who is educated in the process and understands,
17 yes. That's exactly what I'm saying, yes, sir.

18 Q. That someone reading this letter would not think you're
19 referring to calcined coal when you say 1,500?

20 A. That's exactly what I'm saying.

21 Q. They should somehow assume you meant some other kind of --

22 A. Jean Lacy certainly would because she knows coal
23 qualities.

24 Q. Who?

25 A. Jean Lacy. She knows coal qualities, anthracite coal.

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1 Q. But you never say anthracite coal in this letter, do you?

2 A. I don't have to. The specification is what people are
3 going to be concerned about. It doesn't matter what the source
4 is.

5 Q. So your testimony is that you are producing 1,500 tons of
6 whatever this unspecified coal blend is, that's what you were
7 producing at the Hazard, Kentucky location?

8 A. My testimony is that 1,500 tons per month was available at
9 any point Kingsford or any other company wanted it at those
10 specifications. That is my testimony.

11 Q. But the letter says "our current production." Not what's
12 available, "our current production," right?

13 A. That was the current production.

14 Q. You were producing 1,500 tons per month at the Hazard,
15 Kentucky location?

16 A. Yes, it's -- can I explain?

17 Q. Please.

18 A. Producing, okay, is a combination of many things.
19 Producing can be as simple as blending. So if I produce
20 500 tons of calcined product, and I blend it back with a
21 thousand ton of another product, and I end up with these
22 specifications, then yes, we are producing 1500 tons per month
23 of that product.

24 Q. Your testimony is that is what you were doing in 2017?

25 A. Yes, sir.

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1 Q. At that volume?

2 A. Yes, sir.

3 Q. So when Mr. Miller testified that you all weren't
4 producing any kind of coal product in that range, he must have
5 been mistaken, right?

6 A. I think most of the questions that has been asked had been
7 tailored and geared toward --

8 Q. Well, I ask the specific question here.

9 When Mr. Miller testified --

10 A. I'm answering your first question.

11 Q. When Mr. Miller testified that he -- his entire time at
12 Nex-Gen saw nothing like that level of production, he was lying
13 to the jury?

14 A. You need to let me answer your question, okay?

15 Q. Well, that was the question.

16 A. I'm not going to call Mike a liar because Mike don't
17 understand. And most of your questions have been geared toward
18 char production and the throughput of the unit.

19 I don't think anybody can deny, you know, that a lot of
20 coal moved through the property and away from the property. A
21 lot of pet coke moved to the coal and from the property. You
22 know, all of them are contributions to the grand scheme of
23 overall production.

24 Mike and them was involved in learning how to produce
25 char, a char product. They weren't technically involved in

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1 blending -- you know, it's like baking a cake. You know,
2 little ingredient here, little ingredient there. I mean, the
3 overall -- this statement is true, I am testifying to that.

4 Q. 1,500 tons per month was going out from your facility?

5 A. I'm saying our current production is 1,500 tons per month.
6 So for --

7 Q. Who is that 1,500 tons going to?

8 A. Whoever wanted it that was going to pay for it.

9 Q. But no one was really paying for it, were they?

10 A. You know, I think Jean Lacy attested that it takes some
11 time to get a contract with Kingsford and, you know, they want
12 to see that you're producing.

13 Q. And they wouldn't make a commitment until they did that
14 full process, right?

15 A. Yes, sir.

16 Q. That's right. So if someone had said that Kingsford had
17 made a commitment to purchase from Nex-Gen in 2017, that
18 wouldn't be true, would it?

19 A. There was ongoing discussions, yeah. You know, we
20 talked -- initially talked to brokers for Kingsford as far back
21 as '15.

22 Q. Well, my question is, there was no commitment from
23 Kingsford to purchase from Nex-Gen in 2017; isn't that right?

24 A. I'm not -- you would have to be more specific about your
25 question. Yes, there was a verbal commitment to purchase

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1 something. Volumes, prices, qualities, all of that is much
2 later.

3 Q. In 2017, you had a verbal commitment from Kingsford to
4 purchase from Nex-Gen?

5 A. Yes, sir.

6 Q. So when Jean Lacy testified otherwise, again, that must
7 have been a lie?

8 A. According --

9 THE DEFENDANT: Do I have to answer the question?

10 THE COURT: Yes, sir, you are to answer the question.

11 A. Many people, many brokers was involved that -- in this
12 process. So whether that statement come directly from Jean, I
13 couldn't honestly say. But yeah, we had a verbal commitment.

14 Q. And so when Ms. Lacy testified that no such commitment
15 existed, that was a lie to this jury?

16 A. I'm not calling anybody a liar. I'm just simply stating
17 we had a verbal commitment -- I don't know -- from brokers to
18 sell the product to Kingsford.

19 Q. Brokers, not from Kingsford.

20 A. I was talking to Kingsford in 2017. I'm sure there's
21 emails probably in discovery for that.

22 Q. You were talking to Ms. Lacy, though, right?

23 A. I don't remember who I talked to. I mean, we talked to so
24 many people. Jean Lacy got involved at the very last half of
25 it where we were, you know, trying to get geared up to get the

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1 product qualified.

2 Q. Well, now, hold on. Let's look at the first page of the
3 exhibit on our screen here.

4 This email from you to Ms. Lacy is all the way back in
5 April 2017, right?

6 A. That's where I'm getting a little bit confused about your
7 question. I mean, I was talking to her then. I was talking to
8 Kingsford in '17, so I don't understand what you want me to --

9 Q. You agree with me there is a difference between talking to
10 somebody about potential sales and getting a verbal commitment
11 from them to actually buy your product, right?

12 Those are two different things?

13 A. Correct.

14 Q. Thank you. Okay.

15 MR. ROSENBERG: Let's look at Government's Exhibit 602.

16 Q. You recognize this document, sir?

17 A. Yes, sir.

18 Q. What is it?

19 A. Honestly, I'm not going to be able to read it. But it's a
20 Nex-Gen Industries, Incorporated investment summary.

21 MR. ROSENBERG: If you could just zoom in on the very
22 bottom, please? "Please contact."

23 Q. Who does this document instruct to contact regarding this
24 investment opportunity?

25 A. Doug Vance or Molly McKinnon.

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1 MR. ROSENBERG: Go to the middle of the document,
2 "Business Strategy."

3 Q. Now, this document says "Due to the fact that sales have
4 exceeded their production capabilities, Kingsford Charcoal
5 recently issued verbal commitments to purchase a variety of
6 wood and coal-based product from NGI."

7 A. Correct.

8 Q. "Kingsford has indicated they will initially purchase
9 small amounts of charcoal, wood chips, and other products to
10 give NGI time to build and deploy their mobile machines in
11 several locations to take advantage of a variety of feedstocks
12 but will quickly ramp up afterwards."

13 You agree there's nothing in here about, well, the
14 commitment came from brokers, not Kingsford. Doesn't say
15 anything like that here, right?

16 A. It's not specific, no. I mean, this --

17 Q. It says "The commitment" --

18 A. This came through charcoal, yes, sir.

19 Q. Right.

20 A. But, you know, if I'm dealing with brokers who were
21 selling to Kingsford Charcoal, then, you know, it's -- I don't
22 guess I got into the specifics of who the actual brokers are.

23 Q. You didn't actually have these commitments, did you?

24 A. I've had --

25 Q. You wanted them, right?

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1 A. Excuse me?

2 Q. You wanted these commitments, didn't you?

3 A. We got to the point we had a commitment. They bought
4 three test loads, four test loads actually.

5 Q. This didn't occur until 2018.

6 A. I think Jean Lacy attested that it takes a long time to
7 get this process done with Kingsford, so it's to be expected.
8 I think she actually even give you times. And that she said
9 nine out of ten businesses fail due to quality control or
10 financing.

11 And I think she agreed that our quality was perfect. So
12 that should tell you where the problem lies. But yeah, it
13 takes a long time to deal with Kingsford. And typically you're
14 going to start with a broker.

15 Q. You didn't actually have these commitments, did you?

16 A. I've had a lot of commitments. Some pan out, some don't.

17 Q. You were trying to use the name of Kingsford Charcoal to
18 get money from other investors, weren't you?

19 A. I don't need to.

20 Q. Then why did you list it in this investment product?

21 A. Because that's where the end product was going to go.

22 Q. I want to turn to Kentucky River Properties. Now, you
23 testified just before our break that you do understand the
24 difference between a loan and a sale, right?

25 A. Yes, sir.

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1 Q. All right. On direct examination, you testified that,
2 with respect to KRP, you prefer not to think of it as a loan.

3 A. Yes, sir.

4 Q. Does what you prefer to think or not think about it change
5 the fact that it was a loan?

6 A. Don't amount to a hill of beans.

7 Q. No. It was a loan, wasn't it?

8 A. Yes, sir.

9 Q. But you told Agent Hubbuch -- in your call back in
10 December of 2018, you told him that it wasn't a loan, it was
11 for building them a unit?

12 A. Which is what we done.

13 Q. They weren't buying a unit from you, were they?

14 A. Read the loan agreement.

15 Q. Read the loan agreement?

16 A. Nobody said they was buying a unit. They were paying
17 \$170,000.

18 Q. They were loaning \$170,000, correct?

19 A. Loan, pay, however you want to say.

20 Q. Well, hold on, hold on.

21 A. Okay. We'll say loan.

22 Q. No. You just testified there is a clear difference
23 between a loan and a sale. Right?

24 A. Yes, sir.

25 Q. You've been in business a long time.

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1 A. Yes, sir.

2 Q. You know the difference.

3 A. Yes, sir.

4 Q. When I loan you money, what is my expectation?

5 A. Can I correct the sale part first, please?

6 Q. We'll get there.

7 When I loan you money, what is my expectation?

8 A. You're loaning me money and you need to be paid back.

9 Q. Money is going to come back to me?

10 A. Yes, sir.

11 Q. When I buy a product that you're building, do I expect the
12 money to come back?

13 A. No, sir.

14 Q. So there is no doubt that the agreement with KRP was a
15 loan, right?

16 A. Yes, sir.

17 Q. So why did you tell Chris Hubbuch, Agent Hubbuch, that it
18 wasn't a loan?

19 A. Because technically it wasn't a sale neither, so

20 Q. We know it wasn't a sale.

21 A. Yes, sir.

22 Q. It was a loan.

23 A. But when you're stacking up the two, disagreement with
24 somewhat of a hybrid. So yes, it could be said 100 percent
25 that it was a loan.

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1 Q. There was a demand note, correct?

2 A. Yes, sir.

3 Q. Which identified Nex-Gen as the borrower or debtor.

4 A. Yes, sir.

5 Q. How many times when you have bought an item do you use a
6 demand note?

7 A. I'm not disputing the fact that it was a loan. I'm just
8 trying to explain to you how the loan came about and what the
9 overall understanding -- yes, I agree 100 percent it was a
10 loan.

11 Q. Did you disclose this loan to Koch when you borrowed their
12 money?

13 A. I would imagine not, because again -- probably not.

14 Q. Even though your agreement with Koch said that they would
15 be the sole lender.

16 A. KRP was not lending me money to promote the business as
17 much as they was to promote the production capacity.

18 Q. It's hard to keep up with all these misrepresentations,
19 isn't it?

20 A. I think that's the truth of it.

21 Q. Yeah.

22 Now, on direct examination, I believe you testified that
23 your agreement with the Shumard folks was essentially they
24 would provide up to \$3.5 million to the business; is that
25 right?

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1 A. At one point in our discussions, I think it is on paper
2 somewhere, there was talk of 2.9 million and then an additional
3 500,000. And maybe even additional monies to buy feedstock and
4 whatnot after you got up and running, so

5 Q. But that's nowhere in the actual agreement you signed with
6 them, right?

7 A. I would have to go back and look at it. Probably not,
8 but -- you're talking about the operating agreement?

9 Q. The operating agreement, yes.

10 A. Yeah, I don't think so.

11 Q. It doesn't say anything about a \$3.5 million --

12 A. No, sir.

13 Q. -- figure?

14 A. No, sir.

15 Q. With Allan Deware, I think you said as well that at some
16 point he agreed he was going to buy the Trus Joist site, right?

17 A. Yes, sir.

18 Q. That's not in any written agreement with Allan Deware, is
19 it?

20 A. With the exception of maybe the first handwritten note,
21 probably not.

22 Q. So with respect to both the Shumards and Deware, the jury
23 just needs to take your word for it that these folks said they
24 were going to buy the Trus Joist site, right?

25 A. I think if the jury sees all the information that's made

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1 available in discovery, they most certainly will be able to do
2 that.

3 Q. Is there anything that has prevented you from introducing
4 whatever evidence you want in this case?

5 A. I don't think so.

6 Q. So at this point, it's just taking your word for it,
7 right?

8 A. I guess so.

9 Q. You also testified that Allan Deware understood that he
10 was buying out the Shumards, right?

11 A. Yes, sir.

12 Q. Again, he testified he had no such understanding, right?

13 A. Yes, sir.

14 Q. You heard that. So Allan Deware must be lying.

15 A. Sir, I'm not calling anybody a liar.

16 Q. He must be mistaken, right?

17 A. Absolutely.

18 Q. But there's nothing in the written agreement about Allan
19 Deware buying out the Shumards, is there?

20 A. I don't think so.

21 Q. The Shumard name isn't in any of those documents.

22 A. Probably not.

23 Q. So the documents don't reference the Shumards. Allan
24 Deware says, I have no idea that this agreement purportedly was
25 to buy out the Shumards. So far, in terms of evidence, all the

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1 jury has heard is your testimony that Deware was buying out the
2 Shumards, right?

3 A. As far as I know, yes, sir.

4 Q. So they just have to take your word for it.

5 A. They are -- they are the jurors. They have to do whatever
6 they feel their heart tells them to do.

7 Q. I think the Judge will give them instructions on following
8 their heart versus following the evidence. But --

9 So this money from Deware was to buy out the Shumards.
10 Why didn't that money go directly over to the Shumards?

11 A. You would have to ask Allan and McKinnon that question.

12 Q. Allan and who?

13 A. McKinnon.

14 Q. Molly McKinnon?

15 A. Yes, sir.

16 Q. But you kept accepting money from the Shumards after Allan
17 Deware started giving you money too, right?

18 A. Yes, sir, they had agreed to pay whatever expenses we had
19 acquired until we led up to buying Trus Joist.

20 Q. Let me pause you there. Why would the Shumards continue
21 to provide money to the business if they were bought out by
22 Allan Deware?

23 A. Allan Deware never bought them out.

24 Q. So what did Allan's money go to then?

25 A. Went to various things, business about the company. I

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1 mean, he --

2 Q. So he wasn't actually buying out the Shumards, was he?

3 A. The agreement was he was supposed to buy the Shumards out,
4 yes, sir.

5 Q. Not the written agreement, though, right?

6 A. I don't actually recall what was in the operating
7 agreement. But it probably did not specify that in the
8 operating agreement, but that was the actual agreement.

9 Q. So it was just a secret, not-written agreement between you
10 and Allan, right?

11 A. I wouldn't say it was a secret, no, sir.

12 Q. Why did you sign something in writing purporting to be the
13 agreement if there was really a separate agreement?

14 A. The one thing I noticed about people and business is that
15 paperwork's ever changing and ever evolving. So I can't
16 explain some of that stuff to you. I just know when we
17 originally discussed it, we shook hands. I think they proved
18 up the fact that he did, in fact, know about Shumards. There
19 was discussions about Shumards.

20 Q. As a potential investor, right?

21 A. I don't know what the discussions was, I can't honestly
22 say.

23 Q. And after that point, you don't disagree that Allan Deware
24 received bank statements that hid the fact the Shumards were
25 giving money.

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1 A. I don't know what Allan Deware was sent. I thought he was
2 sent bank statements that reflected what April had sent him.

3 Q. The true banks statement, yes.

4 But he also received bank statements from Ms. McKinnon,
5 right?

6 A. I don't know about that.

7 Q. Now, you testified that the Shumards, that was the first
8 investor, right?

9 A. I'm a little rough with dates, but I'll get as close as I
10 can. I think -- I think I started talking to Shumards in the
11 end of 2016, because I think I was in Kentucky actually on the
12 Trus Joist property in the third quarter of 2016.

13 Q. But the question is, the Shumards, you testified that they
14 were your first investor, right?

15 A. Oh, yes, sir.

16 Q. You testified that prior to that, you were the sole owner
17 of Nex-Gen Industries, correct?

18 A. I was the sole owner on paper, on the state corporation
19 commission papers. But you know, if you're going to the sold
20 some stock to Ms. Joan, yes, I certainly did that.

21 Q. Okay. So you were not the sole owner of Nex-Gen
22 Industries at the time you entered into agreements with the
23 Shumards, were you?

24 A. I think it's a -- that's a tough one to answer, okay?
25 Because it depends on how you look at it. On paper, you know,

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1 with the state corporation commission, I was the sole member.
2 Ms. Joan has been a -- you know, a friend for a long time,
3 spent some money on me. And you know, so yeah, she's my
4 partner until I die, okay?

5 Q. That's Joan Faybik, right?

6 A. Yes, sir.

7 Q. And you actually executed some documents to give her
8 ownership of Nex-Gen Industries, didn't you?

9 A. She got some stock certificates in the stock, yes, sir.

10 Q. So on paper and in reality, you were not the sole owner of
11 Nex-Gen Industries, were you?

12 A. I guess it could be said that way. But I mean, again --

13 Q. Well, I want to know what the truth is, sir. Were you or
14 were you not the sole owner?

15 A. Well, the truth is I was the sole owner. She had some
16 stock. I mean --

17 Q. She had 50 out of the 100 shares, didn't she?

18 A. Yes, sir.

19 Q. So 50 percent of the company, correct?

20 A. Yes, sir.

21 MR. ROSENBERG: Your Honor, I would like to tender to the
22 witness what's been marked as Government's Exhibit 91.

23 THE COURT: Yes, sir.

24 MR. ROSENBERG: Can you pull that up on the witness's
25 screen?

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1 BY MR. ROSENBERG:

2 Q. Can you see that, sir?

3 A. Yes, sir.

4 Q. Is this a copy of the 50 shares you executed?

5 A. Yes, sir.

6 Q. And did it go to Jason Faybik, Ms. Joan Faybik's son?

7 A. Is it to him?

8 Q. Yeah. He's the one listed.

9 A. Oh, yes, sir. Yes, sir.

10 MR. ROSENBERG: Your Honor, we moved to admit Government's
11 Exhibit 191.

12 THE COURT: Any objection?

13 MR. DARLING: No objection.

14 THE COURT: United States Exhibit 191 is admitted.

15 (United States Exhibit 191 was admitted.)

16 BY MR. ROSENBERG:

17 Q. You signed off on this, right, in the lower left-hand
18 corner?

19 A. Yes, sir.

20 Q. And what's the date of this? See just above the signature
21 lines?

22 A. 1st day of March, 2016.

23 Q. March 1st, 2016, right?

24 A. Yes, sir.

25 MR. ROSENBERG: And go back to the left-hand side. We'll

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1 zoom in on the left column.

2 Q. Out of the 100 shares in the company, how many were given
3 to the Faybiks?

4 A. 50.

5 Q. So 50 percent of the company, right?

6 A. No, sir.

7 Q. No?

8 A. 50 shares out of a hundred shares.

9 Q. It's been a while since I've taken math, but 50 shares out
10 of a hundred would be 50 percent, right?

11 A. Correct. But at any time I can pay a little more money
12 and increase my shares to 10 million, if I wish.

13 Q. So these 50 shares out of a hundred didn't really mean
14 anything?

15 A. It means she's got 50 shares out of a hundred.

16 Q. But you could turn the hundred shares into a million any
17 time you wanted to?

18 A. Yes, sir.

19 Q. Thus making her 50 shares worthless.

20 A. I think she knows where she stands with me.

21 Q. My question is, if you turned the 100 shares into a
22 million, her 50 shares would basically be worthless then,
23 right?

24 A. I mean, her 50 shares are her 50 shares. So I don't know
25 what -- I don't know what the value would be.

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1 Q. So she owned 50 out of the 100 shares, but she didn't own
2 50 percent of the company?

3 A. Correct.

4 Q. But when you testified that you were the sole owner of
5 Nex-Gen Industries, that wasn't accurate, right?

6 A. Technically, probably not.

7 Q. And you testified to that under oath today, right?

8 A. Yes, sir.

9 Q. Now, these 50 shares, that wasn't provided just for free,
10 right?

11 A. No, sir.

12 Q. You took money for those?

13 A. Yes, sir.

14 Q. How much money did you take?

15 A. I honestly don't know what -- I could not give you a
16 dollar amount on that, what I've sent or received from her.

17 Q. When did she start providing you money?

18 A. Probably sometime -- probably a little earlier than this,
19 I would imagine.

20 Q. Before March 1st of 2016?

21 A. I think so. She came to -- there was another company, had
22 wanted me to do an expo for them and she was an investor in
23 that company. And her and several of his -- the other
24 company's investors came to watch this expo, so that's how I
25 met her.

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1 Q. To watch what?

2 A. It was an expo. We were producing some biochar for
3 another company that they wanted to showcase.

4 Q. She paid you many thousands of dollars, right?

5 A. Yes, sir.

6 Q. She also let you use her credit card, didn't she?

7 A. Yes, sir.

8 Q. You also received money from her family members, right?

9 A. I think she had -- maybe Jason, and I think she actually
10 had sent some money one time, five or \$10,000, and wanted it
11 accredited to her other boy because he was having some
12 financial hardships.

13 Q. What about Keith Shpakoff?

14 A. Yes, sir.

15 Q. You took money from him as well, right?

16 A. Yes, sir.

17 Q. What did those folks get in exchange for their money?

18 A. Basically, you know, if it's friends and family or a
19 personal loan, people I've gotten close to over the years, I
20 mean, they are going to be on board for the long haul. And you
21 know, when it straightens up and pulls out and pulls together,
22 they will get a portion of it. If it goes belly up, then I
23 guess it goes belly up. It's yet to be seen.

24 Q. But as far as you're concerned, her 50 shares in Nex-Gen
25 Industries, that wasn't worth anything?

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1 A. I'm not -- that's not the statement I'm making. I'm just
2 saying she had 50 shares of a hundred.

3 Q. And you didn't tell the Shumards that Joan Faybik was an
4 owner of Nex-Gen Industries, did you?

5 A. She always requested that I keep her name out of it, to be
6 honest with you.

7 Q. What's that?

8 A. She's always requested that I keep her name out of it.
9 But again --

10 Q. Well, it's they're buying -- acquiring your company.

11 A. They are not acquiring my company.

12 Q. Well, you committed --

13 A. They're starting another company.

14 Q. And you committed all the assets of Next-Gen Industries to
15 that company, didn't you?

16 A. I'm getting 48 percent of their company.

17 THE COURT: I'll ask -- excuse me, Mr. Vance. Don't speak
18 over the question. And we'll wait until he finishes his answer
19 as well.

20 A. Okay.

21 THE COURT: You can re-ask the question.

22 Q. You committed all the assets of Nex-Gen Industries to the
23 new entity, NexGen Energy Partners, didn't you?

24 A. I committed what assets was available at the time.

25 Q. No. You committed all the assets of the company, didn't

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1 you?

2 A. That was available at the time to the company.

3 Q. Is that what the agreement says?

4 A. You can't contribute something you don't have.

5 Q. So you committed all the assets of the company.

6 A. Yes, sir. Yes, sir.

7 Q. But you didn't tell them that Ms. Faybik was an owner of
8 those assets.

9 A. She was not an owner of the assets.

10 Q. She owns half the shares, doesn't she?

11 A. She owns 50 of a hundred.

12 Q. Half the shares, right?

13 A. Yes, sir.

14 Q. So you hid Ms. Faybik from them, right?

15 A. No, sir.

16 Q. You did disclose Ms. Faybik to the Shumards?

17 A. There was no need to.

18 Q. So you hid her from them.

19 A. No, sir.

20 Q. Which one is it?

21 A. It's neither. It was never disclosed. It was never
22 discussed. It was never asked.

23 I mean, if it had been asked, then obviously I would have
24 said yes, Ms. Joan, she's my favorite person in the whole
25 world. I mean, I don't know how to answer your question,

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1 honestly.

2 Q. So when you're committing all the assets of a company that
3 someone else owns 50 percent of the shares of, it's your
4 position you don't have to disclose the existence of your
5 co-owner?

6 A. I would say if it's in the paperwork, you know, that you
7 have to. I mean, under that arrangement, I would say no.

8 Q. Now, who is this person that introduced you to Ms. Joan
9 Faybik?

10 A. Again, we were having a -- we were producing some char for
11 a company called Vega or Vincor, one of the two. And he's a
12 penny stock company and he had -- he wanted me to -- he wanted
13 to hire me to produce some char for him and let his penny stock
14 people come in and watch us produce char.

15 Q. Who was that?

16 A. Who is what?

17 Q. Who was this person? That was the question.

18 A. Mike Molen.

19 Q. Mike Molen of Vega, right?

20 A. Vega, Vincor.

21 Q. You in the past have tried to hide your association with
22 Mr. Molen, haven't you?

23 A. It got -- you know, it just -- I was really enthused by
24 the whole thing in the beginning but, I mean, over the course
25 of some time, it got a little bit -- just found it to be better

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1 if I tried to disassociate with him, yeah.

2 Q. So you agree, you tried to hide the fact of your
3 association with them?

4 A. No, I wouldn't say I've ever tried to hide it. I just
5 tried to distance myself from him, because, you know, nothing
6 ever seemed to work out.

7 Q. Let me put it this way, have you ever told someone that
8 you are no longer associated with Vega?

9 A. Yes, sir.

10 Q. But did you do that when, in fact, you were still
11 associated with Vega?

12 A. To me, there is a big difference in somebody calling me on
13 the phone saying, "Hey, Doug, can you answer this question?"
14 And actually doing business with them.

15 Me and Vega, never really got to do business with him, so
16 technically, to me, I wasn't associated with him.

17 You know, if Mike calls me on the phone and asks me a
18 question or says "Hey, Bud, do you want to have a beer or
19 something?" To me, there is a little difference there. So
20 yes, sir, I no longer was doing business with him, no, sir.

21 Q. So a difference between just socially talking with
22 Mr. Molen and things like purchase orders, sales, that would be
23 doing business, but just having a beer, that's not being
24 associated with them, fair?

25 A. Fair enough, yes, sir.

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1 Q. Okay.

2 MR. ROSENBERG: Your Honor, we would like to tender to the
3 witness what's been marked Government's Exhibit 185.

4 THE COURT: Yes, sir.

5 BY MR. ROSENBERG:

6 Q. Can you see that on your screen, sir? Let me know when
7 you do.

8 A. Yes, sir.

9 Q. That's an email from your account, right?

10 A. Yes, sir.

11 Q. And I see it says "Best, Doug Vance" so you're going to
12 agree that you sent that, right?

13 A. Yes, sir.

14 Q. And does this email reference Vega, the company we just
15 discussed?

16 A. Yes, sir.

17 MR. ROSENBERG: Your Honor, we move to admit Government's
18 Exhibit 185.

19 THE COURT: Any objection?

20 MS. LEWIS: No objection.

21 THE COURT: United States Exhibit 185 is admitted.

22 (United States Exhibit 185 was admitted.)

23 Q. All right. What's the date of this email, sir?

24 A. It would be May -- 23rd of May, 2017.

25 Q. And you reference "having a lot of mud on our face" in

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1 this email, right?

2 A. Yes, sir. It was bad.

3 Q. Was there some prior history with this company PGN that
4 you were referencing?

5 A. I don't know if this was -- I feel like this might have
6 been part of the PGE deal, but I can't really swear to it. I
7 can't remember who Hao is.

8 Q. In any event, what did you tell them in the last sentence
9 there that starts with "FYI"?

10 A. "We are no longer associated with the Vega party."

11 Q. So by May 2017, we're not doing business with Mike Molen
12 or Vega, right?

13 A. At that time, no.

14 Q. And any further dealings with him would just be of a
15 social nature, we're not doing business with him?

16 A. No, that's not what I said.

17 Q. Okay.

18 A. What I said, we are no longer associated with the Vega
19 party as of that date.

20 Q. But you're liable to just change your mind on a moment's
21 notice, right?

22 A. Yes, sir.

23 Q. Okay.

24 MR. ROSENBERG: So let's go to Exhibit 186, to tender just
25 to the witness.

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1 Q. Do you see that document, sir?

2 A. Yes, sir.

3 Q. This is an email between you and Mr. Molen of Vega?

4 A. It appears to be, yes, sir.

5 Q. What's the date of this email?

6 A. This would be the 3rd of August 2017.

7 MR. ROSENBERG: Your Honor, we move to admit Government's
8 Exhibit 186.

9 THE COURT: Any objection?

10 MS. LEWIS: No objection.

11 THE COURT: Exhibit 186 is admitted.

12 (United States Exhibit 186 was admitted.)

13 BY MR. ROSENBERG:

14 Q. Now, at the top your response to Mr. Molen was "ten-4,"
15 right?

16 A. Yes, sir.

17 Q. That's something that you often use as a confirmation,
18 right?

19 A. Yes, sir.

20 Q. So this is an email from you?

21 A. Yes, sir.

22 Q. But it doesn't say "Best, Doug Vance," does it?

23 A. This one says sent from my iPhone.

24 Q. Right. So sometimes your email signature changes based on
25 what device you are using, isn't that true?

DOUGLAS VANCE - CROSS

1 A. I don't think I had a signature set up on my phone at that
2 time. But you know, I mean --

3 Q. This would be around the same time you were sending emails
4 to Dell Jagers, wouldn't it?

5 A. I would have to go back and see the date. This one
6 clearly says sent from my iPhone.

7 Q. Doesn't say "Best, Doug Vance"?

8 A. Again, I didn't have my signature set up on my phone at
9 that time. But if it's sent from the phone, it clearly says
10 sent from my iPhone.

11 Q. So after your email saying you are no longer associated
12 with Vega, here you are associating with Vega again, aren't
13 you?

14 A. Sure.

15 Q. And in reality, you hadn't stopped associating with
16 Mr. Molen, had you?

17 A. It's like any other businesses, you're going to have hits
18 and misses. I mean, you know, if people -- I'm great for
19 people trying to bounce back or come back, if they do and I can
20 help facilitate, I most certainly will.

21 Q. Now, you told Mr. Howe at PGN you were not associated with
22 Vega because they had a prior bad impression of that company,
23 didn't they?

24 A. I told them that we got a little bit of mud on our face,
25 first. And FYI, we are no longer associated with Vega.

DOUGLAS VANCE - CROSS

1 Q. What was the purpose of telling them that?

2 A. In hopes to try to -- again, I can't actually remember who
3 that person is. I'm trying to think. But I'm sure it was
4 obviously to try to facilitate for some mistake or something
5 that was made.

6 Q. Sir, isn't it true that you were representing no
7 association with Vega because you knew that had a bad
8 reputation?

9 A. Possibly. I mean, you know, his -- people's reputations
10 get hurt, okay? You know, it's --

11 Q. But the reality is, you were still doing business with
12 Mr. Vega, right? Mr. Molen?

13 A. If I send an email like that to a guy today and he seems
14 to be struggling and he bounces back in a week, most certainly
15 I will do business with him. I am not disputing that, sir.

16 Q. What was Mr. Molen asking you for on August 3rd?

17 A. I think he wanted to build a unit, he wanted me to sell
18 him a unit. He wanted a small one that -- I guess something he
19 could show for demo purposes.

20 Q. And had he, in fact, sent you \$25,000 for that unit?

21 A. Yes, sir.

22 Q. Where is that in the bank records?

23 A. I have no clue.

24 Q. What did you do with that \$25,000?

25 A. I probably paid some bills with it.

DOUGLAS VANCE - CROSS

1 Q. You didn't put it in a Nex-Gen account?

2 A. I honestly couldn't say. I don't know where it went.

3 Q. So you just pocketed it, personally?

4 A. It was my right to do so.

5 Q. Well, now, didn't the agreement you had with the Shumards
6 have a noncompetition clause?

7 A. Yes, technically.

8 Q. Didn't your agreement with Mr. Deware have a
9 noncompetition clause?

10 A. Yes, technically.

11 Q. And a noncircumvention clause?

12 A. Yes, sir.

13 Q. So what you're suggesting right here would be in direct
14 violation of both of those?

15 A. No, sir.

16 Q. Right?

17 A. No, sir. How can it be?

18 Q. You never actually built a unit for Mr. Vega, did you --
19 for Mr. Molen?

20 A. No, sir.

21 Q. This was just invented, right?

22 A. No, sir.

23 Q. Well, he tells you to create the invoice and make it look
24 official, right?

25 A. Yes, sir. He was trying to get financing.

DOUGLAS VANCE - CROSS

1 Q. For something that he never actually bought?

2 A. That's -- it's not up for me to decide whether or not he
3 finishes his purchase. I mean, if we're contracted to build
4 something, we'll build it, okay?

5 Q. So you weren't assisting him in defrauding a financier?

6 A. Absolutely not.

7 MR. ROSENBERG: Can we go to Exhibit 205A? Can we go to
8 page 10?

9 Q. Do you see that on your screen, sir?

10 A. Yes, sir.

11 Q. Do you see a remitter that says Vencor on this cashier's
12 check?

13 A. Yes, sir.

14 Q. And Vencor was one of Mr. Molen's companies?

15 A. Yes, sir.

16 Q. Why does it say Vencor up there?

17 A. Because that's my reimbursement of the \$25,000 that he had
18 sent.

19 Q. Your reimbursement?

20 A. Yes, sir.

21 Q. To who?

22 A. To the Shumards.

23 Q. But this amount is \$31,250.

24 A. Yes, sir.

25 Q. And what did you tell the Shumards this money came from?

DOUGLAS VANCE - CROSS

1 A. Come from Vencor.

2 Q. Why do the amounts not match?

3 A. It's a tough one to answer. Vencor, I would have to go
4 back and look, but you know, maybe I had -- you know, again,
5 maybe I was reimbursing some money I had spent.

6 Q. You agree that this check was issued in the period that
7 you were getting money from Koch, right?

8 A. I have no clue. Probably.

9 Q. May 2018?

10 A. May 15th, 2018?

11 Q. Yeah.

12 A. Yes, sir.

13 Q. You were getting money from Koch at that time, right?

14 A. Probably.

15 Q. And you used Koch money to issue a check like this with
16 AK Holdings in the remitter, right?

17 A. No, I would say I used Vega/Vencor money. You know, if
18 money gets spent here -- reimbursed here and then spent here
19 and then loaned here and then back here, I mean, all of that
20 gets a tad bit confusing. So occasionally you will use this
21 loan money to pay this bill or debt, or however you want to say
22 it, or reimbursement. But at the end of the day, it's all
23 tallied up the same.

24 Q. Your direct examination, you weren't asked anything about
25 Gary Chamblee making threats of violence. No question about

DOUGLAS VANCE - CROSS

1 that, right?

2 A. No, sir.

3 Q. And you never heard anything to that effect, right?

4 A. No, sir. Personally, I always liked Gary, got along with
5 him.

6 Q. Would you have continued doing business with someone who
7 was threatening violence?

8 A. Probably not.

9 MR. ROSENBERG: Your Honor, may I have just a moment?

10 THE COURT: Yes, sir.

11 MR. ROSENBERG: Your Honor, we would like to show what's
12 been admitted as Government's Exhibit 174.

13 THE COURT: Yes, sir.

14 BY MR. ROSENBERG:

15 Q. Sir, what did Ms. McKinnon send to you in this email?

16 A. It's a -- I don't see the actual attachment. The email
17 says "Here is one I found online and one I made up. You may
18 have to make some adjustments to the Excel version to make it
19 print properly on your printer."

20 Q. What are -- the attachments, do you see where it says
21 Fairbanks Scale Ticket Blank?

22 A. Yes, sir.

23 Q. And do you see Fairbanks blank.gif?

24 A. Yes.

25 Q. Molly was sending you blank scale tickets, right?

DOUGLAS VANCE - CROSS

1 A. I assume, yes, sir.

2 Q. And the purpose of this was for you to fill out to make it
3 look like coal product was being shipped to or from Washington
4 Mills, right?

5 A. No, sir.

6 Q. What did you plan to fill out on these Fairbanks scale
7 tickets?

8 A. Whatever came in and out from the plant. One of these two
9 tickets is the ticket that we used hundreds of times at the
10 plant for either wood dust or char or coal.

11 MR. ROSENBERG: Let's look at Government's Exhibit 711.
12 It's been admitted. If we can go to the attachment?

13 Q. Can you see that on your screen, sir?

14 A. Yes, sir.

15 Q. These scale tickets, did you fill these out?

16 A. No, sir.

17 Q. Who are these from?

18 A. I want to say I can't read it.

19 Q. All right.

20 MR. ROSENBERG: Let's tender just to the witness
21 Government's Exhibit 708.

22 Q. Can you see those better?

23 A. Yes, sir.

24 Q. Do you know who filled these out?

25 A. No, sir.

DOUGLAS VANCE - CROSS

1 Q. You would agree that they use the same form that
2 Ms. McKinnon sent to you?

3 A. I didn't actually see the attachment, but that is a -- I
4 mean, it's a certified scale ticket or scale weigh ticket. But
5 I didn't actually see the attachment.

6 Q. Look with me if you would in the lower left-hand corner.
7 Do you see where it says Form 33A?

8 A. Yes.

9 MR. ROSENBERG: Now let's go back to Government's
10 Exhibit 174. We'll go to the attachment.

11 Q. What's in the lower left-hand corner?

12 A. Form 333A.

13 Q. It matches up, right?

14 A. Excuse me?

15 Q. Form 33A -- 333A, just like we saw in Exhibit 708, right?

16 A. Yes, sir.

17 MR. ROSENBERG: Your Honor, we move to admit Government's
18 Exhibit 708.

19 THE COURT: Any objection?

20 MR. DARLING: No objection.

21 THE COURT: United States Exhibit 708 will be admitted.

22 (United States Exhibit 708 was admitted.)

23 BY MR. ROSENBERG:

24 Q. We're almost to the end, sir.

25 A. Thank you.

DOUGLAS VANCE - CROSS

1 Q. Were you aware of Ms. McKinnon suffering an assault at the
2 site of the Nex-Gen facility in Chavies?

3 A. Yes.

4 Q. And did anyone report to you that Gary Chamblee was
5 responsible?

6 A. No, sir.

7 Q. Were you aware of Ms. McKinnon's residence burning down in
8 Georgia?

9 A. Yes, sir.

10 Q. Did anyone report to you that Gary Chamblee was
11 responsible for that?

12 A. No, sir.

13 Q. Did Gary Chamblee ever ask you to fabricate any documents?

14 A. No, sir.

15 MR. ROSENBERG: Your Honor, no further questions.

16 THE COURT: All right. Thank you.

17 Ms. Lewis?

18 MS. LEWIS: Thank you, Judge.

19 CROSS-EXAMINATION

20 BY MS. LEWIS:

21 Q. Good afternoon, Mr. Vance. I just have a few questions
22 for you.

23 A. Yes, ma'am.

24 Q. I want to show you what is marked as Defense Exhibit
25 Number 3.

DOUGLAS VANCE - CROSS

1 Do you recognize what this document is?

2 A. I don't see anything yet. Yes, sir -- or, ma'am, I'm so
3 sorry.

4 Q. All right. This is an email. And who is it to and from?

5 A. It's from Doug Vance to Robert and Gary Chamblee.

6 Q. Who is Robert?

7 A. Robert was the guy who owns RJF trucks that Gary was
8 partnered on that was supposed to be hauling the char.

9 Q. What is this email --

10 MS. LEWIS: I would move to introduce this as Defense
11 Exhibit 3.

12 THE COURT: Any objection?

13 MR. ROSENBERG: No objection.

14 THE COURT: All right. McKinnon Defense Exhibit 3 is
15 admitted.

16 (McKinnon Defense Exhibit 3 was admitted.)

17 BY MS. LEWIS:

18 Q. And what's your purpose of this email? What are you
19 talking --

20 A. They just were slow on trucks, and so I was trying to
21 hurry them up to get trucks up there.

22 Q. So you were using RJF Logistics for hauling product?

23 A. Yes, sir.

24 Q. They were the ones that were supposed to get products to
25 Kingsford?

DOUGLAS VANCE - CROSS

1 A. Yes, ma'am.

2 Q. That's the same issues that Ms. Lacy was talking about?

3 A. Yes, ma'am.

4 Q. So they did eventually deliver some product?

5 A. Yes, ma'am.

6 Q. All right. You express to Gary, since he's copied on this
7 email, the problems you were having?

8 A. Yes, ma'am.

9 Q. You heard him deny here that RJF was used?

10 A. Yes, ma'am.

11 Q. Wasn't his statement that he offered them up but you
12 declined?

13 A. Excuse me?

14 Q. Wasn't his statement here to the jury was that he offered
15 up RJF services but you turned him down?

16 A. I honestly don't recall.

17 Q. Okay. Now, as to the Shumard Group, in the initial
18 conversations you wanted them to handle any accounting and
19 administrative needs, right?

20 A. Yes, ma'am.

21 Q. But it didn't turn out that way?

22 A. No, ma'am.

23 Q. You did give Ms. McKinnon power of attorney?

24 A. Yes, ma'am.

25 Q. You're not aware of Allan Deware receiving any bank

DOUGLAS VANCE - RECROSS

1 statements other than the ones he received from Ms. Francis,
2 are you?

3 A. No, ma'am.

4 Q. I thought that was my recollection too.

5 MS. LEWIS: That's all I have. Thank you.

6 THE WITNESS: Thank you.

7 THE COURT: All right. Let's see if there is redirect.
8 Mr. Darling?

9 MR. DARLING: No, Your Honor.

10 THE COURT: All right. Any recross on matters that were
11 brought out by Ms. Lewis?

12 MR. ROSENBERG: Very briefly, Your Honor.

13 THE COURT: Yes.

14 MR. ROSENBERG: Could we show Defense Exhibit 3 that was
15 just admitted?

16 RECROSS-EXAMINATION

17 BY MR. ROSENBERG:

18 Q. All right. You were just asked about this document,
19 right?

20 A. Yes, sir.

21 Q. And it was your testimony that this is regarding the
22 troubles getting the test load delivered to the Kingsford
23 plant?

24 A. No, sir.

25 Q. It's not about that?

DOUGLAS VANCE - RECROSS

1 A. It's about hauling something, but, you know, I can't
2 attest to what.

3 Q. So if it was suggested to you by counsel for Ms. McKinnon
4 that this related to the test loads being sent to the Burnside
5 plant, you can't testify to that, right?

6 A. Honestly, we had a lot of trouble out of this particular
7 trucking company getting a lot of stuff trucked. So it was a
8 time frame, so I couldn't honestly say which incident this was.

9 Q. What's the date of this email?

10 A. April 3rd, 2018.

11 MR. ROSENBERG: If we could switch over to our computer
12 and show Government's Exhibit 180? This has been admitted into
13 evidence, so we would like to show it to the jury too. Now, we
14 can scroll down, a little bit further. Keep going.

15 Q. This email from Pritam at Clorox is dated April 10th,
16 correct?

17 A. Yes, sir.

18 Q. And he asks for delivery on April 25th, right?

19 A. Yes, sir.

20 Q. So that email you were just shown by counsel for
21 Ms. McKinnon, that predated even knowing when Clorox wanted the
22 product delivered, right?

23 A. Correct.

24 Q. So whatever issue was being discussed there could not
25 possibly have anything to do with the issues of delivering the

DOUGLAS VANCE - REDIRECT

1 product for the Burnside test?

2 A. I don't know that's what's implied. I think it was giving
3 an example of having trucking issues across the board.

4 Q. You agree that that email had nothing to do --

5 A. Oh, yes, sir.

6 Q. -- with the delivery of the test material to the Burnside
7 plant, correct?

8 A. That email had nothing to do with this incident, yes, sir.

9 MR. ROSENBERG: Nothing further, Your Honor.

10 THE COURT: See if there is any further questions,
11 Ms. Lewis? I think -- Mr. Darling, I think you already had a
12 chance on this, if you want to ask, you can do it.

13 MR. DARLING: They have just -- they have to do with the
14 two exhibits.

15 THE COURT: Yes, sir, that's fine.

16 REDIRECT EXAMINATION

17 BY MR. DARLING:

18 Q. Mr. Vance, have you got Defense Exhibit 3 in front of you?

19 A. It's the one that I looked at a few minutes ago.

20 Q. Right. But do you have it in front of you now?

21 A. Yes, sir.

22 Q. That's an email from you to Gary Chamblee and Robert?

23 A. Yes, sir.

24 Q. How did you sign it?

25 A. "Best, Doug Vance."

DOUGLAS VANCE - REDIRECT

1 Q. This is the -- this is Government's Exhibit 180 that you
2 were just shown. It is an email from you to Mr. -- I'm not
3 even going to try --

4 A. Pritam.

5 Q. That's an email you sent to him on April 12, 2018?

6 A. Yes, sir.

7 Q. How is it signed?

8 A. "Best, Doug Vance."

9 Q. Are these two emails that you just looked at, were they
10 composed and sent from your computer?

11 A. More than likely, yes, sir.

12 Q. Because the one that you showed from your phone that you
13 didn't have anything, specifically said "sent from my
14 iPhone"?

15 A. Yes, sir.

16 Q. All right. Thank you, Mr. Vance.

17 THE COURT: Yes, sir.

18 Anything else of this witness?

19 MS. LEWIS: No, sir.

20 THE COURT: Mr. Rosenberg, anything else?

21 MR. ROSENBERG: Nothing further, Your Honor.

22 THE COURT: Thank you, sir. You may step down.

23 THE WITNESS: Thank you.

24 THE COURT: Mr. Darling, any additional witnesses that you
25 would like to call?

1 MR. DARLING: I do not, Your Honor.

2 THE COURT: Okay. Thank you. Defendant Vance rests?

3 MR. DARLING: Thank you.

4 THE COURT: Counsel, if you could come up to the bench
5 just a moment? Let's talk about our schedule.

6 (Bench conference on the record.)

7 THE COURT: I have a plea I need to take at 4:30 this
8 afternoon, so I don't think it would be to anyone's advantage
9 to start and stop in ten minutes. Agreed?

10 Ms. Lewis, do you anticipate calling Ms. McKinnon first
11 thing in the morning?

12 MS. LEWIS: Yes, sir, as of right now.

13 THE COURT: How long do you anticipate her direct
14 examination would be?

15 MS. LEWIS: I would say an hour to 90 minutes.

16 THE COURT: All right.

17 We'll go ahead and recess for the evening. We'll spend
18 ten minutes -- well, as soon as I excuse the jury, we're going
19 to spend ten minutes discussing jury instructions, but we'll
20 try to make use of the time.

21 MS. LEWIS: Thank you.

22 THE COURT: All right. Thank you.

23 (Bench conference concluded.)

24 THE COURT: Ladies and gentlemen, I have another
25 proceeding I need to take up 4:30, so we will go ahead and

1 recess for the evening.

2 Please keep in mind the admonitions that you've been given
3 previously not to discuss the case among yourselves and, of
4 course, don't discuss the case with anyone when you go home
5 tonight.

6 Don't read, watch or listen to any accounts of the case.
7 Don't do any type of research or investigation. Don't
8 communicate through social media your position as a juror or
9 anything about the case.

10 We'll start again tomorrow at 9:00.

11 At this time, I would anticipate that we'll be able to
12 complete the proof in the case, but of course that could
13 change. But I would anticipate that we will be able to
14 complete the proof in the case tomorrow.

15 Please, again, don't make up your mind about the matter.
16 You haven't heard all the testimony in this case yet.

17 If you would like, you can leave your notebooks there.
18 Does anyone need to go back into the jury deliberation room?
19 All right. If not, you can leave your badges as well, the
20 clerk will collect those and put those back in the jury
21 deliberation room. They will be there when you return tomorrow
22 morning.

23 The jury will be excused.

24 (Jury left courtroom at 4:21 p.m.)

25 THE COURT: Please be seated. We'll use the ten minutes

1 that we have remaining before we recess to have a brief
2 conference about instructions in the case. Of course, we won't
3 have our final instructions conference until all proof has been
4 submitted.

5 At this point do the parties anticipate that they will be
6 requesting any additional instructions in this matter?

7 MR. CHAPMAN: Not from the United States, Your Honor.

8 MR. DARLING: No, Your Honor.

9 THE COURT: Thank you.

10 Ms. Lewis?

11 MS. LEWIS: I will seek to be requesting a duress
12 instruction, Your Honor.

13 THE COURT: If it's not appropriate to give, at this time
14 I would anticipate giving a reverse jury instruction on that
15 issue, but I have to wait until I see what the proof is.

16 And I would suggest that the parties draft an appropriate
17 instruction either in favor of justification, I believe there
18 is a pattern jury instruction on that issue, 6.07, I believe.
19 6.07. And if the United States seeks a reverse jury
20 instruction, you can tender that or prepare that for discussion
21 at the appropriate time.

22 All right. This case will be in recess. We'll take about
23 five minutes before we call up the matter scheduled for 4:30.

24 (Proceedings adjourned at 4:23 p.m.)

25

1 C E R T I F I C A T E

2 I, Linda S. Mullen, RDR, CRR, do hereby certify that
3 the foregoing is a correct transcript from the record of
4 proceedings in this above-entitled matter.

5 /s/Linda S. Mullen April 18, 2023
Linda S. Mullen, RDR, CRR Date of Certification
6 Official Court Reporter

7

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