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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
. .
Plaintiff, .
. Lexington, Kentucky
- v - .
. Wednesday, October 12, 2022
DOUGLAS WILLIAM VANCE and . 8:59 a.m.
MOLLY IRENE MCKINNON, .
. JURY TRIAL DAY 6 of 7
Defendants. .

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

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Proceedings recorded by mechanical stenography, transcript
produced by computer.

1 (Proceedings in open court, October 12, 2022, 8:59 a.m.)

2 THE COURT: Thank you. The record will reflect defendants
3 and counsel are present. The jury is not present.

4 I have one housekeeping matter to take up before the jury
5 comes in.

6 At the end of the day yesterday, I was advised that an
7 issue had been raised about seating with your paralegal,
8 Ms. Lewis, being too close to the probation officer. So you
9 all will need to move. The probation officer is seated over to
10 my left at the end of the table. You all will need to move
11 down that direction. All right?

12 All right. Let's see if we have any issues the parties
13 need to take up.

14 Mr. Rosenberg?

15 MR. ROSENBERG: Your Honor, there is a matter we want to
16 address before any testimony today.

17 THE COURT: Yes, sir.

18 MR. ROSENBERG: Which I think the Court prompted our
19 inquiry into, in terms of the necessity or justification
20 instruction and the potential for a reverse instruction.

21 We looked at *United States versus Wiseman*, which is
22 932 F.3d 411, where the Sixth Circuit set out and basically
23 clarified that the Court may require a proffer from the
24 defendant prior to any testimony being offered to first see
25 whether there will be a prima facie case showed on each element

1 of the *Singleton* factors. While that's not a heavy burden, it
2 is some showing that must be made as to each of those five
3 elements.

4 We believe that if that's not first shown, then any
5 testimony as to necessity, justification, should not come in.

6 Then, if that prima facie showing is made, the testimony
7 can come in. And then the Court at the instruction -- at the
8 charge conference would assess whether a reasonable jury could
9 find by a preponderance whether the defense has established.

10 And at that stage, I think the determination would be made
11 whether to provide the affirmative instruction or whether the
12 reverse instruction would be appropriate.

13 So we would ask for that proffer first to be made before
14 any testimony is introduced on the subject.

15 THE COURT: All right.

16 Ms. Lewis, what is your position?

17 MS. LEWIS: Your Honor, I would ask that Ms. McKinnon be
18 allowed to testify in front of the jury without the need for a
19 proffer. If we do not establish the duress elements by a
20 preponderance, then I think the remedy is not to give any
21 instruction in regard to that and the jury can make their
22 determinations of fact.

23 THE COURT: In *United States versus Slone*, the Sixth
24 Circuit in 2010, after allowing such evidence to be admitted,
25 determined that the burden had not been met and did in fact

1 approve a reverse instruction. And it would appear that that
2 would be more prejudicial to the defendant if the Court were to
3 allow her to testify directly before the jury without at least
4 making some showing as to what the proof would be in terms of a
5 proffer.

6 So I will require the proffer at this time as to the
7 elements that must be established.

8 So the record is clear, there are five elements that must
9 be shown in order to establish a justification defense under
10 authority from the Sixth Circuit, including *Singleton*, which
11 sets out these elements, 902 F.2d 471, discussion at 472 to 473
12 of that case.

13 The elements are that the defendant was under an unlawful
14 and present eminent and impending threat of such a nature as to
15 induce a well-grounded apprehension of death or serious bodily
16 injury.

17 Second, the defendant had not recklessly or negligently
18 placed herself in a situation which it was probable that she
19 would be forced to choose the criminal conduct.

20 Third, the defendant had no reasonable legal alternative
21 to violating the law, a chance both to refuse to do the
22 criminal act and also to avoid the threatened harm.

23 Four, a direct causal relationship may be reasonably
24 anticipated between the criminal action taken and the avoidance
25 of the threatened harm.

1 Five, the defendant did not maintain the illegal conduct
2 any longer than absolutely necessary.

3 Ms. Lewis, at this time you may proffer what the proof
4 that you expect would be on these five elements.

5 MS. LEWIS: I'm sorry, what was that, Your Honor?

6 THE COURT: I said at this time you may proffer what you
7 believe the proof to be on these five elements.

8 MS. LEWIS: Yes, sir.

9 It would be Ms. McKinnon's testimony that early on, after
10 meeting Mr. Chamblee, he asked her to change some QuickBooks
11 records.

12 THE COURT: When would this have occurred?

13 MS. LEWIS: I believe this was about November 2016. She
14 does have a journal that she kept contemporaneously that she
15 would testify from if she needed to refresh her memory.

16 THE COURT: Okay. As early as November 2016 she was asked
17 to change some records.

18 MS. LEWIS: I'm sorry, that date was June 16, 2017, Your
19 Honor.

20 And then he demanded that she change bank statements that
21 were requested by Mendie Hogan. She thought he was joking at
22 first but he implied bad things could happen.

23 The next day, her testimony would be that she received
24 three text messages from Mr. Chamblee.

25 THE COURT: What would the date be?

1 MS. LEWIS: Well, it was June 27th, Your Honor.

2 THE COURT: All right. Where was she located at the time?

3 MS. LEWIS: She would have been in Georgia at that time.

4 THE COURT: She was in Georgia?

5 MS. LEWIS: And Mr. Chamblee does reside in Georgia.

6 THE COURT: All right. So thereafter she changed bank
7 statements.

8 MS. LEWIS: Well, to back up, the text messages she
9 received were three images of her, one in her car, one in her
10 bed asleep, and one while outside. That placed her in fear
11 that she could be harmed by him or someone that he would send,
12 especially given that somebody had been in her house.

13 The next time he demanded that she create more bank
14 statements.

15 THE COURT: When would this have occurred, this second
16 instance?

17 MS. LEWIS: She would have to find the date in her
18 journal, Your Honor.

19 THE COURT: Approximately how long after the first
20 incident?

21 MS. LEWIS: It was approximately a month later.

22 THE COURT: All right.

23 MS. LEWIS: He implied --

24 THE COURT: What contact did she make with law enforcement
25 during that one-month period?

1 MS. LEWIS: She contacted her husband, who was former law
2 enforcement, explained what was going on with him. He told
3 her, "You can't trust the FBI," so that was the extent of it.
4 And she was afraid to contact law enforcement because she
5 didn't know what Mr. Chamblee was capable of.

6 THE COURT: So there's no contact with law enforcement at
7 any point?

8 MS. LEWIS: No, sir.

9 THE COURT: And her criminal conduct allegedly then would
10 have gone on from June through sometime in 2018?

11 MS. LEWIS: That's correct, Judge.

12 THE COURT: That would be the gist -- well, and then tell
13 me about the testimony you intend to offer on the fire.

14 MS. LEWIS: There's a couple of other incidents as well.

15 There was another time, September 1st, 2017, he demanded
16 that she change bank statements. If she didn't, he stated he
17 would punch her in the face. She believed that threat because
18 she didn't know what he was capable of.

19 THE COURT: Was this face to face or was this over the
20 phone, text message, how was it?

21 MS. LEWIS: It was over the phone.

22 THE COURT: All right. What efforts did she make to
23 contact law enforcement about that alleged threat?

24 MS. LEWIS: She did not, Your Honor.

25 THE COURT: All right.

1 MS. LEWIS: And then on September 21st, 2017, she was
2 mugged by an unidentified party that was reported to the police
3 by Mike Miller.

4 THE COURT: Is there any evidence at all that Mr. Chamblee
5 was involved in the mugging?

6 MS. LEWIS: He made comments about the fire before anybody
7 could have informed him of the fire.

8 THE COURT: I'm asking you about the mugging. You said
9 she was mugged September 21st, 2017, by an unidentified person.

10 MS. LEWIS: He made comments after the fact about her
11 accident.

12 THE COURT: Did she report that to law enforcement?

13 MS. LEWIS: She did not report anything in regards to
14 Mr. Chamblee to law enforcement.

15 The mugging was reported by Mike Miller to police.

16 June 3rd, 2018 is when the home burns. That was on a
17 Sunday. She indicated to Mr. Chamblee that she would be coming
18 back to Kentucky on Monday. She happened to leave on Sunday,
19 and he made comments after the fact that I will make sure
20 you're in the house next time.

21 THE COURT: Were those comments reported to law
22 enforcement --

23 MS. LEWIS: No, sir.

24 THE COURT: -- in the course of the arson investigation?

25 MS. LEWIS: No, sir.

1 THE COURT: Were those threats passed along to Mr. Vance?

2 MS. LEWIS: I do not believe it was passed on to

3 Mr. Vance.

4 THE COURT: All right. What would the remaining proof be
5 on these issues?

6 MS. LEWIS: Three days later she was assaulted in her
7 hotel room in Hazard, Kentucky, again by an unidentified
8 assailant. Mr. Chamblee made comments a few days later, and
9 again, this was not reported to law enforcement.

10 In June of 2018 is where they have the encounter at the
11 plant. And it would be Ms. McKinnon's testimony that
12 Mr. Chamblee grabbed her by the throat and pushed her against
13 the wall. This was not reported to law enforcement either.
14 Mr. Vance did not know about this at that time.

15 THE COURT: This would have been approximately a year
16 after these first demands were made to change records?

17 MS. LEWIS: That is true, Your Honor.

18 THE COURT: There is absolutely no reporting to law
19 enforcement or accusing Mr. Chamblee of any of this conduct; is
20 that correct?

21 MS. LEWIS: That is correct, Your Honor.

22 THE COURT: All right. Thank you.

23 Mr. Rosenberg.

24 MR. ROSENBERG: Respectfully, Your Honor, it's the
25 government's position that the proffer here does not meet all

1 of the *Singleton* elements. For one, the first report of any
2 alleged coercion is not until June of 2017. This is well after
3 many of the fraudulent misrepresentations that have been made
4 and proven in this case.

5 THE COURT: What are the dates? Refresh my memory as to
6 the dates that the documents are starting to be changed in this
7 case.

8 MR. ROSENBERG: That would be in 2016.

9 So the initial emails and conversations with Allan Deware
10 are in August of 2016. That's also around the time of the
11 engagements with the Shumards, and money starts flowing from
12 both of those sets of investors in early fall 2016.

13 THE COURT: What about the bank records, when are the bank
14 records changed?

15 MR. ROSENBERG: So the -- I guess it depends on the
16 particular account. There was -- the money was flowing into
17 the Wells Fargo NGI account starting back in 2016. The
18 falsified records being sent, those were already being sent to
19 Allan Deware because he received, I believe, the tip from April
20 Francis before June of 2017, which is the first threat of the
21 alleged coercion.

22 We know that the bank records had already been falsified
23 prior to that point, because Allan Deware was already doing his
24 comparison of the real statements from April Francis and the
25 statements he had received from Ms. McKinnon.

1 Furthermore, there was no effort under element three, no
2 effort to report any of this to law enforcement, which would
3 have been a legal alternative to violating the law, to provide
4 a chance for her to refuse to do the criminal act and to avoid
5 the threatened harm.

6 We also note that the Sixth Circuit in the *Milligan* case,
7 which is also noted in the jury pattern instruction 6.07, the
8 Sixth Circuit has basically told district courts to be weary of
9 applying this defense in continuing -- offense conduct that is
10 continuing in nature, as well as in conspiracies, which I think
11 goes to both element three and element five, that the defendant
12 did not maintain the illegal conduct any longer than absolutely
13 necessary.

14 We have a long period of offense conduct here, both in the
15 scheme to defraud and the money laundering conspiracy. And so
16 the defendant would have to show that the coercion or necessity
17 existed through that entire period, and that her engagement in
18 the illegal conduct lasted no longer than absolutely necessary
19 for that period. And we do not believe the proffer today shows
20 that.

21 Thank you, Your Honor.

22 THE COURT: All right. Based on my review of the case
23 law, it's my determination that the defendant has not met the
24 very low burden of establishing prime facia evidence or case to
25 justify or allow a justification defense under 6.07, the

1 pattern jury instructions.

2 This is essentially a claim of duress that the defendant
3 wishes to submit. And the case law would indicate that a jury
4 instruction should not be given if it lacks evidentiary support
5 or is based upon mere suspicion or speculation.

6 We're not at the point of instructing the jury at this
7 point, but there is a duty, as the Sixth Circuit has found in
8 *Capozzi*, 723 F.3d 720, it's a 2013 case, the Court has a duty
9 to require a prima facie showing that he or she can produce
10 evidence on each of the elements that I have outlined for
11 justification. Those elements are listed in the *Singleton*
12 case, the quotation I've given to the parties previously.

13 It is the defendant's affirmative duty to establish some
14 evidence and to support each of these elements.

15 With regard to the third element, the issue would be
16 whether Ms. McKinnon has -- could establish a reasonable
17 alternative to -- excuse me, whether there was a reasonable
18 alternative to violating the law. And clearly, in this
19 particular case, based upon the length of time that has passed,
20 there would be reasonable alternatives to creating false
21 documents and acting in the way in which the United States has
22 asserted and offered proof in this particular case.

23 For example, in *United States versus Newcomb*, that's a
24 1993 case, the defendant was charged with being a felon in
25 possession of a firearm, and he requested a jury instruction on

1 the defense of justification arguing he was forced to take a
2 firearm from a third party to prevent that person from
3 committing a crime. The circuit found that he lacked a
4 reasonable alternative to possessing the firearm, and that a
5 reasonable juror could find that he was faced with an emergency
6 situation. But that's not the situation we have here.

7 *Newcomb* distinguished a couple of cases, including *United*
8 *States versus Liu*, an emergency situation from cases in which
9 illegal conduct spans over a long period of time. In *Liu*,
10 960 F.2d 449, the Court denied a duress instruction for the
11 defendant accused of purchasing illegal green cards over a
12 two-year period of time inasmuch as he had multiple
13 opportunities to seek protection from federal authorities.

14 Likewise, in *United States versus Scott*, the Court
15 rejected -- this is a Tenth Circuit case, 901 F.2d 871, a 1990
16 case, the Court rejected a defendant's claim of coercion to
17 manufacturing methamphetamine where the period of time involved
18 was 125 days. The Court found that he had countless
19 opportunities to contact law enforcement or escape the
20 perceived threats during that period of time.

21 Quoting the Court, "A defendant who does not present any
22 evidence of a crisis situation would presumably have the luxury
23 of choosing from among several alternative courses of action,
24 some of which would not have required him to perform illegal
25 acts."

1 There is another case from the Sixth Circuit I have
2 reviewed, *United States Versus White*, involving a bank robbery,
3 where the Court rejected an instruction on duress because the
4 defendant failed to show that he had no opportunity to contact
5 the police prior to the robbery.

6 And in this particular case, the defendant asserts that
7 while there was adequate opportunity to contact law
8 enforcement, based upon hearsay statements from her husband,
9 she did not do so because she was concerned that the FBI would
10 not take proper actions. And such a concern is not appropriate
11 to justify not contacting law enforcement over a more than
12 one-year period of time, according to her proposed testimony in
13 the case.

14 So I do find that the defendant has not been able to
15 establish a prime facia that case as to the third and the fifth
16 elements that must be established and, therefore, will not be
17 allowed to present such testimony to the jury.

18 It's not necessary that the Court address whether a
19 reverse instruction should be given at this point in the case
20 based upon lengthy statements made during opening statement, as
21 well as statements made during cross-examination or questions
22 raised by counsel for Ms. McKinnon during cross-examination of
23 several witnesses in the case requiring the United States to
24 then respond to those questions during its case in chief.

25 All right. Let's see if we need to take a brief recess

1 before the jury comes in.

2 Ms. Lewis?

3 MS. LEWIS: Yes, I would appreciate that, Your Honor.

4 THE COURT: All right. Take about a 10-minute recess.

5 (Recess taken from 9:20 a.m. to 9:32 a.m.)

6 THE COURT: Good morning. Sorry for the delay, ladies and
7 gentlemen.

8 We will continue at this time in Lexington Criminal Action
9 20-63, United States versus Douglas William Vance and Molly
10 Irene McKinnon. All jurors are present. Defendants are
11 present. All counsel are present.

12 Let's see. We finished yesterday with the case on behalf
13 of Mr. Vance.

14 We'll proceed, then, with Ms. McKinnon.

15 MS. LEWIS: May we approach, Your Honor?

16 THE COURT: Yes, ma'am.

17 (Bench conference on the record.)

18 MS. LEWIS: Your Honor, given the Court's ruling,
19 Ms. McKinnon would like more time to consider the decision
20 whether to testify or not, given the Court took away the
21 defense she believed we could assert and the facts that we
22 thought we could talk about.

23 THE COURT: How much time do you need?

24 MS. LEWIS: Perhaps it's overly generous, but could we
25 have until 11:30 or 12?

1 THE COURT: No.

2 MS. LEWIS: What would the Court deem reasonable?

3 THE COURT: Ten more minutes.

4 MS. LEWIS: Thank you.

5 THE COURT: All right.

6 (Bench conference concluded.)

7 THE COURT: Ladies and gentlemen, unfortunately, we will
8 need to take another brief recess, approximately 10 to
9 15 minutes. I do apologize. However, please keep in mind the
10 admonitions that were given previously.

11 We will be in recess.

12 (A recess was taken from 9:40 a.m. to 9:50 a.m.)

13 THE COURT: Thank you. The jury is not present, I
14 understand that Mr. Darling has an issue to take up.

15 MR. DARLING: Yes, Your Honor. Thank you. Based on the
16 Court's ruling, it appears that Ms. McKinnon is no longer going
17 to testify. I have exhibits that I was going to introduce
18 through her. There is a letter written by her and signed by
19 her that was given to Mr. Vance. The first time I realized
20 that there was a possibility that she wasn't going to testify
21 was 9:20 this morning, which was why I did not introduce this
22 at that time. I'm asking the Court for leave to reopen and to
23 call Mr. Vance back to introduce this exhibit.

24 THE COURT: What would effectively be a hearsay statement
25 by an individual not testifying in the case?

1 MR. DARLING: It is.

2 THE COURT: The co-defendant in the case.

3 MR. DARLING: It is a party defendant. Our position is
4 that our positions are adverse in this letter. She takes an
5 awful lot, if not all, of the responsibility for everything
6 that happened, particularly the bank statements.

7 She admits in this letter that she had access to
8 Mr. Vance's email account and that she routinely sent emails
9 under his name and actually opened them, as she put it on the
10 end, so he wouldn't even know it had been sent.

11 THE COURT: All right. What is the position first of the
12 defendant, Ms. McKinnon on --

13 MS. LEWIS: It's her position, Your Honor, to allow
14 Defendant Vance to reopen their case and he can testify to the
15 letter as she will not testify.

16 THE COURT: But do you object to Mr. Vance being allowed
17 to tender this letter as an exhibit?

18 MS. LEWIS: We do not object.

19 THE COURT: You do not object, although the defendant
20 would not testify?

21 All right. What's the government's position?

22 MR. ROSENBERG: We certainly object to this on a number of
23 grounds, Your Honor. For one, there's no reason this cannot
24 have been put in or attempted to be put forward in Mr. Vance's
25 case in chief.

1 Number two, this was not provided as reciprocal discovery
2 under Rule 16, which would be required if it's being introduced
3 in the defendant's case in chief.

4 Three, it's impermissible hearsay. It's being -- it's a
5 statement of a non-testifying party that is not a party
6 opponent.

7 So I think for all of those grounds, there is not a basis
8 to admit it.

9 In the event that the Court disagreed and was inclined to
10 allow it to be put in, this is a six-page letter that we've
11 received for the first time. There is also a reference to an
12 Excel attachment that's not been provided in it. So if this
13 were to come -- come in, we would ask for leave for time to
14 actually review the contents.

15 THE COURT: All right. So let me see if I understand
16 what's going on here.

17 It would appear that this is the letter that Mr. Vance
18 kept referring to in his interview with the FBI but would not
19 disclose the contents of it. So he was clearly aware of it, of
20 the existence of this letter whenever it was created. It was
21 never provided to the United States in reciprocal discovery.

22 At this stage, Mr. Vance wants to basically reopen to
23 introduce the letter.

24 Is that fair summary?

25 MR. DARLING: Yes, Your Honor.

1 THE COURT: It will not be allowed.

2 MR. DARLING: I'm sorry?

3 THE COURT: It will not be allowed, Mr. Darling. It's
4 improper for several reasons that the United States has
5 indicated.

6 And so the objection to reopening, for purposes of
7 introducing a letter of a third party, Ms. McKinnon, the
8 objection is sustained and the request to reopen is denied.

9 All right.

10 MR. DARLING: Your Honor, please, even in light of the
11 ruling, I would like to tender the exhibit for possible review
12 at a later time.

13 THE COURT: It will be filed in the record as a Court
14 exhibit. It will not be allowed to go back to the jury and
15 counsel may not make reference to the letter or the contents of
16 the letter in the closing arguments to be made in the case.

17 Now, of course, there is reference in the testimony of
18 Special Agent Hubbuch, references to a letter, I believe. I
19 believe that part was played to the jury. But in terms of
20 discussing the contents, it will not be permitted.

21 What would be the next exhibit, Madam Clerk, how will that
22 be marked?

23 THE CLERK: For the government?

24 THE COURT: No, Defendant Vance Court Exhibit.

25 THE CLERK: 1.

MOLLY IRENE MCKINNON - DIRECT

1 THE COURT: Number 1.

2 (Defendant Vance Court Exhibit 1 was admitted.)

3 THE COURT: All right. You can bring that up to the
4 clerk. That is not to go to the jury.

5 THE CLERK: Would you like to see it?

6 THE COURT: No, I don't need to see it.

7 Anything else before we bring the jury back in? Let's
8 bring the jury in.

9 (Jury entered the courtroom at 9:57 a.m.)

10 THE COURT: Once again, all members of the jury are
11 present. Defendants and counsel are also present. We will
12 continue at this time with the case on behalf of Ms. McKinnon.

13 Ms. Lewis?

14 MS. LEWIS: Thank you, Your Honor.

15 THE COURT: Are you calling the defendant?

16 MS. LEWIS: Calling the defendant, Your Honor.

17 **MOLLY IRENE MCKINNON, DEFENDANT, SWORN**

18 THE COURT: Thank you. You may proceed.

19 MS. LEWIS: Thank you, Judge.

20 MOLLY IRENE MCKINNON

21 DIRECT EXAMINATION

22 BY MS. LEWIS:

23 Q. Good morning, Molly.

24 Would you please state your name for the record?

25 A. Molly McKinnon.

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1 Q. How old are you?

2 A. 59.

3 Q. Where do you currently reside?

4 A. In Acworth, Georgia.

5 Q. Who do you live with there?

6 A. I live in my sister's house with my mom and my sister's
7 stepson.

8 Q. What type of car do you drive?

9 A. My sister's Camry.

10 Q. All right. Do you have any vacation homes?

11 A. No.

12 Q. Do you own any boats?

13 A. No.

14 Q. What's your educational background?

15 A. I went to college for psychology. No accounting,
16 anything.

17 Q. All right. Do you have any past work experience
18 supervising employees?

19 A. No.

20 Q. Do you have any past work experience related to coal
21 sales?

22 A. No.

23 Q. What's your job history like?

24 A. Real estate. I worked in the real estate industry for
25 years. When the market crashed, I kind of transitioned over to

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1 helping people find money to buy real estate.

2 Q. How did you meet Doug Vance?

3 A. I was introduced to him by a gentleman named Paul Roberts,
4 I believe. He told me that Doug had a business in Virginia and
5 he was looking to -- looking for money to expand it, so he
6 thought I might be able to help him find a loan to expand it.

7 Q. About when did you start working with Mr. Vance?

8 A. I think I was introduced to him, I don't know, March,
9 April, May of 2016.

10 Q. All right. And when you were working with him, did you
11 come to Kentucky for that?

12 A. I did, but not until probably July-ish of 2016, maybe.

13 Q. How often were you here at that point?

14 A. At that point it was just that one visit.

15 Q. But --

16 A. After -- after he moved to Kentucky, I would come up here
17 every week.

18 Q. And he moved to Kentucky from Virginia, his operation?

19 A. The operation did.

20 Q. So when you were coming to Kentucky, did you stay here or
21 did you drive back and forth to Acworth, Georgia?

22 A. It was about a six-hour drive, so I would usually drive up
23 on either a Sunday night or early Monday morning and stay in a
24 hotel through like Friday and drive home on Friday.

25 Q. What was your role in the business at that point?

MOLLY IRENE MCKINNON - DIRECT

1 A. Initially, it was just supposed to be me finding money for
2 him to move the business.

3 And Gary Chamblee was one of the investors. He asked me
4 if I would stay on to like oversee the accounting and
5 administrative functions.

6 Q. How long did you actually plan to stay in that role?

7 A. About six months, six, nine months tops. Because me and
8 my husband had just opened another business, so I was just
9 going to do that and then kind of get things set up and then go
10 back to my business.

11 Q. So it wasn't long term?

12 A. No.

13 Q. Or at least that was the plan. What potential investors
14 did you locate for Mr. Vance, other than Mr. Chamblee that you
15 already mentioned?

16 A. Chamblee and Allan Deware.

17 Allan Deware was introduced to me by a gentleman named
18 David Smith. And I had known David for maybe four or
19 five years. And we had been discussing some other deals,
20 mentioned it to him and he said he had a friend named Allan who
21 might be interested as well.

22 Q. And Mr. Chamblee was with the Shumard Group as we heard?

23 A. Correct.

24 Q. Between Mr. Deware and the Shumard people, which ones
25 invested first?

MOLLY IRENE MCKINNON - DIRECT

1 A. I believe I actually started talking to Allan Deware
2 first, but Shumards invested first.

3 Q. All right. Was Mr. Deware aware -- did Mr. Deware have
4 knowledge of the people from Atlanta, the Shumard Group?

5 A. Absolutely.

6 Q. Was it discussed?

7 A. Many times.

8 Q. What was your understanding of Mr. Deware's plan with
9 investing with Mr. Vance?

10 A. Initially, it was he wanted to be a partner with Doug.
11 But when he found out that Shumard had invested first, his plan
12 was to -- he wanted to get everything set up and then buy out
13 the Shumards, so that was his ultimate goal. But until he
14 could do that, he wanted to help with the marketing.

15 Q. Was there mention of possible purchasing the Trus Joint
16 facility?

17 A. Yes, with both.

18 Q. And did both provide that they had proof of the funds to
19 do so?

20 A. Yes, they did.

21 Q. Did Mr. Deware, you, and Mr. Vance have regular meetings?

22 A. We started off that way. We had conference calls every
23 Tuesday. But along the way, Allan and David, their attendance
24 kind of dropped off. But initially we did talk every Tuesday,
25 I believe it was.

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1 Q. Why do you believe their interest started dropping off?

2 A. David -- David and Allan had been in a partnership
3 previously and David was a salesperson, I believe. And he
4 thought he could make a lot of sales. He had contacts with
5 southern companies. He had many contacts, he thought he could
6 make a lot of sales. That didn't happen.

7 Allan brought in his own marketing company called Lucky
8 Dog. Lucky Dog spent about four months trying to put together
9 a lump charcoal deal and that fell apart. I mean, there were
10 just several things along the way that, sales wise, just did
11 not happen.

12 Q. Was there issues they found out about as far as the end
13 product and production cost?

14 A. The -- for the lump charcoal deal or --

15 Q. Correct.

16 A. -- the capacity? The lump charcoal deal that Lucky Dog
17 put together, I put a pro forma together based on the numbers
18 they gave me. And because they had to purchase, I forgot how
19 much it was, I want to say they had to purchase about \$20,000
20 worth of bags in bulk. So in order to do that, and in order to
21 sell the product, they brought in a distributor and the
22 distributor charged more money. So the overall numbers
23 initially did not make a profit.

24 So Allan elected not to go forward with it. And like I
25 said, that was like a four-month process he was trying to get

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1 that set up.

2 Q. So that turned out to be a non-lucrative marketing
3 attempt?

4 A. Correct. It would have eventually made money, I believe,
5 it's just they had to shell out all the money up front to
6 get -- to get the distribution and the bags purchased.

7 Q. Were there any liability issues that popped up around that
8 time?

9 A. Yes, there were. Mr. Vance was doing logging and there
10 were two workers' comp accidents. And Mr. Deware was very
11 concerned about his own personal liability.

12 Q. So he had knowledge that Mr. Vance was still engaged in
13 logging at that point?

14 A. Absolutely. The -- never mind.

15 Q. Did you ever discuss whether you had any personal loans
16 with Mr. Deware?

17 A. That was never discussed at all.

18 Q. Okay. So you never asked him to pay any of your personal
19 loans?

20 A. No.

21 Q. If you had personal loans that you needed paid back, would
22 you ask him to pay for them for you?

23 A. No. I was borrowing money from my sister. I was living
24 at my sister's home, I was driving my sister's car. The
25 Shumards were supposed to be paying me from their company

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1 account, but they didn't pay me so I had to borrow money from
2 my sister.

3 Q. Okay. Let's talk about the Shumard Group. When was it
4 that they invested?

5 A. August 26, 2016.

6 Q. Do you recall when they formally registered NexGen Energy
7 Partners?

8 A. I think it was like November. It was like three months
9 later.

10 Q. When did they eventually open a bank account?

11 A. I actually had to open the bank account. I opened one in
12 March of 2017, because the -- they were putting money into
13 Mr. Vance's account, and Mr. Vance's account was in Virginia.

14 And the employees, a lot of them didn't have pay -- didn't
15 have bank accounts. So they wanted to go cash their checks.
16 So it was just more convenient if I opened up something in
17 Hazard locally, that we would be able to use for them.

18 So I opened up an account in Hazard in March of 2017, but
19 they didn't even start using it until June.

20 Q. All right. You testified that at the same time Mr. Vance
21 was still engaged in logging?

22 A. Correct.

23 Q. When did he stop receiving any income from logging, to
24 your knowledge?

25 A. June of 2017.

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1 Q. And that's approximately the same time that Bank of
2 America account was opened?

3 A. Correct -- no, no -- yeah, the Bank of America account.

4 Q. When was the first time anyone with --

5 A. Oh, that was a mistake. It was the Whitaker account that
6 they started putting money into in June. I opened it in March,
7 but they didn't start using it until June.

8 Q. When did they open the Bank of America account?

9 A. Bank of America was November, I think, later that year.

10 Q. Of?

11 A. 2017.

12 Q. 2017? All right. Around the same time that the logging
13 income ceased?

14 A. The logging income ceased in June of 2017. And that's
15 when they started putting money into the Whitaker account.

16 Q. All right. When was the first time anyone from the
17 Shumard Group requested you tender any financial documents?

18 A. I want to say it was like March, March or April of 2017.

19 Q. Had they asked for any bank records or bookkeeping records
20 prior to that?

21 A. No.

22 Q. If they had, would you have provided them?

23 A. Yes.

24 Q. Who was supposed to be over NexGen Energy Partners'
25 accounting and administrative needs?

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1 A. Somebody from the Shumard office. I mean, originally,
2 Doug's intent in his original LOI, I think everybody has seen
3 that, he specifically asked that they handle the accounting and
4 that they handle the administrative work, because I think
5 everybody has seen he's not a paperwork person.

6 Q. And you were involved at that point too. And if you had
7 any objection, you could have brought that to their attention?
8 Say if you wanted to keep it yourself --

9 A. Oh, definitely. Definitely.

10 Q. So you would have had no problem with them taking over
11 accounting?

12 A. Not at all.

13 Q. What method of accounting were you asked to use by the
14 Shumard people?

15 A. They asked me to use QuickBooks, set up QuickBooks with a
16 cash basis system, which is, my understanding is cash basis is
17 just like your regular checkbook.

18 Q. Were you familiar with that?

19 A. I wasn't familiar with QuickBooks. I did use a program
20 called Peachtree for me and my husband's business, but it's
21 just -- I mean, it was just cash basis, just like I said, just
22 like a regular checkbook.

23 MS. LEWIS: All right. Can we see Defense Exhibit 92?
24 It's previously been admitted.

25 Q. Molly, can you see this document on your screen?

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1 A. Yes.

2 Q. What does this appear to be?

3 A. I sent Mendie Hogan, who was at the Shumard's office, an
4 email. It was about the time to start setting up the
5 QuickBooks for the -- their accountant was going to file taxes
6 for the business. And she had asked me about making some
7 adjustment in the computer and I didn't know how to do it. I
8 sent her reports.

9 I think if you go down a little bit further, initially
10 they asked for me to use -- I'm sorry, go ahead.

11 Q. What is the date of this email?

12 A. April 24th, 2017.

13 Q. All right. You can continue.

14 A. I'm sorry. I think this is on the email chain where they
15 asked me to use cash basis.

16 MS. LEWIS: Scroll down to page 2.

17 A. Yeah, right there.

18 MS. LEWIS: Page 3 rather.

19 A. No, you just passed it. Right there. Down at the bottom
20 right.

21 Q. Okay. What does that bottom sentence say?

22 A. "Please send me the copy of the 2016 balance sheet, P&L,
23 trial balance, and general ledger all cash basis."

24 MS. LEWIS: If we could go down to page 3?

25 Q. What is this document, Molly?

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1 A. That is the document that I sent them, it was the P&L for
2 the company for August through the end of the year for 2017.

3 Q. Is it January through December?

4 A. Yeah, it says January but the company didn't start until
5 August, so that was the time period that it covered.

6 Q. This was using cash basis?

7 A. Yes.

8 MS. LEWIS: Then if we could go to the next section?

9 Q. This is in that same email chain, correct?

10 A. It is.

11 Q. What type of accounting is noted on this document, Molly?

12 A. It changed to accrual.

13 Q. Is this the same profit and loss statement basically?

14 A. It is.

15 Q. Why did you go from cash basis to accrual?

16 A. I was told to change it.

17 Q. Who told you to change it?

18 A. Gary Chamblee.

19 Q. What was the different result going from cash basis to
20 accrual from your observation?

21 A. If you look at the initial one, the sales are like 19,000,
22 I think it is. And there was a net loss for the company of
23 \$267,000.

24 So when I changed it to accrual, now we're showing sales
25 of 62,000, and the net -- there is a net loss of 230,000. So

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1 the loss for the company went down and our sales went up.

2 Q. There could have been other accounting factors that you're
3 not aware that also contributed to that?

4 A. Yeah. All I did for that one, that I know of, is just
5 changed it from cash to accrual.

6 Q. And Mr. Vance was engaged in logging still at this point?

7 A. Correct.

8 Q. Was anyone from the Shumard Group aware that he was
9 engaged in logging?

10 A. Mr. Chamblee was.

11 Q. Did you enter the logging income into QuickBooks?

12 A. I did.

13 Q. Was it -- how was it denoted or reflected?

14 A. It was shown in the books as sales of our carbon product
15 instead of logging.

16 Q. Who told you to make that change?

17 A. Mr. Chamblee.

18 Q. Other than the logging income, did you receive sales
19 reports of carbon product from anyone, or amount of sales?

20 A. For this? I don't think so.

21 Q. All right. At any time.

22 A. I did later.

23 Q. Who did you receive sales information from?

24 A. Mr. Chamblee told me that he had made some sales and gave
25 me information to input into the QuickBooks.

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1 Q. All right. Did you also create any updates for the
2 partners in NexGen Energy Partners?

3 A. I don't remember exactly when I started it, but I
4 typically on -- I want to say Mondays, I would send in a report
5 of whatever we had done for the week.

6 There came a point when I -- it was usually a -- it
7 started off as an email and then it transitioned into a regular
8 report. But not official accounting reports until April.

9 Q. And those reports reflected those sales?

10 A. Correct.

11 Q. Where was money from Mr. Chamblee's reported sales going?

12 A. He told me that the money was being deposited into --

13 MR. ROSENBERG: Objection, Your Honor.

14 THE COURT: Sustained.

15 BY MS. LEWIS:

16 Q. To your knowledge, do you know where the money from
17 Mr. Chamblee's sales was being deposited?

18 MR. CHAPMAN: Your Honor, unless there's a non-hearsay
19 basis for this knowledge, I will object.

20 THE COURT: Sustained.

21 BY MS. LEWIS:

22 Q. What was Mr. Chamblee's role with the Shumard Group?

23 A. He was one of the investors. He was a manager of the
24 business, and he was a CPA.

25 Q. Did you report to him?

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1 A. Yes.

2 Q. How did you typically communicate with him?

3 A. Usually by phone, by email, sometimes by text.

4 Q. Were there any apps other than text?

5 A. Not initially, but later on he started communicating
6 through an app called WhatsApp. And also requested that I sign
7 up for a subscription-based service called Silent Circle.

8 Q. Did you have both of those apps then at that point?

9 A. I can't remember if I had WhatsApp. I had never heard of
10 Silent Circle before.

11 Q. So you installed Silent Circle?

12 A. I didn't initially. I added it maybe two or three months
13 after that.

14 Q. And how does that app work?

15 A. That app if -- say I send you a text, I can make it
16 disappear on your end. So if I send you a text that says,
17 "Hey, Brandi," I can make it disappear in three minutes, five
18 minutes, a day or whatever.

19 Q. Did you communicate -- I'll move on from that.

20 What's the point of WhatsApp? What's distinctive about
21 that application?

22 A. I think it's encrypted. I don't really know that much
23 about it.

24 Q. How did you communicate on that app with Mr. Chamblee?

25 A. I think it was primarily text, but phone calls as well.

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1 Q. Does that --

2 A. And Silent Circle also worked with the phone. But it's --
3 you had to -- I mean, he could delete the text to show that it
4 didn't come through.

5 Q. All right. Did either of those apps leave any record on
6 phone records?

7 A. Not that I'm aware of. I think that's the whole point of
8 getting them, is that they don't show a record.

9 Q. To move on, you remember Mike Miller testifying last week
10 about his payroll checks, correct?

11 A. Yes.

12 Q. In July 2018, did you request funds for payroll?

13 A. I did.

14 Q. Do you recall what that amount was?

15 A. \$5,600.

16 Q. And when was that payroll -- or what was that pay date
17 for, or the date?

18 A. They got paid every Friday, so that pay period should have
19 been -- the checks written on that pay period should have been
20 July 6th. And I think -- I'm sorry, go ahead.

21 Q. All right. So you saw the checks that were dated
22 June 6th?

23 A. Correct.

24 Q. Do you recall what day of the week June 6th, 2018 was?

25 A. A Wednesday.

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1 Q. All right. And paychecks were issued on Fridays?

2 A. Correct.

3 Q. So out of those payroll funds, did you actually receive a
4 paycheck?

5 A. No.

6 Q. There's been talk about email, financial information that
7 you sent to Dell Jagers with Kentucky River Properties.

8 A. Yes.

9 Q. All right. What knowledge did you have about that
10 information that was sent?

11 A. The information I sent was information that I had input
12 into QuickBooks that reflected Gary Chamblee's sales.

13 Q. And he reported those to you?

14 A. I'm sorry?

15 Q. He reported those to you?

16 A. Correct.

17 MS. LEWIS: If we could go to Government's Exhibit
18 Number 151? That's already been admitted.

19 Q. Molly, what is this document?

20 A. This was an email I sent to Mr. Vance prior to --

21 Q. What date?

22 A. I'm sorry. June 24th of 2018.

23 Q. All right. Can you explain this email to the jury?

24 A. Yeah. Mr. Vance was planning to go visit the Shumard
25 Group and discuss a buy-out, so that he could buy them out of

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1 the partnership. So I was giving him some information prior to
2 his trip.

3 Q. All right.

4 MS. LEWIS: If we could scroll down just a little bit,
5 please?

6 Q. Do you see a notation under Gary's main questions about
7 Robert?

8 A. Yes.

9 Q. Who is Robert?

10 A. Robert is -- there is a company called RJF Trucking that
11 Gary required us to use, and Robert was asking for his money to
12 be paid.

13 Q. Had there been problems with that company?

14 A. There were. I didn't understand at the time. The company
15 charged more than other companies. The company had trouble
16 with trucks showing up, but Mr. Chamblee still required that we
17 use them. So I just thought he was getting some kind of
18 kickback.

19 Q. All right. And then what is this last bullet point?
20 Please read that and explain that.

21 A. "I haven't transcribed all conversations yet, but I have a
22 few I can send over if you want them now or I can just give
23 them all to you next week."

24 Q. Who were those conversations with?

25 A. They were conversations between me and Gary Chamblee.

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1 MS. LEWIS: If we go to Government's Exhibit Number 156,
2 please? Previously admitted.

3 Q. Molly, what is this document and the date on it?

4 A. This was an email, it looks like it originated from Gary,
5 dated March of 2018, March 5th, 2018.

6 Q. All right. From Mr. Vance though?

7 A. Correct. I'm sorry.

8 Q. All right.

9 MS. LEWIS: If we could scroll down, please?

10 Q. What's your recollection, understanding of Mr. Chamblee's
11 communication here?

12 A. He -- Mr. Chamblee and Mr. Shumard had several different
13 businesses, one of the businesses was in Colombia, the country
14 of Colombia. He had reached out to a gentleman named Ernie
15 from that company --

16 MR. CHAPMAN: Objection, Your Honor.

17 THE COURT: Sustained.

18 A. Okay. I'm trying to think --

19 THE COURT: Sustained.

20 A. It was my understanding that --

21 MR. CHAPMAN: Your Honor --

22 THE COURT: Sustained.

23 BY MS. LEWIS:

24 Q. Just wait, please.

25 A. I'm sorry.

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1 Q. I guess is this an example of information he's passing on
2 to you of sales?

3 A. Yes, he was requesting an update on the sales of product
4 that he purchased through a company that he had worked with
5 previously.

6 MS. LEWIS: Let's go to Government's Exhibit Number 177,
7 please.

8 Q. What is this document, Molly?

9 A. This is another email communication between Doug,
10 Mr. Chamblee, and myself, May 5th, 2018.

11 Q. All right.

12 MS. LEWIS: Scroll down.

13 Q. What is Mr. Chamblee talking about here, based upon this
14 email?

15 A. The one addressed to me or to Doug?

16 Q. Yes.

17 A. He said that he hasn't -- they didn't receive checks and
18 wanted me to follow up.

19 I believe there's an email from Mendie a day or two later
20 that says that she got a check from Miller, so I'm just
21 assuming that's the check that he is referencing, who was one
22 of our companies.

23 Q. So Miller is a coal or carbon provider --

24 A. It's --

25 Q. -- supplier?

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1 A. It's one -- I believe this particular one was -- Doug did
2 toll processing on his equipment, and I believe this was one of
3 the checks for the toll processing.

4 Q. Okay. In this section that's noted to you and Doug, could
5 you read that first line, please?

6 A. "I plan on being in Hazard on Thursday. I would like to
7 talk about Koch and see what you would like to present to
8 them."

9 Q. So he was aware that there were discussions with Koch or
10 potential discussions?

11 A. Absolutely. This also references the trip with Mr. McCoy.
12 Mr. McCoy is the gentleman that he bought the coal from.

13 MR. CHAPMAN: Nonresponsive, Your Honor.

14 THE COURT: Sustained. Jury will disregard.

15 BY MS. LEWIS:

16 Q. Does this email also mention other meetings?

17 A. Yes.

18 Q. All right. Who are those meetings to be with?

19 A. Ken McCoy, and a gentleman named Jeff Dimick.

20 Q. To your knowledge, what is Mr. McCoy involved in?

21 A. Mr. McCoy is the gentleman that Gary referenced when he
22 was here who is his coal partner and that he bought coal from
23 to fill his orders.

24 Q. Who is Mr. Dimick?

25 A. Dimick was a gentleman that I believe he said he had met

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1 him through the university.

2 Q. Who is he --

3 A. I'm sorry.

4 Q. Without saying --

5 A. Gary Chamblee met him through some university. And Jeff
6 Dimick had a piece of technology that he wanted to connect with
7 Mr. Vance's technology and create electricity, was my
8 understanding. And Mr. Dimick had initially applied for a
9 \$6 million loan -- I'm sorry, \$6 million grant for that
10 transaction.

11 Q. Did that potential grant amount increase later?

12 A. It did, it increased to 30 million.

13 MS. LEWIS: If we can go to Government's Exhibit
14 Number 130? Already admitted into evidence.

15 We'll move past that due to technical difficulties.

16 If we could see Government's Exhibit Number 134?

17 May I have a moment to help, Your Honor?

18 THE COURT: Yes, ma'am.

19 BY MS. LEWIS:

20 Q. Molly, do you recall an email between you, Mr. Vance and
21 Mr. Severson with Koch?

22 A. There were several.

23 Q. Okay. Do you recall one that had an attachment of
24 reported sales?

25 A. I typically sent one of those like every week.

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1 Q. All right. Where did you get the information for sales
2 that went into that email report?

3 A. Mr. Chamblee.

4 Q. Did Mr. Vance provide any of that information as well?

5 A. Not -- not -- no.

6 Q. So, Molly, with your time with Mr. Vance and then with
7 NexGen Energy Partners and all of these people, were there any
8 large transfers to your bank accounts?

9 A. No.

10 Q. Just perhaps payroll, salary, what have you?

11 A. That's the only thing I got. And I was still owed money
12 when I left.

13 Q. Were you supposed to be reimbursed for your expenses --

14 A. Yes.

15 Q. -- where you had to drive and stay in Kentucky?

16 A. Yes.

17 Q. Were you even reimbursed for all of that?

18 A. I think over the entire time I was there, like two years,
19 I got maybe \$3,000.

20 Q. Okay. I believe we saw a cashier's check yesterday or
21 Friday for \$6,000 to you.

22 Do you recall what that was for?

23 A. That was for past due salary. I was supposed to get
24 \$3,000 a month, and I was supposed to start getting paid in
25 August and I didn't. So that was past due salary.

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1 MS. LEWIS: Nothing further. Thank you.

2 THE COURT: Thank you.

3 Mr. Chapman?

4 MR. CHAPMAN: Yes, Your Honor. Thank you.

5 THE COURT: You may question the witness.

6 CROSS-EXAMINATION

7 BY MR. CHAPMAN:

8 Q. Good morning, Ms. McKinnon.

9 A. Hello.

10 Q. I have got several topics of questions to cover with you
11 this morning. I would like to start with your role in the
12 company.

13 You were the CFO of Nex-Gen, correct?

14 A. I -- originally I was supposed to be the CEO, and that
15 changed, so

16 Q. What did it change to?

17 A. I think there's one email in there where I said general
18 flunky, to be honest. I just did basically whatever I could,
19 whatever I needed to do.

20 Q. You represented yourself to be the CFO, correct?

21 A. Correct.

22 Q. Was that inaccurate?

23 A. Not necessarily.

24 Q. Either you're CFO or you're not.

25 A. Well, I did have that on my email, I didn't officially

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1 have that title, I don't guess. Because nobody really had
2 official titles there.

3 Q. So every email that you sent representing yourself as CFO
4 was a lie?

5 A. No, that's not what I said.

6 Q. Didn't you just testify that you weren't actually the CFO?

7 A. I held several different jobs there. I was in charge of
8 accounting, I was in charge of administrative.

9 Q. Did you or did you not just tell this jury that you were
10 not the CFO?

11 A. I don't know if I used those exact words.

12 Q. I think the jury will remember.

13 A. Okay.

14 Q. So I'll ask you again. Were you the CFO?

15 A. I didn't have that official title.

16 Q. So if you represented yourself as having that title, that
17 would not be true, correct?

18 A. I guess you could look at it that way.

19 Q. You were with the company starting in mid 2016; is that
20 correct?

21 A. August 26th of 2016, correct.

22 Q. Through the end of 2018?

23 A. Not all the way through the end, no.

24 Q. When?

25 A. They actually removed me as a manager in June of 2018, but

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1 Mr. Chamblee requested that I stay on, I believe through like
2 September, October --

3 Q. Okay.

4 A. -- of 2018.

5 Q. So October of '18.

6 You worked closely with Mr. Vance; is that correct?

7 A. I did.

8 Q. Describe for the jury your relationship with Mr. Vance.

9 A. Well, initially, I tried to help him find loans to grow
10 the business. And then he was one of the investors in the
11 business, so I worked with him typically on a daily basis when
12 I was in Kentucky.

13 Q. You would work with him on a daily basis?

14 A. Typically, I was there Monday through Friday usually.

15 Q. Now, Ms. McKinnon, you lied to investors in this case,
16 didn't you?

17 A. No.

18 Q. You lied to lenders, didn't you?

19 A. Not that I am aware of.

20 Q. We'll walk through a few of those documents.

21 A. Okay.

22 Q. First of all, let's talk about April Francis.

23 You know Ms. Francis, don't you?

24 A. Yes.

25 Q. Who is she?

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1 A. She was the person who was hired to take my place because
2 I was only supposed to be there about six months.

3 Q. She was hired to take your place as CFO?

4 A. Correct -- that's what I'm trying to say. I wasn't
5 technically the CFO. I did everything there. It was a very
6 small office. So when you use a term like CFO or CEO, that's a
7 little -- it's not totally correct.

8 Q. Your time at Nex-Gen lasted over two years, correct?

9 A. Correct.

10 Q. And Ms. Francis worked there for the entire time -- her
11 period of time completely was subsumed within your period of
12 time, correct?

13 A. Yeah. I believe she was hired in December of 2016 and
14 left like maybe June of 2017.

15 Q. So she didn't take your place. You both worked there at
16 the same time.

17 A. That was the initial plan, but she did not.

18 Q. But that is not what happened?

19 A. No, it's not.

20 Q. Now, you got irate at her when she discovered that bank
21 statement, didn't you?

22 A. I didn't get irate.

23 Q. Don't you remember her testifying to that?

24 A. She testified to a lot of things that weren't totally
25 true.

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1 Q. That's -- ma'am, that wasn't my question. If you could
2 respond to my question.

3 Do you remember her testifying that you got irate when she
4 discovered that bank statement?

5 A. I remember her saying that.

6 Q. When she said that, she was lying to this jury?

7 A. My recollection, yes.

8 Q. You got irate at her because you understood your scheme
9 had just been exposed to someone who shouldn't have known about
10 it.

11 A. No. There was a question at that point about some of the
12 information that I was conveying I realized was incorrect. So
13 yes, I was concerned about the information that was out there.

14 Q. So you are admitting to this jury that you sent incorrect
15 information to Mr. Deware?

16 A. I am.

17 Q. Let's talk more about Mr. Deware. You misrepresented the
18 status of the Shumard Group in an August 2016 email, right?

19 A. I'm sorry?

20 Q. Could you not hear my question?

21 A. I didn't.

22 Q. I apologize. You misrepresented the status of the Shumard
23 Group in an August 2016 email, did you not?

24 A. No, I did not.

25 MR. CHAPMAN: Can we pull up Government's Exhibit 601?

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1 This has been previously admitted.

2 Q. Ma'am, if you could read, it's the third paragraph, the
3 sentence that begins, "If you still want to provide one."

4 Do you see that?

5 A. "If you still want to provide one, you will be first in
6 line if the first group decides not to move forward. They
7 are" -- finish?

8 Q. That was the only sentence that I wanted you to read.

9 So in this email, you are representing that the Shumard
10 Group had not moved forward.

11 A. They hadn't at that point.

12 Q. And you are telling Mr. Deware that it's a choice between
13 the Shumards and him, correct?

14 A. It was at that point.

15 Q. That's not what you did in this case, Ms. McKinnon. You
16 set up alternative companies for Mr. Deware and the Shumards.

17 A. That is not what happened.

18 Q. You sent Mr. Deware a false investment summary, didn't
19 you?

20 A. Not that I recall.

21 Q. Well, I can show it to you.

22 A. Okay.

23 MR. CHAPMAN: If you'll pull up Government's Exhibit 602?

24 Q. You sent this to Mr. Deware, correct?

25 A. I assume so.

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1 Q. Do you not remember?

2 A. I don't. I mean, there's no date on it, I don't -- I have
3 no idea.

4 Q. You don't remember what you sent investors?

5 A. Over six years ago, I don't remember every little thing
6 that I sent.

7 Q. Do you recall Mr. Deware testifying that you sent this to
8 him?

9 A. Yes.

10 Q. Do you have any reason to doubt that you did?

11 A. No.

12 Q. Okay. Now, the sentence that says, that begins,
13 "Currently operating under the name Nex-Gen Industries."

14 Do you see that?

15 A. Where is it?

16 Q. It's being highlighted for you.

17 A. Okay. Yes.

18 Q. It says "Vance has self-funded the business since 2013."

19 Do you see that?

20 A. Yes.

21 Q. That statement was not accurate, correct?

22 A. My understanding was he self-funded.

23 Q. He got money from Joan Faybik, did he not?

24 A. That -- he got money for personal loans is the way I
25 understood it.

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1 Q. If he had gotten money for the business from other
2 sources, that statement would not be correct, correct?

3 A. No. No, no, I'm not saying that's not correct.

4 Q. What are you saying?

5 A. I'm saying that certain people look at things, if you --
6 if you get money from friends and family, that's considered
7 self-funding. And that's what he considered Ms. Faybik, was a
8 personal friend.

9 Q. I'd now like to direct your attention to the second
10 paragraph under business strategy, first sentence, "Due to the
11 fact that sales have exceeded their production capabilities."

12 Do you see that?

13 A. Yes.

14 Q. And that's not true, is it?

15 A. That was conveyed to us from a gentleman named Courtenay
16 Taplin.

17 Q. That's not what I asked you. I asked you if that was
18 true.

19 A. I don't know if it's true or not. That was information
20 that was conveyed to me.

21 Q. You represented that to Mr. Deware not knowing if it was
22 true or not?

23 A. I have no reason to believe that the guy was lying. He's
24 a broker for Kingsford. Why would he lie?

25 Q. Let's go to the next part of the sentence. "Kingsford

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1 Charcoal recently issued verbal commitments to purchase a
2 variety of wood and coal-based products from NGI." Another
3 lie.

4 A. No. Courtenay Taplin told us that he had verbal
5 commitments.

6 Q. Did you hear the testimony from Clorox, Kingsford's parent
7 company?

8 A. I did. But she's not over the entire department either.

9 Q. So Jean Lacy lied to this jury as well?

10 A. That's not what I'm saying. You're trying to say I'm
11 lying.

12 Q. My question was nothing about you, ma'am.

13 A. Initially, you said that Kingsford Charcoal was a lie. It
14 is not a lie. We had a broker who told us that he had verbal
15 commitments, I put that in the agreement.

16 Q. And that was not true, was it?

17 A. I assume not.

18 Q. Ms. McKinnon, you pressed Mr. Deware for money to fulfill
19 that Carbonox purchase order, didn't you?

20 A. I don't know if the term "pressed" is correct. But yes, I
21 told him we had a purchase order from Carbonox that we wanted
22 to fulfill.

23 Q. What about the word "pressed" was incorrect?

24 A. I don't recall pressing him.

25 Q. Okay.

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1 MR. CHAPMAN: Can we show Government's Exhibit 603?

2 Q. Would you please read your email?

3 A. "Here is the PO that Doug needs financing for right now."

4 Q. You sent Mr. Deware false financial information, correct?

5 A. I did.

6 Q. You were hiding transactions from Ken Shumard, right?

7 A. I was told --

8 Q. No, ma'am.

9 A. I was --

10 Q. Answer my question.

11 A. I was trying to -- I was told to put certain information
12 in QuickBooks.

13 MR. CHAPMAN: Your Honor, I'm objecting to hearsay.

14 THE COURT: All right. I'll sustain. Please respond to
15 the question.

16 A. Okay. Can you repeat it?

17 Q. Yes. My question was --

18 MS. LEWIS: Your Honor, can we approach on that?

19 THE COURT: No. She will need to answer the question,
20 please.

21 BY MR. CHAPMAN:

22 Q. My question was, you hid transactions from Mr. Shumard to
23 Mr. Deware, correct?

24 A. Correct.

25 Q. You hid transactions from Mr. Chamblee to Mr. Deware,

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1 correct?

2 A. No. Mr. Chamblee was fully aware --

3 MR. CHAPMAN: Objection. Your Honor.

4 THE COURT: All right. If you would please answer the
5 question, ma'am.

6 BY MR. CHAPMAN:

7 Q. So, ma'am, you are denying to the jury that you hid a
8 transaction from Mr. Chamblee to Mr. Deware?

9 A. Correct.

10 Q. Okay.

11 MR. CHAPMAN: Can we pull up Government's Exhibit 628, I
12 believe? Go to the last page.

13 Q. Ma'am, do you see a transaction on November 21st, 2016?

14 A. Yes.

15 Q. And who is that from?

16 A. Mr. Chamblee.

17 Q. And what's the amount?

18 A. 11,675.

19 MR. CHAPMAN: And now can we go to Government's
20 Exhibit 627? I don't know what page it will be on. Can we
21 scroll to the date range that would encompass 11/21?

22 Q. Can you point out to the jury where Mr. Chamblee's
23 transaction is on this -- on these banking records?

24 A. It's not there.

25 Q. So I'll return to my previous question. You hid a

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1 transaction from Mr. Chamblee in the banking records that you
2 sent to Mr. Deware?

3 A. I misunderstood you. I thought you were saying I hid it
4 from Mr. Chamblee. I'm sorry, that was --

5 Q. So now that your lie was exposed, you're changing your
6 story.

7 A. It's not a lie. I misunderstood your question.

8 Q. You hid transactions from Ms. Faybik, correct?

9 A. I did not hide them. I wasn't aware of them.

10 MR. CHAPMAN: Can we go back to Government's Exhibit 628?
11 Next page.

12 Q. Okay. Do you see in the middle of the page a transaction
13 from January 19th, 2017? Excuse me.

14 A. Which one?

15 Q. Oh, yes. January 19th, yes.

16 A. Yes.

17 Q. Who is that from?

18 A. Joan Faybik.

19 Q. And the amount?

20 A. \$3,500.

21 MR. CHAPMAN: And if we could now return to Government's
22 Exhibit 627? Can we scroll up, Ms. Poynter, to -- oh, you do
23 have it on the right -- thank you.

24 Q. Similar question here, Ms. McKinnon.

25 Where, on the banking records that you sent to Mr. Deware,

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1 does it list a transaction from Ms. Faybik?

2 A. It does not.

3 Q. So again, you hid a transaction from Ms. Faybik?

4 A. I didn't know about that transaction so I wouldn't be
5 hiding it if I didn't know about it.

6 Q. Ma'am, it was on the true banking records.

7 A. I didn't have the true banking records.

8 Q. You're the CFO of the company and you didn't have true
9 banking records?

10 A. Those were Nex-Gen Industries bank statements. I had
11 access to the NexGen Energy Partners bank statements.

12 Q. You're listed as the CFO of a company and your testimony
13 to this jury is that you did not know -- you did not have the
14 true banking records for that company?

15 A. Correct.

16 Q. You also hid a transaction from Mr. Shpakoff, correct?

17 A. On Mr. Deware's?

18 Q. Yes.

19 A. Yeah. Again, I had no knowledge of it, so it wasn't I'm
20 trying to hide it, I didn't know about it. Information that's
21 on here is information that I was given by Mr. Chamblee.

22 Q. Now, you admitted earlier hiding transactions from
23 Mr. Shumard and Mr. Chamblee, correct?

24 A. I admitted Mr. Shumard, not Mr. Chamblee. There is a
25 difference.

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1 Q. I think the jury will recall your testimony. If they
2 remember it differently, you have just lied, correct?

3 A. I don't recall saying that I hid anything from
4 Mr. Chamblee.

5 Q. How did you -- how did you doctor the bank statement?

6 A. How did I doctor it?

7 Q. Yes, ma'am.

8 A. What do you mean?

9 Q. What part of that did you not understand?

10 A. Specifically, what are you asking me?

11 Q. I'm asking you how you doctored these bank statements.

12 A. Which bank statements? What are you -- I'm looking at
13 QuickBooks.

14 Q. The two that we have been looking at.

15 A. I'm sorry.

16 Q. The two that we have been looking at.

17 A. I'm looking at a QuickBooks, aren't I?

18 Q. Financial document. Excuse me.

19 A. Okay. I'm sorry.

20 Q. How did you doctor the financial document?

21 A. Mr. Chamblee brought me a list of transactions --

22 MR. CHAPMAN: Objection, Your Honor. It's not responsive.

23 A. That's --

24 THE COURT: I'll allow her to say where she received
25 information. But she'll have to answer as to whether she

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1 doctored any financial statements.

2 A. The information that I input into QuickBooks was
3 information that Mr. Chamblee gave me.

4 Q. Ma'am, that did not respond to my question.

5 A. What was the question again? I'm sorry.

6 Q. I'm happy to ask it again. How did you doctor this
7 financial document?

8 A. I don't know how you can use the term "doctor" when I'm
9 putting in the information he gave me.

10 Q. Ma'am, you've already admitted, at the least, hiding a
11 transaction from Mr. Shumard.

12 A. Because I was told to put this information in there.

13 Q. So how did you doctor the statement?

14 A. I didn't doctor anything. I put exactly what he gave me.

15 Q. So you're not answering my question.

16 A. I can't say I doctored it when I didn't realize I was
17 doctoring anything.

18 MS. LEWIS: Your Honor, I believe it's been asked and
19 answered.

20 MR. CHAPMAN: I'm moving on, Your Honor.

21 THE COURT: All right.

22 BY MR. CHAPMAN:

23 Q. You made misrepresentations to Mr. Deware concerning the
24 sales of product, correct?

25 A. I gave him information that I thought was correct at the

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1 time that I gave it to him.

2 Q. Again, ma'am, not my question.

3 You gave him incorrect information, correct?

4 A. I gave him information that ultimately turned out to be
5 incorrect, yes.

6 Q. You told him there was a -- that \$285,000 transaction, you
7 told him that was from the sale of product, didn't you?

8 A. I did.

9 Q. That's not true, was it?

10 A. It was not.

11 MR. CHAPMAN: If we could show Exhibit 621? Previously
12 been admitted into evidence. Could we focus down on the bottom
13 of the screen?

14 Q. Ma'am, I will read the sentence I want to ask you about.
15 It says, "I have been holding off on many of the bills just
16 waiting on the Koch checks to come in."

17 Was that an accurate reading?

18 A. Correct.

19 Q. And when was -- when did you send this email?

20 A. May 3rd of 2017.

21 Q. In May -- on May 3rd of 2017, there had been no sales to
22 Koch.

23 A. I did not realize that, but there had not been.

24 Q. And there was no financial relationship with Koch of any
25 sort?

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1 A. I don't believe so at that time.

2 Q. So if you represented to Mr. Deware that we're waiting on
3 Koch checks to come in, that would not be accurate, would it?

4 A. It was accurate in that I thought it was true when I sent
5 that. I found out later that was incorrect.

6 Q. Again, you're the CFO of this company, aren't you?

7 A. You keep going back to that title. I wasn't --

8 Q. You handled the financials.

9 A. I put CFO on there because Mr. Chamblee wanted us to get
10 credit for the company.

11 Q. You handled the financials, didn't you?

12 A. I did -- well, hold on. Which company? There were
13 several companies.

14 Q. You tell me.

15 A. The Shumards hired me to handle the accounting for NexGen
16 Energy Partners.

17 Q. This email is not to the Shumards, is it?

18 A. It is not.

19 Q. Who is it to?

20 A. This is to Allan Deware.

21 Q. And you handled the financials for Mr. Deware's company,
22 didn't you?

23 A. Not his company.

24 Q. Who did?

25 A. I'm assuming Mr. Deware did.

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1 Q. Mr. Deware was handling the finances for the company that
2 he set up with you and Mr. Vance?

3 A. Not that company. I'm sorry, I thought you were talking
4 about his other company.

5 Q. What other company?

6 A. Paint Dynamics, whatever his other company was.

7 Q. Why would I be asking you about Paint Dynamics?

8 A. I don't know.

9 Q. You handled the finances for the company that you were
10 involved with with Mr. Deware, didn't you?

11 A. I provided him information that I was given by
12 Mr. Chamblee.

13 Q. Concerning Mr. Deware's company?

14 A. Correct.

15 Q. I would now like to talk about Kentucky River Properties,
16 ma'am.

17 You sent Kentucky River Properties accurate royalty
18 reports, didn't you?

19 A. Yes, I did.

20 Q. There seemed to be some hesitancy in that answer.

21 A. Well, their agreement, they weren't entitled to receive
22 payment for service work, but we paid it anyhow.

23 So if you're going to get technical, they weren't actually
24 supposed to get paid for the service work but we paid them
25 anyhow.

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1 Q. Ma'am, I asked you a very simple question.

2 Did you provide them accurate royalty reports?

3 A. I was trying to explain. If you're going technically by
4 the agreement, we weren't supposed to pay them for service
5 work, but we did.

6 Q. I still don't hear an answer to my question. It's a yes
7 or no question.

8 A. Yes.

9 MR. CHAPMAN: Okay. Let's look at one of those,
10 Exhibit 125. If we can scroll to the royalty report?

11 Q. So, Ms. McKinnon, what have you -- what sale of product
12 have you reported to KRP?

13 A. This is service work, drying graphite.

14 Q. So you are reporting selling 45 tons of dried graphite,
15 correct?

16 A. It's service work. It's not -- you're not selling
17 graphite. They just redried it. They just dried it.

18 Q. Could you look at the third column with me?

19 A. Okay.

20 Q. What's the label of that column?

21 A. Tons Sold.

22 Q. So it's your testimony to the jury that that was not
23 actually 45 tons of sold dried graphite?

24 A. It wasn't.

25 Q. So you're admitting misrepresenting information to KRP?

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1 A. No, I put an asterisk up there that showed it was service
2 work, no production involved. This was their report. They
3 provided me with this report. I just made a notation to
4 clarify exactly what that was.

5 Q. They provided you the report with 45 tons of graphite?

6 A. They provided me the blank report that had the columns on
7 it.

8 Q. So you reported that there were 45 tons of dried graphite
9 sold?

10 A. I've got -- look, I've got an asterisk showing it was
11 service work. I wasn't -- I mean, it clearly says, there's an
12 asterisk, service work, no production involved.

13 Q. Production is different from sales, is it not?

14 A. No.

15 Q. Do you not understand the difference between producing
16 something and selling something?

17 A. This is a royalty report, you show what you've actually
18 sold. Production is different. Production could just be a
19 number. You don't actually always sell what you produce.

20 Q. But you just said you put on a royalty report what you
21 actually sold, correct?

22 A. I did, I guess. I think I clarified that it was service
23 work and not product that was sold.

24 Q. You didn't list any carbon product as being sold on this
25 royalty report, correct?

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1 A. Correct.

2 Q. And that was accurate?

3 A. Correct.

4 MR. CHAPMAN: If we could turn to Government's
5 Exhibit 167? Move on to the royalty report. I'm being told it
6 wasn't. We will move on then.

7 Q. Ms. McKinnon, you sent Mr. Jagers false financial
8 documents, correct?

9 A. I did.

10 Q. And one of those times was on June 26th, 2017?

11 A. I would have to see it again, I don't want to admit to a
12 certain date yet.

13 Q. Ms. McKinnon, let's talk about Stephen Gooch.

14 Do you know who that is?

15 A. Yes.

16 Q. Who is that?

17 A. He was, I believe, a collection agent or an attorney,
18 collection attorney.

19 Q. How were you involved with him?

20 A. I set up an ACH for Mr. Vance.

21 Q. For what purpose?

22 A. I forgot the dollar amount. He was -- I think it was
23 \$25,000.

24 Q. And again, I asked you about the purpose. What was the
25 purpose of that?

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1 A. It was a personal payment. I didn't really get into the
2 specifics of it.

3 Q. You helped Mr. Vance make that payment, correct?

4 A. I did. I set it up.

5 Q. And the money that was used for that actually came from
6 Koch, right?

7 A. I don't know that it actually came from Koch, per se. It
8 was in that account.

9 Q. Well --

10 A. I don't have --

11 Q. Let's talk about --

12 A. I didn't have access to that account.

13 Q. Let's talk about Koch, ma'am.

14 A. Okay.

15 Q. You sent Mr. Severson documents making false
16 representations about sales, right?

17 A. Ultimately, it was determined that they were false, yes.

18 Q. You sent Mr. Severson documents making false
19 representations about customers, right?

20 A. Ultimately, they were determined to be false, correct.

21 Q. You coordinated with Mr. Vance about those
22 representations?

23 A. No. I coordinated with Mr. Chamblee.

24 MR. CHAPMAN: Can we show Government's Exhibit 170? This
25 has been admitted.

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1 Q. Ma'am, who is this an email chain between?

2 A. Me and Mr. Vance.

3 Q. What is the subject line of the email?

4 A. "NGI customers, don't send to Dave yet."

5 Q. Who is Dave?

6 A. Dave Severson.

7 Q. So when you just testified that you did not coordinate
8 with Mr. Vance about the representations to Mr. Severson, you
9 lied?

10 A. No. Coordinate is different. I received information from
11 Mr. Chamblee that got conveyed to this report.

12 Q. And you then worked with Mr. Vance, correct?

13 A. Yes.

14 Q. And you say, "I haven't done a cash flow analysis based on
15 these sales yet so let me do that before you send to anyone
16 just in case I need to revise."

17 A. Exactly. I had to get the cash balance in the bank from
18 Mr. Chamblee in order to do the cash flow.

19 Q. Why would you need to revise a customer list?

20 A. I don't think I was revising the customer list, it was the
21 cash flow on the sales.

22 Q. Why would you need to revise sales?

23 A. I'm not revising the sales, I'm adding in the cash
24 balance -- the report each week showed a cash balance and you
25 would add or subtract based on sales and deposits.

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1 Q. There is a -- the two attachments are a customer list and
2 a sales report; is that correct?

3 A. Yes.

4 Q. And you -- you're indicating to Mr. Vance, do not send
5 these to Mr. Severson in case I need to revise them?

6 A. Correct.

7 Q. Okay. Let's talk about the Shumard Group.

8 A. Okay.

9 Q. You sent Mr. Chamblee false information in July of 2018,
10 right?

11 A. I sent Mr. Chamblee information that he requested.

12 Q. Was that information false?

13 A. I would have to see it.

14 Q. Okay.

15 MR. CHAPMAN: Let's pull up Government's Exhibit 138.

16 This has been previously admitted.

17 Q. The first bullet point of -- first of all, this is an
18 email from you to Mr. Chamblee, correct?

19 A. Correct.

20 Q. In July of 2018, correct?

21 A. Correct.

22 Q. The first bullet point, "Doug will be talking with Cabot
23 on Wednesday and will get an update on the check at that time."

24 Was that an accurate reading?

25 A. Yes.

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1 Q. There was no check from Cabot, was there?

2 A. Ultimately, no.

3 Q. The second bullet point, "AK Steel confirmed that the
4 check should go out on the 24th."

5 There was no check from AK Steel, was there?

6 A. There was not.

7 Q. Washing -- the third bullet point, "Washington Mills
8 should pay the deposit by the end of the month."

9 There was no business with Washington Mills, was there?

10 A. Correct. But this is all information I got from
11 Mr. Chamblee.

12 Q. Ma'am, what is the source of information listed in bullet
13 point number 1?

14 A. It says Doug.

15 Q. What is the source of information listed in bullet point
16 number 2?

17 A. It says Doug.

18 Q. Where does bullet point 2 say Doug?

19 A. Oh, I'm sorry, it doesn't.

20 Q. Okay. What is the source of information listed in bullet
21 point number 2?

22 A. Bullet point number 2, it doesn't have anything.

23 Q. It doesn't have a source of information?

24 A. You're saying who it came from?

25 Q. Yes, ma'am.

MOLLY IRENE MCKINNON - CROSS

1 A. It doesn't.

2 Q. Who --

3 A. Number 2?

4 Q. Who does it say confirmed information?

5 A. Oh, I'm sorry, AK Steel confirmed.

6 Q. You sent Mr. Chamblee false information in March of 2018,
7 correct?

8 A. I sent information that Mr. Chamblee gave me.

9 Q. That was not an answer to my question. If you could
10 please respond.

11 A. I need to -- are you talking about this one or a different
12 one?

13 Q. I can reask my question.

14 You sent Mr. Chamblee false information in March of 2018,
15 correct?

16 A. Can I look at it?

17 Q. It can be hard to remember all the false representations,
18 can't it?

19 MR. DARLING: Objection, Your Honor.

20 A. Anything that came from Mr. Chamblee was false --

21 THE COURT: I'll sustain.

22 MR. CHAPMAN: If we could pull up Government's Exhibit 152
23 and focus at the -- toward the bottom of the page?

24 Q. This is an email from you to Mr. Chamblee, correct --

25 A. Correct.

MOLLY IRENE MCKINNON - CROSS

1 Q. -- in March of 2018?

2 A. Correct.

3 Q. If I could point you to paragraph number 3?

4 A. Okay.

5 Q. It says, "AK Steel started hauling and should have
6 accepted delivery of their 500 tons within the week and we can
7 invoice then."

8 Was that an accurate reading?

9 A. Yes.

10 Q. There was no business with AK Steel, was there?

11 A. There was not.

12 Q. Thank you.

13 A. I thought there was when I sent it.

14 Q. You would know who is and is not doing business with the
15 company, wouldn't you?

16 A. When Mr. Chamblee told me he was making sales, I had no
17 reason to disbelieve him.

18 Q. Ma'am, you're one of the two principals of this company.

19 A. I am not. I'm not a principal on any of these companies.

20 Q. You were running the financials, correct?

21 A. I had access to the NGEP Whitaker bank account. That's
22 the only account I had.

23 Mr. Chamblee had access to the Bank of America account.

24 Q. You were at the site weekly, correct?

25 A. Yes.

MOLLY IRENE MCKINNON - CROSS

1 Q. And yet it's your testimony to this jury that you had no
2 idea who the customers were.

3 A. I'm saying that the customer -- he told me he made these
4 sales. Why should I disbelieve him?

5 Q. And where in your email does it say that?

6 A. Does it say what?

7 Q. That Mr. Chamblee is the one telling you this.

8 A. It doesn't.

9 Q. Why would you email Mr. Chamblee information that he had
10 told you?

11 A. Because he -- every week he would provide information to
12 his partners. That's what he requested.

13 Q. Now, regarding Washington Mills, you concocted a fake
14 Washington Mills purchase order with Mr. Vance, correct?

15 A. I did what I was told to do.

16 Q. Ma'am, that is not my question.

17 Did you or did you not concoct a false Washington Mills
18 purchase order with Mr. Vance?

19 A. I didn't do it with Mr. Vance. Is that your question?

20 Q. It was my question.

21 A. Okay. That's incorrect.

22 Q. All right.

23 MR. CHAPMAN: Can we pull up Government's Exhibit 142?

24 Q. Ma'am, this is an email from you to Mr. Vance, correct?

25 A. Yes.

MOLLY IRENE MCKINNON - CROSS

1 Q. And the attachment is a Washington Mills PO.Doc X,
2 correct?

3 A. Correct.

4 Q. That's a Word document; is that correct?

5 A. I assume so.

6 Q. Do you know what that file suffix means?

7 A. I've seen docs, I have haven't docx, I have seen doc.

8 Q. So you are not familiar with that? You've not familiar
9 with an attachment that you emailed to Mr. Vance?

10 A. Not that abbreviation. D-o-c, I am.

11 Q. So, ma'am, this is a false Washington Mills purchase
12 order, correct?

13 A. Can I see it?

14 Q. Yes, ma'am.

15 A. I'm assuming it is.

16 Q. Yes. Do you see it on your screen now?

17 A. Yes.

18 Q. And so again, my question is, this is a false Washington
19 Mills purchase order, correct?

20 A. Correct.

21 Q. And you emailed it to Mr. Vance, correct?

22 A. Correct.

23 Q. Now regarding Nucor, you concocted a false Nucor purchase
24 order, correct?

25 A. Purchase order?

MOLLY IRENE MCKINNON - CROSS

1 Q. Yes, ma'am -- excuse me, I apologize. A spec sheet.

2 A. Yes.

3 Q. And again, you did this in collaboration with Mr. Vance?

4 A. No, I did not.

5 MR. CHAPMAN: Can we show Government's Exhibit 148?

6 Q. Ma'am, this is an email from you to Mr. Vance, correct?

7 A. Correct.

8 Q. Would you please read your email?

9 A. "The spec sheet you sent looks like it came from a seller
10 instead of a buyer so I changed it up a little. If you need me
11 to make it exactly like that one, I can. If you need me to add
12 or delete anything, let me know. Also, I used a logo that is
13 on their website instead of one in text. Saved as Word doc and
14 PDF."

15 Q. And so you were transmitting the Nucor spec sheets that
16 you created to Mr. Vance, correct?

17 A. Yes. I sent it to his email address.

18 Q. Yes.

19 You provided Mendie Hogan false financial documents,
20 correct?

21 A. Probably, yeah. I would like to see exactly what they
22 are.

23 MR. CHAPMAN: Can we show Government's Exhibit 701? This
24 has been admitted.

25 Q. Do you recognize this, Ms. McKinnon?

MOLLY IRENE MCKINNON - CROSS

1 A. I assume they are the statements I put together.

2 Q. Do you remember Ms. Hogan testified that you sent these
3 bank statements to her?

4 A. Yes.

5 Q. Do you have any reason to doubt that's not the case?

6 A. No.

7 Q. These documents are not true and accurate; is that
8 correct?

9 A. Ask it again. I'm sorry.

10 Q. Yes, ma'am. These bank statements you sent to Ms. Hogan
11 are not true and accurate bank statements?

12 A. They are not.

13 Q. You edited those to remove transactions from Mr. Deware,
14 right?

15 A. The information that I used for these was the information
16 that I got from Mr. Chamblee. I don't recall specifically if
17 Mr. Deware was in there.

18 Q. What was not true and correct about them?

19 A. I would have to look at them. It's been a while.

20 MR. CHAPMAN: Can we scroll through the first bank
21 statement?

22 Q. Ms. McKinnon, can you see an excerpt from this first
23 statement on your screen?

24 A. Yes.

25 Q. Do you see any transactions on this from Mr. Deware?

MOLLY IRENE MCKINNON - CROSS

1 A. No.

2 Q. But you ensured any transaction related to the Shumard
3 Group stayed on this, right?

4 A. I'm sorry, say it again.

5 Q. Yes, ma'am.

6 A. Sorry.

7 Q. You ensured that any transaction involving the Shumard
8 Group stayed on these statements?

9 A. I put on this document what I was given by Mr. Chamblee.
10 It also included receipts from our regular operating expenses.

11 Q. So again, my question was, you made sure any transactions
12 from the Shumard Group stayed on the statements that were being
13 sent to Ms. Hogan?

14 A. I made sure the information that Mr. Chamblee gave me got
15 conveyed to this.

16 Q. If I could have an answer to the question?

17 Did you ensure any transactions from the Shumard Group
18 remained on the bank statements?

19 MS. LEWIS: Objection. Asked and answered.

20 THE COURT: I don't believe it has. You can repeat the
21 question. The witness will be directed to answer.

22 BY MR. CHAPMAN:

23 Q. Ma'am, you ensured any transactions involving the Shumard
24 Group remained on these bank statements, correct?

25 A. I don't know specifically. All I did was put the

MOLLY IRENE MCKINNON - CROSS

1 information that he gave me.

2 Q. You removed any mention of Ms. Faybik, correct?

3 A. I didn't remove anything. I didn't have that information.

4 Q. You removed any mention of Mr. Shpakoff.

5 A. I didn't remove it because I didn't have it.

6 Q. You removed transfers to Mr. Vance's personal account.

7 A. I didn't have that.

8 Q. You removed transfers to Tazewell County Circuit Court.

9 A. I didn't have that information, so I can't remove it if I
10 don't have it.

11 Q. You removed any deposits from KRP.

12 A. Okay. This is December, so there's -- I wouldn't think
13 KRP would be on here.

14 Q. I'm not -- I'm talking the bank records that you sent to
15 Ms. Hogan, they did not include any transactions from KRP.

16 A. I don't believe they did.

17 Q. Now, you were aware of there being an issue at the company
18 involving paychecks that wouldn't cash on occasion; is that
19 correct?

20 A. Correct.

21 Q. You would agree with me that a lot of cash came out of the
22 accounts at issue in this case, correct?

23 A. A lot of cash was used. I don't know what you mean by was
24 taken out. A lot of cash was used to pay bills.

25 Q. You don't know what it means to take cash out of an

MOLLY IRENE MCKINNON - CROSS

1 account?

2 A. If you take cash out and pay bills, I think the
3 implication is that you're just saying they're taking it out,
4 period. But the cash was taken out to pay bills.

5 Q. I'm asking a very simple question.

6 Are you aware that cash was taken out of the account,
7 withdrawn from the account?

8 A. Correct, yes.

9 Q. And there is no accounting for that cash, is there?

10 A. There's no accounting for some of it.

11 Q. Now, you were asked on direct examination about cash and
12 accrual accounting.

13 A. Correct.

14 Q. Do you remember that?

15 A. Yes.

16 Q. Those are both legitimate forms of accounting in your
17 understanding; is that correct?

18 A. Yes.

19 Q. The fact that you may use accrual accounting, that doesn't
20 authorize you to falsify numbers, right?

21 A. No, it does not.

22 Q. There was some discussion on direct about the Silent
23 Circle app.

24 Do you recall that?

25 A. Yes.

MOLLY IRENE MCKINNON - CROSS

1 Q. Nothing in that app prevented you from taking screen
2 shots, right?

3 A. Did it what? I'm sorry.

4 Q. Prevented you from taking screen shots, correct?

5 A. I don't know. I never tried.

6 Q. You read from an email on direct about some alleged
7 recorded conversations.

8 Do you recall that?

9 A. Yes.

10 Q. The jury has not heard any of those, correct?

11 A. No.

12 Q. And you were asked on direct about discussions that
13 Mr. Chamblee may have been aware of with Koch.

14 Do you recall that?

15 A. Yes.

16 Q. But he wasn't aware that there had been a loan from Koch,
17 was he?

18 A. He was absolutely aware.

19 Q. You didn't tell him it came from sales of product?

20 A. The loan? No.

21 Q. You have made a lot of accusations, ma'am, about
22 Mr. Chamblee providing you information that you then used; is
23 that a fair statement?

24 A. Yes.

25 Q. Where are the emails reporting this?

MOLLY IRENE MCKINNON - CROSS

1 A. I don't have any emails. I kept a journal.

2 Q. Why is Mr. Chamblee not on any of the emails to Dave
3 Severson?

4 A. I have no idea. I did keep a journal every day.

5 MR. CHAPMAN: Objection, Your Honor.

6 THE COURT: Sustained.

7 BY MR. CHAPMAN:

8 Q. On direct examination, ma'am, you testified that you got
9 roughly \$3,000 the entire time you were at the company.

10 Do you recall that?

11 A. Did I do what? I'm sorry.

12 Q. On direct examination, you testified that the entire time
13 you were at the company you got approximately \$3,000.

14 A. No, that was a misstatement if I said that.

15 My salary each month was supposed to be 3,000. I believe
16 I got a total of about 36,000 the whole time I was there.

17 Q. All right. So if you had testified that you had gotten
18 3,000, that was a mistake?

19 A. It was a mistake.

20 MR. CHAPMAN: Your Honor, may I have one moment?

21 THE COURT: Yes, sir.

22 MR. CHAPMAN: Very briefly, Your Honor.

23 THE COURT: Yes, sir.

24 BY MR. CHAPMAN:

25 Q. Ma'am, I would like to end just with a few final

MOLLY IRENE MCKINNON - CROSS

1 questions, to return to a topic we discussed earlier. Just I
2 want to confirm with you, you knew you were falsifying bank
3 statements; is that right?

4 A. Yes.

5 Q. And a falsified bank statement would mislead someone
6 reading it; is that correct?

7 A. Correct.

8 Q. You understand a bank statement is not something that the
9 account holder creates, right?

10 A. Correct.

11 Q. The bank creates it?

12 A. Correct, yes.

13 MR. CHAPMAN: All right.

14 That's all, Your Honor. Thank you very much.

15 THE COURT: All right.

16 Mr. Darling.

17 CROSS-EXAMINATION

18 BY MR. DARLING:

19 Q. Ms. McKinnon, I've got a few questions for you about Doug
20 Vance.

21 How was it you first met Doug?

22 A. I met him through a gentleman named Paul Roberts who said
23 he was looking for money to expand his business.

24 Q. And when was that?

25 A. I want to say it was March, April, something like that, of

MOLLY IRENE MCKINNON - CROSS

1 2016.

2 Q. How did Doug Vance get together with the Shumards?

3 A. I was introduced to the Shumards through a friend of mine
4 named Doyle Rabren. I told Doyle about Doug's business and he
5 thought the Shumard Foundation might be interested.

6 Q. So prior to the Shumard people and Doug getting together,
7 had you ever met with the Shumard people?

8 A. No.

9 Q. So you were involved in the business both with regard to
10 the Shumards and Mr. Deware as time went on, correct?

11 A. Correct.

12 Q. You mentioned falsifying some bank records.

13 A. Yes.

14 Q. You mentioned that you put in information that was
15 provided to you by Mr. Chamblee?

16 A. Correct.

17 Q. You didn't put in there information that was provided by
18 Doug Vance?

19 A. I did not.

20 Q. In fact, Doug Vance didn't know you were doing anything
21 regarding falsifying anything?

22 A. I did not.

23 Q. Did you have access to Doug Vance's email account?

24 A. Yes.

25 Q. Both user name and password?

MOLLY IRENE MCKINNON - CROSS

1 A. Yes.

2 Q. When did you first obtain that?

3 A. I can't remember specifically. I want to say it was like
4 early 2017 maybe.

5 Q. Did you ever send emails from Doug Vance's email account
6 purporting to be Doug?

7 A. Yes.

8 Q. Did you ever send emails from yourself to Doug Vance --

9 A. Yes.

10 Q. -- that -- let me extend that -- that Doug Vance never
11 would have seen because you then got into the email account?

12 A. Yes.

13 Q. What sorts of emails would you send in that manner?

14 A. There were three emails that I can think of off the top of
15 my head, the two Washington Mills POs and the information for
16 Nucor.

17 Q. So exhibits that you looked at with Mr. Chapman, I believe
18 it was Exhibit 142 dealing with the Washington Mills
19 information.

20 Doug Vance had no part in that?

21 A. What was that one again? I'm sorry.

22 Q. Well, it's Exhibit 142. But it dealt with providing the
23 Washington Mills information, that was one of the ones you said
24 even though Doug's on the email, he didn't know about it?

25 A. Oh, correct.

MOLLY IRENE MCKINNON - CROSS

1 Q. And then we've seen throughout a lot of this time the
2 mock-up of Nucor logos and that sort of thing.

3 That was something that Doug Vance never saw, correct?

4 A. That's -- to my knowledge, he did not.

5 Q. You mentioned these bank accounts that you sent to Mendie
6 Hogan. And you've talked at length about they were -- they
7 were falsified. And I know you and Mr. Chapman went back and
8 forth as to what information.

9 In any event, Doug Vance was unaware of those, correct?

10 A. Unaware?

11 Q. Unaware.

12 A. Correct.

13 Q. You know Dell Jagers?

14 A. I do.

15 Q. Who is he?

16 A. He was a consultant that worked for KRP. Well, that's
17 what I thought initially. I ultimately found out he was
18 actually a member of the board for KRP.

19 Q. Did you ever send him falsified bank statements?

20 A. Did I send Dell fake bank statements?

21 Q. Over Doug Vance's -- out of Doug Vance's email account.

22 A. The bank statements or the financials?

23 Q. I'm going with bank statements.

24 Well, did you send financials?

25 A. I did.

MOLLY IRENE MCKINNON - CROSS

1 Q. From -- supposedly from Doug Vance?

2 A. From my account.

3 Q. I'm --

4 A. I'm getting confused about which one. I'm sorry.

5 Q. Okay.

6 A. I --

7 Q. Go ahead.

8 A. I personally from my email address sent financials to
9 Dell.

10 Q. What about from Doug's?

11 A. No, I did not.

12 Q. So you were -- well, let me just ask you. This is
13 Government's Exhibit 153, it has been previously introduced.

14 Do you see that?

15 A. Yes.

16 Q. NGI statements?

17 A. Yes.

18 Q. Do you see that it purportedly comes from Doug Vance?

19 A. Yes.

20 Q. Signed "Doug"?

21 A. Yes.

22 Q. Did you send that?

23 A. I can't recall if I sent it, to be honest. I mean,
24 probably, because it's signed the same way the other one was.

25 Q. Okay.

MOLLY IRENE MCKINNON - REDIRECT

1 MR. DARLING: That's all I have, Your Honor. Thank you.

2 THE COURT: All right. Thank you. See if we have

3 redirect.

4 Ms. Lewis?

5 REDIRECT EXAMINATION

6 BY MS. LEWIS:

7 Q. Molly, the NGI investment summary that Mr. Chapman showed
8 you early on in his cross-examination --

9 A. Uh-huh.

10 Q. -- did you see a date on that document?

11 A. I didn't.

12 Q. All right. And any reference to Kingsford, that was
13 information provided to you from an outside source?

14 A. Correct.

15 Q. Were you aware of Ms. Faybik giving Mr. Vance any money
16 around that time?

17 A. No. I didn't find out Ms. Faybik had given Mr. Vance
18 money until we got the discovery for this case.

19 Q. All right. So basically any information you provided was
20 just based upon information you were given?

21 A. Correct.

22 MS. LEWIS: That's all I have. Thank you.

23 THE COURT: All right.

24 Let's see. Any recross?

25 MR. CHAPMAN: May I have one moment?

1 THE COURT: Yes, sir, certainly.

2 MR. CHAPMAN: No redirect.

3 THE COURT: All right. Thank you.

4 Mr. Darling, any recross on matters brought out on
5 redirect by Ms. Lewis?

6 MR. DARLING: No, Your Honor.

7 THE COURT: Thank you.

8 I'm sorry?

9 THE WITNESS: No, I'm sorry. I laughed.

10 THE COURT: You can step down, ma'am. Thank you.
11 If counsel could approach, please.

12 Well, before you approach, let me see if we have
13 additional witnesses on behalf of Ms. McKinnon.

14 MS. LEWIS: No, Your Honor.

15 THE COURT: Defendant announce rest?

16 All right. Counsel, if you all could come up now, please.
17 (Bench conference on the record.)

18 THE COURT: Does the United States anticipate rebuttal
19 testimony or evidence?

20 MR. CHAPMAN: No, Your Honor.

21 THE COURT: I'll go ahead and excuse the jury. We'll have
22 our instructions conference. I'll have the jury come back at
23 1:00. I'll instruct the jury hopefully at that time. I think
24 it will take probably an hour, approximately an hour for the
25 instructions to be given.

1 I'll also take up any motions that the parties would like
2 to renew when we excuse the jury.

3 How long would you like for your closings? I'll give the
4 United States time for both defendants in the case. How much
5 would you like?

6 MR. DARLING: 30 minutes should be plenty, Your Honor.

7 THE COURT: Ms. Lewis?

8 MS. LEWIS: I would think 20 for me, Your Honor.

9 THE COURT: All right. Would an hour and a half be
10 sufficient for the United States?

11 MR. CHAPMAN: Yes, Your Honor.

12 THE COURT: All right. If you request more than an hour,
13 they've asked for 30 and 20, 50.

14 MR. CHAPMAN: Your Honor, I was going to request
15 approximately an hour.

16 THE COURT: All right. Do you need additional time for
17 rebuttal?

18 MR. CHAPMAN: Yes, Your Honor.

19 THE COURT: 50 and 15. 50 for initial and then 15?

20 MR. CHAPMAN: Yes, Your Honor.

21 THE COURT: All right.

22 MR. DARLING: When you excuse the jury, can we take a
23 minute?

24 THE COURT: I can give you ten, we can't take 20.

25 MR. DARLING: Oh, no. Okay.

1 THE COURT: Thank you.

2 MR. DARLING: Understood.

3 (Bench conference concluded.)

4 THE COURT: Ladies and gentlemen, both sides have
5 announced close of their case in chief at this time.

6 Let me explain the way we'll be proceeding this afternoon.
7 I need to have an instructions conference with the attorneys,
8 and I'll do that during the lunch hour and then finalize the
9 jury instructions.

10 And so we'll hopefully be ready to go at 1:00 this
11 afternoon, so you'll have a little bit longer for lunch.

12 If you look at the clock in the back of the courtroom,
13 that's wrong. That's a few minutes slow. So we'll try to be
14 ready at 1:00. If for some reason it takes a few minutes
15 longer to finalize the instructions, I apologize in advance,
16 but we'll certainly get those completed just as quickly as we
17 can.

18 As we do take our break, please keep in mind you should
19 not be discussing the case with anyone or allowing anyone to
20 approach you to discuss the matter. Don't, of course, read,
21 watch or listen to any accounts of the case and don't make up
22 your mind until this matter is finally submitted to you.

23 While you've heard the testimony that will be presented,
24 you've not heard and I have not given you the instructions that
25 you should follow in the case. And you've not heard the

1 arguments, the closing arguments by the attorneys.

2 So please put the case out of your mind until after you
3 have your lunch break and return, hopefully we'll try to start
4 promptly at 1:00 this afternoon.

5 Follow the same procedures. If anyone needs to go back
6 and use the deliberation room at lunch, please feel free to do
7 that, but otherwise you can leave your notebooks there in your
8 chairs. Keep your badges on if you go out. And the jury will
9 be excused until 1:00 this afternoon.

10 (Jury left courtroom at 11:40 a.m.)

11 THE COURT: We will take a ten-minute recess for counsel.
12 We will continue at 11:50 this morning.

13 (A recess was taken from 11:40 a.m. to 11:50 a.m.)

14 THE COURT: Thank you. Before we have our instructions
15 conference, I'll inquire as to whether the defendants wish to
16 renew their prior motions under Rule 29.

17 Mr. Darling.

18 MR. DARLING: Your Honor, on behalf of Mr. Vance, I would
19 move -- I would renew the motions for acquittal pursuant to
20 Rule 29. Ask the Court to enter a judgment of acquittal on
21 behalf of Mr. Vance. The reason being that he has specifically
22 denied all of the charges against him, any of the individual
23 charges, while we then have had competent testimony from
24 co-defendant that he was unaware of either false bank records
25 or transactions or that any of the information provided to

1 these investors it was determined or testified to that he
2 didn't know anything about.

3 In particular, I would direct the Court to Count 5 of the
4 indictment, which is a count solely against Mr. Vance, which
5 deals with an email to DJ, who is Dell Jagers, providing
6 falsified NGI bank records, that is the subject of Government's
7 Exhibit 153. The Court will remember that Mr. Vance vehemently
8 denied sending that while Ms. McKinnon said she probably did
9 send those documents to Mr. Jagers.

10 I believe that on that particular count, looking at the
11 evidence even in the light most favorable to the government,
12 there is -- clearly it would be unreasonable for anybody to
13 find Mr. Vance guilty on that.

14 Basically, I hate that it came to this, but Ms. McKinnon
15 at every opportunity exonerated Mr. Vance from any wrongdoing
16 in this case, and I think that would create reasonable doubt
17 and it would be unreasonable for a jury to find him guilty.

18 I would ask the Court to enter judgments of acquittal on
19 all counts.

20 THE COURT: Thank you.

21 Ms. Lewis.

22 MS. LEWIS: Thank you, Your Honor. I would renew my
23 motion as well pursuant to Rule 29 for judgment of acquittal.
24 In the indictment, it's alleged throughout that there was a
25 conspiracy between the parties, I think that's been established

1 by Ms. McKinnon's testimony there was not a conspiracy with
2 Vance. I think that would definitely strike reasonable doubt
3 amongst the jury.

4 THE COURT: All right. Thank you.

5 I will deny the motions on behalf of both defendants for
6 the reasons previously stated.

7 Additionally, with regard to the new arguments that have
8 been raised, issues of credibility, witness credibility is for
9 the jury to make a determination. But notwithstanding that,
10 the jury in this case could easily conclude that these
11 defendants were conspiring together with regard to Count 5.
12 Although Ms. McKinnon stated that she probably sent the
13 information, the jury could also conclude that, if she did
14 that, then she was doing it on behalf of Mr. Vance based upon
15 their working relationship, as well as the conspiracy charge in
16 Count 1.

17 Quite frankly, taking the evidence in the light most
18 favorable to Ms. McKinnon, if the jury believed her testimony
19 attempting to place the blame on Mr. Chamblee, the jury could
20 conclude that perhaps he was a co-conspirator in the case but
21 not necessarily exonerate either defendant in this matter.

22 But the records that have been produced, the testimony
23 that has been produced over several days do cast very serious
24 doubt about both defendants' credibility in the case, and
25 undercut much of the testimony that has been presented, and

1 could lead a trier of fact to conclude that both defendants
2 perjured themselves during their testimony in this matter. So
3 the motions will be overruled.

4 We'll have our instructions conference at this time.

5 (Jury charge conference conducted, transcript not
6 requested.)

7 (A recess was taken from 12:23 p.m. to 1:02 p.m.)

8 (Jury instructions read by The Court, transcript not
9 requested.)

10 THE COURT: All right. Thank you.

11 Ladies and gentlemen, we will proceed with the first part
12 of the closing argument. By rule, the United States proceeds
13 first, then you'll hear from counsel for the defendants, and
14 the United States may then have a chance to provide rebuttal to
15 you, rebuttal argument.

16 So we'll go through the argument by the United States, the
17 initial argument, and we will take a break at that point, about
18 a ten-minute break, so we will keep it a little bit shorter.

19 Mr. Chapman, will you be presenting the closing argument
20 for the United States?

21 MR. CHAPMAN: Yes, Your Honor.

22 THE COURT: Thank you. You may proceed.

23 MR. CHAPMAN: Thank you.

24 May it please the Court.

25 THE COURT: Mr. Chapman.

1 MR. CHAPMAN: Mr. Darling, Mr. Vance, Ms. Lewis,
2 Ms. McKinnon.

3 Lies, ladies and gentlemen. Telling lies to get people's
4 money. That's what Doug Vance and Molly McKinnon did in this
5 case. They told lies and they did not disclose material
6 information in order to persuade people and businesses to give
7 away their money. Those monetary transfers took the form of
8 investments and loans, but the end result was the same. Doug
9 Vance and Molly McKinnon schemed together and persuaded others
10 to part with their money.

11 That is textbook fraud, ladies and gentlemen, lying to
12 persuade people to part with their money.

13 But Mr. Vance and Ms. McKinnon didn't stop there. They
14 then engaged in their own monetary transactions, as you heard,
15 to cover up those lies and to keep their scheme going. That,
16 ladies and gentlemen, was textbook money laundering, moving
17 money around to promote the underlying fraud to conceal the
18 true nature of the underlying fraud.

19 Now, ladies and gentlemen, let's go back several days and
20 remember what we have heard in this case. April Francis told
21 you how she was the office manager at Nex-Gen. She was just
22 doing her job, and then there was that incident where Mr. Vance
23 asked her to help him out with a bank statement.

24 Well, Ms. Francis looked at that bank statement and that
25 was the spark of this case. She saw that what was being sent

1 to investors was not the same as that true bank statement.

2 And she told you how irate Molly McKinnon was when she
3 realized that April had seen the statement. Ms. McKinnon
4 realized at that moment that the scheme they had devised was
5 about to come crumbling down.

6 Ms. Francis made the courageous decision not to just
7 timidly sit by and hide that information. She approached Allan
8 Deware, an investor she had met during a previous site visit,
9 and she told Mr. Deware the truth of what she had learned.

10 Now, Mr. Deware thought that he was the majority
11 stakeholder of Nex-Gen, but then he sees investments and
12 monetary infusions from Mr. Shumard, Mr. Chamblee, Ms. Faybik,
13 Mr. Shpakoff, and he realizes the wool has been pulled over his
14 eyes. Over \$370,000 of his money down the drain.

15 You see Mr. Vance and Ms. McKinnon had created competing
16 business entities to hide one set of investors from the other
17 set of investors. And they hadn't disclosed the existence of
18 the other set to the other side. That was Nex-Gen Industries,
19 as you heard, with Mr. Deware; and NexGen Energy Partners, as
20 you heard, with the Shumard Group.

21 Now, Mr. Deware had never heard of the Shumard Group as an
22 investor, an actual investor in this endeavor. He knew, he
23 admitted that the Shumard Group had some sort of involvement in
24 this case. He knew their name had been mentioned. But he told
25 you, he was not aware that they had actually invested in this

1 endeavor. And you heard him tell you, if he had known that,
2 that would have impacted his decision-making. He thought he
3 was a 51 percent owner, but in reality, this was a bigger
4 scheme going on.

5 You also heard from the three principal officers at the
6 Shumard family office. Those were Ken Shumard, Gary Chamblee
7 and Mendie Hogan. And they described a process for you of
8 meeting Ms. McKinnon and then Mr. Vance and deciding to invest
9 in the business and forming NexGen Energy Partners. They
10 ultimately put approximately \$1.1 million into that endeavor.
11 And they told you they had never heard of Allan Deware, the
12 competing investor.

13 Doug Vance and Molly McKinnon kept those investors
14 separate, forming separate companies to hide them from one
15 another.

16 You also heard the Shumard Group tell you that when some
17 money would come back to them from Mr. Vance and Ms. McKinnon,
18 it was disguised as income from the sale of product. There was
19 that one cashier's check that Ms. Hogan specifically described
20 for you that purportedly came from sales to a company called
21 Cabot when, in fact, we showed you, it actually came from money
22 from that loan from Koch Industries.

23 The Shumard Group told you how returns like that
24 encouraged them to invest more, because they perceived the
25 business to be more successful than it really was. And so

1 Mr. Vance and Ms. McKinnon would take money from one lender or
2 one investor, return part of it to another lender or another
3 investor, and represent that it actually came from the sale of
4 product when, in fact, it came from that other lender or
5 investor.

6 This falsity encouraged further lending and further
7 investment because it showed to those people that the business
8 was more successful than it truthfully was. And Mr. Vance and
9 Ms. McKinnon's lies concealed the true source of those funds
10 involved in the transactions. The lies hid the fact that the
11 funds from those purported sales proceeds were in fact the
12 proceeds of wire fraud.

13 Now, Kentucky River Properties was another source of money
14 in this case. And you heard from Chuck Mullins and Steve
15 Barker from KRP. They told you how KRP lent Nex-Gen \$170,000,
16 and how the rental agreement for the Trus Joist site required
17 royalty payments.

18 Now, when reporting low production numbers benefited
19 Mr. Vance and Ms. McKinnon, there were low production numbers.
20 You saw the royalty reports. They sent those low production
21 reports to KRP so they didn't have to make higher royalty
22 payments.

23 But when reporting low production numbers would hurt
24 Mr. Vance and Ms. McKinnon, well, they did the opposite. They
25 inflated the numbers. They lied about them. They represented

1 \$1.4 million in sales to KRP when that would help their chances
2 of getting that loan from them.

3 And you also heard how false bank statements were sent to
4 Dell Jagers and false financial information was sent to Dell
5 Jagers that had inconsistent opening and closing balances,
6 inconsistent transactions listed.

7 And that, ladies and gentlemen, was before -- was before
8 the \$170,000 loan was approved. Those documents hid the
9 transfers to Mr. Vance's personal accounts or account. And it
10 hid other infusions of money from investors and lenders, except
11 the ones that KRP already knew about.

12 Koch Industries was an additional source of money. You
13 heard from Dave Severson. Mr. Severson told you that Koch
14 loaned Nex-Gen a total of \$605,000. He believed, based on the
15 word of Mr. Vance and Ms. McKinnon, that they were making
16 actual sales of products to customers.

17 Mr. Vance and Ms. McKinnon had sent Mr. Severson financial
18 documents and customer lists to accomplish that subterfuge.

19 And Mr. Severson got that fabricated Nucor spec sheet that
20 you've heard about. He specifically asked for that in his
21 email. It was sent to him and that induced further
22 contributions from Koch.

23 You also heard Jean Lacy tell you about what a uniquely
24 bad experience it was for Clorox and Kingsford to deal with
25 Mr. Vance and Ms. McKinnon, and how ultimately Mr. Vance and

1 Ms. McKinnon couldn't deliver the quantity of product they had
2 promised. How Clorox hadn't previously made promises for sale
3 of product outside of those test batches that were talked
4 about.

5 You heard Curtis Thomson tell you that he didn't see
6 hardly any finished product leaving the Trus Joist site. And
7 Mike Miller came in and told you the same thing. For all of
8 the defendants' talk, they weren't actually making the quantity
9 of the carbon products they claimed they were.

10 You heard Dave Chmielewski tell you that AK Steel had no
11 sales to Mr. Vance or to Nex-Gen. And he told you those
12 cashier's checks from AK Holdings had absolutely nothing to do
13 with AK Steel.

14 Similarly, Nancy Gates told you that Washington Mills had
15 no sales to Mr. Vance or to Nex-Gen. And she told you that
16 purchase orders that were emailed between Mr. Vance and
17 Ms. McKinnon were complete fabrications. They were not true
18 Washington Mills purchase orders.

19 Similarly, Adam Horrex came in and testified. He told you
20 that Nucor Steel had no sales to Mr. Vance or to Nex-Gen. And
21 he told you the spec sheets emailed between Mr. Vance and
22 Ms. McKinnon were not true Nucor documents.

23 Similarly as well, ladies and gentlemen, Tim Surmeier
24 testified. Mr. Surmeier told you that Mr. Vance and
25 Ms. McKinnon were never able to fulfill that purchase order

1 that he issued from Carbonox. Despite all their
2 representations, they could not fulfill that purchase order.
3 And he told you that he didn't see any finished carbon products
4 leaving the Nex-Gen site on his visits.

5 And I thought he said something really revealing that
6 corroborated what so many other witnesses had said before him.
7 He said that Vance had a good idea, he just didn't know how to
8 execute it.

9 Mr. Vance essentially had enough business knowledge that
10 he was able to send out five-gallon buckets of product, and he
11 could put on a show when people visited. The idea looked good
12 on paper and he could maybe make it look good for a day when
13 there were visitors. But ladies and gentlemen, the emperor had
14 no clothes underneath. When it came time to deliver, Vance and
15 McKinnon couldn't do it.

16 But ladies and gentlemen, that simple failure that I'm
17 talking about, that is not what is illegal in this case.

18 It's not illegal to be bad at business. What is illegal
19 is telling lies, telling lies to induce people and businesses
20 to part with their money. It's telling lies like
21 misrepresenting actual sales. It's telling lies like
22 falsifying financial documents to make it appear that money
23 from other investors was actually from the sale of product.

24 Now, ladies and gentlemen, I would like to talk about the
25 specific counts that are at issue in this indictment with you.

1 During the course of this, I'm going to show you some excerpts
2 from the jury instructions that the chief judge read to you
3 earlier.

4 Ladies and gentlemen, this is Count 1 of the indictment.

5 MR. DARLING: Excuse me, Your Honor. I believe the Court
6 has changed the wording of that instruction.

7 THE COURT: If you would like to use my copy, you can do
8 that.

9 MR. CHAPMAN: Yes, sir. Ladies and gentlemen, I apologize
10 for that mistake. This copy is from Chief Judge Reeves and it
11 does include the correction that we made in open court.

12 So ladies and gentlemen, this is the jury instruction for
13 Count 1 of the indictment. And there are two elements that you
14 see listed there.

15 First, that defendants Vance and McKinnon conspired or
16 agreed to commit the crime of wire fraud, and that the
17 defendants knowingly and voluntarily joined the conspiracy.

18 Now, ladies and gentlemen, this is the proof that you
19 heard for the past six days. Was there an agreement to commit
20 fraud? And the answer is yes. Mr. Vance and Ms. McKinnon
21 agreed with one another to execute this scheme to defraud
22 lenders and investors.

23 You have heard from witness upon witness who told you how
24 Mr. Vance and Ms. McKinnon worked together in this business
25 arrangement. Mr. Vance was the operations guy, he handled

1 customers, he handled the product. And Ms. McKinnon, her role
2 was on finances and administration and paperwork, that sort of
3 thing.

4 They had their complementary roles in the business and
5 they agreed on the actions that are at issue in this case.
6 Each of them in their own testimony told you about how they
7 worked together in these Nex-Gen entities. So, ladies and
8 gentlemen, there absolutely was an agreement between the two
9 defendants to do what happened in this case.

10 That's what the evidence over the past six days has shown
11 you.

12 And then the second part is, did they knowingly and
13 voluntarily join this agreement? Again, ask yourself, what has
14 the proof shown you over the past six days? The answer is yes,
15 they did. You have seen their emails. You have heard the
16 statements that they made to various witnesses. You saw the
17 falsification of documents, hiding Mr. Deware from the
18 Shumards, hiding the Shumards from Mr. Deware. So absolutely
19 both knowingly and voluntarily participated in this scheme.

20 Ladies and gentlemen, what's on your screen now is the
21 instruction for the substantive wire fraud counts. That's
22 Counts 2 through 6 of the indictment.

23 There are four elements to a wire fraud count that you see
24 on your screens there, and I would like to walk through those
25 with you at this time.

1 First, that the defendant knowingly participated in or
2 devised a scheme to defraud in order to deprive another of
3 money or property. Well, ladies and gentlemen, that's the
4 scheme that's charged in Count 1, that's the overall agreement,
5 the overall conspiracy in this case.

6 Second, the scheme included a material misrepresentation
7 or concealment of a material fact.

8 If we could change the screen to the PowerPoint?

9 Ladies and gentlemen, material misrepresentations or
10 concealment of material facts are all over this case. That's
11 what you've been hearing about for the past six days, and I
12 would like to run through just a few of them with you at this
13 time.

14 This is an email from Ms. McKinnon to Ms. Hogan. She's
15 providing the bank statements from August '16 through May of
16 '17. And you saw how those bank statements are false and
17 misleading, how she hid the transactions that did not involve
18 the Shumard Group from Mendie Hogan.

19 Ladies and gentlemen, this is an example you saw earlier
20 of how the bank statements would be edited to remove
21 transactions that the Shumard Group did not know about.

22 There is a transaction from Mr. Deware. Do you remember
23 his company was named Dragon Head Technologies? The
24 transaction from Mr. Deware on the true bank statements that
25 were hidden when the bank statements were sent to Ms. Hogan.

1 Here is a separate example -- if we could go back one?

2 Here is a separate example where Mr. Shumard's transaction
3 remains in the bank statement because, of course, the Shumard
4 Group knows about that. But the transaction from Dragon Head,
5 from Mr. Deware, is removed.

6 References to Joan Faybik were removed. These are
7 misrepresentations of material facts as it relates to this
8 conspiracy.

9 Ladies and gentlemen, you're seeing where the money is
10 going. It's going to ATM withdrawals where Ms. Faybik lived
11 and it's going to transfers to Doug Vance's personal checking
12 account. It's also going to that over \$1,900 purchase at a
13 jewelry store. It's also going to pay a prior criminal
14 judgment, pay restitution at the Tazewell County Circuit Court.
15 It's also going to Mr. Vance's wife, Heather Vance. Here is
16 the withdrawal slip.

17 Ladies and gentlemen, you see a large deposit, over
18 \$200,000 in the version sent to Ms. Hogan to make it appear the
19 company was more successful, not -- which is not reflected in
20 the true bank statement.

21 Ladies and gentlemen, there were misrepresentations about
22 Koch Industries. When Koch sent that \$50,000 transfer, what
23 happened within -- within the next day? Half of it was gone to
24 Mr. Gooch, the attorney that Mr. Vance and Ms. McKinnon worked
25 together on to help pay an obligation of Mr. Vance's.

1 Similarly here, ladies and gentlemen, 75,000 more came in
2 from Koch, and within the same day, it essentially is accounted
3 for.

4 There are misrepresentations from Ms. McKinnon. She tells
5 Mr. Chamblee at the Shumard Group that AK Steel started hauling
6 and should have accepted delivery of their 500 tons within the
7 week and we can invoice then. That's a lie, ladies and
8 gentlemen. AK Steel had not started hauling anything because
9 they made no purchases.

10 I would now like to show you Exhibit 202B, ladies and
11 gentlemen. This is the specific transaction that's at issue in
12 Count 2 of the indictment.

13 Ladies and gentlemen, you see in the middle of the
14 page the ACH deposit from Gary G. Chamblee, sender, on
15 July 25th, 2018, for \$5,600. And he testified he made that
16 deposit and that it was caused by Mr. Vance and Ms. McKinnon.

17 If we could return to the Elmo.

18 So, ladies and gentlemen, we've been over the material
19 misrepresentations and concealment, element 2.

20 Element 3, the defendant had the intent to defraud. We'll
21 talk more about this as I go on in my closing, ladies and
22 gentlemen, but -- and there is specific language about what it
23 means to have the intent to defraud in the instructions.

24 But ladies and gentlemen, it is not consistent with a good
25 faith defense for the defendants to make those material

1 misrepresentations to lenders and to investors. Instead, when
2 you lie to people, that is consistent with an intent to
3 defraud.

4 And fourth, the fourth element, that the defendant used or
5 caused another to use wire communications in interstate
6 commerce in furtherance of the scheme.

7 That, ladies and gentlemen, as to Count 2, is the ACH
8 deposit, that is the wire communication in interstate commerce
9 that's at issue in Count 2. And the parties have stipulated
10 that that withdrawal -- excuse me, that that deposit moved
11 through interstate or foreign commerce.

12 Now, Count 3, ladies and gentlemen --

13 If we can pull up Exhibit 202?

14 Nothing about my discussion of the elements of wire fraud
15 are going to change about these upcoming counts, except for the
16 wire communication at issue. So in Count 3, the wire
17 communication is that October 2017 wire deposit from
18 Mr. Shumard.

19 And you see there in the middle of the page that
20 October 18th, 2017, wire deposit from Kenneth M. Shumard for
21 \$15,000. Again, ladies and gentlemen, the parties have
22 stipulated that a wire deposit like this is a wire
23 communication that traveled through interstate or foreign
24 commerce.

25 If we could pull up Exhibit 202D?

1 Similarly, here, ladies and gentlemen, the wire
2 communication at issue in Count 4 is a June 5th, 2017 wire from
3 GGC Funding. And you see on your screens June 5th, 2017, wire
4 deposit, GGC Funding, LLC, in the amount of \$86,000. Same
5 here, ladies and gentlemen, the parties have stipulated that a
6 wire deposit like this is a wire communication that has moved
7 in interstate or foreign commerce.

8 Now, Counts 5 and 6 are a little different. Counts 2, 3,
9 and 4 all involve either ACH or wire deposits.

10 Counts 5 and 6 are about two emails that were sent to
11 Mr. Jagers at KRP. You see on your screen Exhibit 153, this
12 is Mr. Vance's email to Mr. Jagers providing falsified banking
13 records.

14 Now, ladies and gentlemen, you heard Mr. Vance deny to you
15 under oath that he sent this email, and we're going to talk a
16 little about that in a moment.

17 But the parties have stipulated that an email like this,
18 that involved a Yahoo server, and Mr. Vance's email account is,
19 of course, a Yahoo.com email account, the parties have agreed
20 with one another that emails that went through a Yahoo server
21 constitute wire communications that moved through interstate or
22 foreign commerce.

23 Finally, Count 6. Ladies and gentlemen, you see on your
24 screen Government's Exhibit 120. This is Ms. McKinnon's email
25 to Mr. Jagers providing falsified banking records. And you

1 see who she cc's on that message? Mr. Vance. So similarly
2 here, ladies and gentlemen, the parties have agreed that any
3 email that went through a Yahoo server constitutes a wire
4 communication in interstate or foreign commerce.

5 Now, Count 7, ladies and gentlemen, Count 7 is the money
6 laundering conspiracy charge. So I'm going to return to the
7 Elmo and show you the elements of that charge.

8 Similarly, ladies and gentlemen, as to Count 1, there are
9 two elements to a conspiracy charge. First, that the two
10 defendants conspired or agreed to commit the crime of money
11 laundering; and second, that the defendant knowingly and
12 voluntarily joined the conspiracy.

13 Now let's look at what the substantive elements of money
14 laundering are.

15 First, that the defendant conducted or attempted to
16 conduct a financial transaction.

17 Ladies and gentlemen, this is what you've heard when
18 Mr. Shumard and Mr. Chamblee told you that at times money was
19 returned to them represented as the sale of product; when
20 Ms. Hogan described to you that cashier's check that came in
21 represented a sales to Cabot. These are financial transactions
22 that the defendants conducted or attempted to conduct.

23 Second, that the financial transaction involved property
24 that represented the proceeds of wire fraud.

25 As we've been discussing, ladies and gentlemen, that is

1 exactly where the money came from, from the underlying
2 conspiracy to commit wire fraud and the underlying substantive
3 wire fraud counts. It came from investors and lenders who had
4 been lied to to get their money. It was represented as if it
5 came from the sale of product, but that was not true.

6 Third, that the defendant knew that the property involved
7 in the financial transaction represented the proceeds of some
8 form of unlawful activity. Well, ladies and gentlemen, of
9 course they knew. They were the ones conducting the scheme.

10 They knew they hadn't made sales of product to Cabot.
11 They knew they hadn't made sales of product to Koch. And when
12 they misrepresented the money as being sales of product, they
13 knew that was not true.

14 Finally, the defendant had the intent to promote the
15 carrying on of wire fraud, or that the defendant knew that the
16 financial transaction was designed in whole or in part to
17 conceal or disguise the true nature -- or the nature, location,
18 source, ownership, or control of the proceeds of wire fraud.

19 So on this element, ladies and gentlemen, I would point
20 out the use of the word "or." So there is two options for you
21 here. First, that the defendant had the intent to promote the
22 carrying on of wire fraud. That's option number one.

23 And promoting the carrying on of wire fraud, that's what I
24 was talking about earlier when I described for you how the
25 witnesses in this case said on the stand that when money was

1 returned to them as indicated from the sale of product, that
2 gave them the impression that the business was more successful
3 than it really was. And thus, that induced further loans and
4 further investments. That is promoting the underlying scheme
5 to defraud.

6 The second option for you is that the financial
7 transaction concealed or disguised the nature, location,
8 source, ownership or control of the proceeds of wire fraud.

9 Well, of course, ladies and gentlemen, it was represented
10 as being from the sale of product, not from being money
11 obtained from other lenders and investors. Thus, it concealed
12 the nature of those funds.

13 Now, I promised you a moment ago that we were going to
14 return to Mr. Vance's denial of sending that email. So let's
15 talk about the defendants' testimony in this case, I'll begin
16 with Mr. Vance.

17 So let's think about his testimony and his credibility.
18 Ladies and gentlemen, judging a witness's credibility in a case
19 is your job, it's not mine, it's not the defense lawyers. It
20 is your job alone. But it is my argument to you that Mr. Vance
21 was not a credible witness.

22 Let's start, ladies and gentlemen, with his history of
23 lying. He admitted to you that he lied under oath to the
24 Tazewell County Circuit Court. He admitted under oath to that
25 Court that he was guilty of a crime when he says he was not

1 actually guilty of that crime. He lied to that Court under
2 oath and now he wants you to believe him.

3 Ladies and gentlemen, he admitted he lied to you under
4 oath here in this trial when he claimed that he was the sole
5 owner of Nex-Gen, and then it was revealed to him that he was
6 not, that he had given shares away to Ms. Faybik.

7 So ladies and gentlemen, he has already, in his very
8 testimony in this case, lied to you.

9 He lied to Special Agent Hubbuch about the KRP money being
10 from a loan. He lied to Allan Deware, he lied to the Shumards,
11 he lied to Koch, he lied to KRP. And yet he asks you to
12 believe him.

13 Ladies and gentlemen, think about Mr. Vance's body
14 language when he was on the stand. I know you were all
15 watching him testifying. You saw him shifting in his seat. He
16 was shifting eye contact, he wasn't looking directly at his
17 attorney or to you all, the jury. He would look around, he
18 would mumble his answers. Ask yourself, is that how a truthful
19 witness testifies? I submit to you that it is not.

20 Do you remember the exchange with Mr. Vance about that
21 Nucor spec sheet? Those were incredibly evasive answers. I
22 don't think he ever gave a straight answer on that.

23 And think about, ladies and gentlemen, the accusation that
24 someone else was using his email account, but that the only
25 emails that this person sent were the fraudulent ones. Does

1 that make any sense to you? Someone who went on conducting the
2 same business that Mr. Vance was conducting, does that seem
3 believable or does that seem like a lie to avoid being held
4 responsible?

5 And we showed you documents where he signed an email in
6 some other way other than "Best, Doug Vance." I think
7 Exhibit 129 was one of those documents, and 186 was as well.

8 And think about the word games he was playing with you
9 all, where he said calcined coal in one sentence, and said he
10 was selling 1,500 tons a month, but when he said that, in the
11 very next sentence he meant some other unnamed product. Is
12 that consistent with a truthful witness? Does that make any
13 sense?

14 Ladies and gentlemen, I'm sure you'll remember that he
15 wouldn't give a straight answer on whether owning 50 out of a
16 hundred shares of a company meant owning half the company. I
17 specifically remember him saying, "It depends on how you look
18 at it." Is that the type of testimony a truthful witness
19 gives?

20 Think about how, at the end of his testimony, he was left
21 simply saying "You have to take my word for it." Ladies and
22 gentlemen, the proof in this case has shown you that Doug
23 Vance's word is not who you want to be taking.

24 Mr. Vance also said one thing in particular that was
25 really revealing on the stand, one thing that stood out. When

1 he was talking about money from investors and from lenders, he
2 said "it's not theirs, it's mine." That was his attitude when
3 it came to the money that came into his business endeavors in
4 this case. That's an encapsulation of how he viewed that money
5 that he lied to get.

6 Once he told his lies and had gotten that money, it didn't
7 matter to him what the fund represented, whether it was an
8 investment or a loan or anything else. What mattered to him
9 was that the money was now his to do with as he pleased.

10 And ladies and gentlemen, now let's talk a little bit
11 about Ms. McKinnon's testimony just this morning.

12 As I indicated earlier, judging Ms. McKinnon's credibility
13 is also solely your responsibility, it's not mine, it's not the
14 defense attorneys. But again, ask yourself, did she appear to
15 be a credible, trustworthy witness? I submit to you that the
16 answer is no.

17 Remember how she started her cross-examination with me?
18 She said she was never actually the CFO of Nex-Gen. But yet,
19 ladies and gentlemen, you saw in several emails her email
20 signature purporting herself to be the CFO.

21 So every single email that she sent to an investor or a
22 lender with that email signature purporting to be the CFO,
23 every single email was a mis -- with that signature was a
24 misrepresentation, as she admitted to you today.

25 She admitted falsifying the financial information sent to

1 Mr. Deware. And she admitted false representations to
2 Mr. Deware about the sale of the product. Again, admitting
3 making false statements.

4 She admitted statements to the Shumard Group in those
5 emails I showed her were inaccurate. And she admitted to
6 falsifying the banking records sent to Ms. Hogan. After all of
7 these misrepresentations, after all this falsification, she
8 wants you to believe her.

9 And, ladies and gentlemen, recall her inconsistent
10 testimony on the stand about that email to Dell Jagers. At
11 first she denied sending that email. But then her story
12 started shifting. First, it shifted to "I can't recall." Then
13 it shifted to "probably, I probably sent it."

14 Ladies and gentlemen, is that how an honest person answers
15 questions? She gave you three different answers to the same
16 question in a matter of minutes. Is that how a truthful
17 witness testifies? It is not, ladies and gentlemen.

18 Ladies and gentlemen, I am going to start summing up here.
19 We have proven this case to you, ladies and gentlemen, beyond a
20 reasonable doubt. We have shown you overwhelming evidence that
21 Mr. Vance and Ms. McKinnon worked together and lied to get
22 investors and lenders to part with their money.

23 They told lies and they did not disclose material
24 information in order to persuade those people in those
25 businesses to part with their money. This is the definition of

1 fraud, ladies and gentlemen, lying to persuade people to part
2 with their money.

3 And then they engaged in those monetary transactions to
4 cover up those lies and to keep their scheme going. That's the
5 definition of money laundering, ladies and gentlemen, moving
6 money to promote the underlying fraud and to conceal the true
7 nature of the underlying fraud.

8 What was the end result of all of this, ladies and
9 gentlemen? The Shumard folks, they lost roughly \$1.1 million.

10 Mr. Deware lost roughly 373,000.

11 KRP was out 170.

12 Koch was out 605,000.

13 And Mr. Shpakoff and Ms. Faybik were out 98,000 and a
14 little over 42,000. Where did all that money go, ladies and
15 gentlemen?

16 Well, Doug and Heather Vance are enriched. And there are
17 hundreds of thousands in cash that's unaccounted for.

18 Ms. McKinnon admitted that to you on the stand, that not all
19 the cash is accounted for. We know Vance paid off that prior
20 criminal judgment. And we know that Mr. Vance returned some
21 relatively small sums to the investors and lenders to promote
22 or to induce further investment and to conceal the wire fraud.

23 Now, ladies and gentlemen, you have sat through several
24 days of testimony. You have heard from a lot of witnesses and
25 you've had to listen to us attorneys quite a bit. This case

1 will very soon be in your hands, it will be time for you to
2 make your decision about the outcome of this case.

3 Doug Vance and Molly McKinnon told lies to get people's
4 money. That is fraud. Follow the evidence in this case,
5 ladies and gentlemen, and find the defendants guilty of all
6 crimes charged.

7 Thank you.

8 THE COURT: All right. Thank you, Mr. Chapman. You can
9 reserve the balance of your time for rebuttal.

10 Ladies and gentlemen, we will take a brief recess at this
11 time, about ten minutes. Please keep in mind the admonitions,
12 please don't discuss the case among yourselves or decide the
13 case at this point.

14 The jury will be excused for ten minutes. We will be in
15 recess.

16 (A recess taken from 2:34 p.m. to 2:49 p.m.)

17 THE COURT: Thank you. All members of the jury are
18 present. Defendants and counsel are also present. We will
19 continue at this time with closing arguments on behalf of the
20 defendants.

21 Mr. Darling, if you are ready, you may proceed with
22 argument.

23 MR. DARLING: Thank you, Your Honor. If the Court please,
24 Counsel.

25 THE COURT: Mr. Darling.

1 MR. DARLING: Ms. Lewis, Molly.

2 Good afternoon for the last time from me. Let me start
3 out by sincerely thanking you. This has been, let's just say,
4 not a real exciting case to sit on, lots of paperwork, lots of
5 documents, bank records and that sort of thing. And I know
6 it's difficult to maintain the interest and, you know, I sit
7 over here and I kind of peak over every so often, you guys
8 really seemed to be paying attention, and that's real important
9 to Doug Vance. Because, you know, everyone talks about what
10 they want in this world when there's a crime involved, is they
11 want their day in court. Well, Doug Vance wanted his day in
12 court. Turned out to be six days, and he's very, very grateful
13 to you that you've paid the kind of attention that you have.

14 You will be getting a copy of the jury instructions. Now,
15 Mr. Chapman showed you a couple of pages of the instructions
16 but here they are. It's pretty thick. It is the law of the
17 case. A lot of effort has gone into this by the Court to put
18 these together. And this is -- this is your guideline to what
19 you can and cannot do in this case.

20 Now, the interesting thing about this is, you will be
21 given a copy of what the judge read to you as the jury
22 instructions. And if you remember, on the very first day of
23 trial, he read to you some other preliminary jury instructions,
24 much smaller, just five or six pages, about what to expect.

25 Well, I am kind of a law geek, been doing this a really

1 long time, my hair is real gray, that sort of thing. What I am
2 always fascinated by in dealing with criminal cases is the
3 concept of burden of proof, beyond a reasonable doubt, and
4 presumption of innocence.

5 And in every court in this country, the government,
6 whether it's the United States of America or a state case, a
7 Commonwealth of Kentucky or any other state, the burden of
8 proof in a criminal case is with the government. Not just the
9 burden of proof, but the burden of proof beyond a reasonable
10 doubt. The defendants enjoy the presumption of innocence.
11 People come in here, and I think the term "a clean slate" is
12 even used in these instructions at some point.

13 And to me, the interesting thing is, I count. As you go
14 through the instructions, I make a little tick mark. And in
15 the preliminary instructions that were read to you last week,
16 you were instructed, there were no less than six references in
17 those preliminary instructions instructing you to base your
18 decision on whether the government has proved the case to you
19 beyond a reasonable doubt and dealing with the presumption of
20 innocence. Okay. Well, that sounds good.

21 Well, in the instructions that were read to you today,
22 29 additional times in these instructions you, the jury, were
23 told in some form or fashion that before you could find Doug
24 Vance guilty in this case, you had to believe that the
25 government has proven its case beyond a reasonable doubt.

1 29 times. You know why? I mean, it's that important. It's
2 what separates this country from any other in the criminal
3 court. It is just that important. It's so important that it
4 needs to be said 29 times before you start deliberating.

5 So has the government proven a case to you about Doug
6 Vance beyond a reasonable doubt? Absolutely not. Complete and
7 utter failure to do so. Let me explain why.

8 We got Doug Vance, and the interesting thing about Doug is
9 when he got up and testified -- and you know he didn't have to
10 do that, the Court cannot compel him to testify to you. The
11 government cannot compel him to testify to you. He could sit
12 there and say, "You didn't prove the case. I'm going home."
13 But he has been itching to testify. And he did.

14 What did you learn about Doug Vance during his testimony?
15 And frankly, bolstered by Molly McKinnon's testimony? Doug is
16 a guy from Virginia, from rural Virginia who builds things, and
17 he builds these things called calciners and dryers and that
18 sort of thing for purposes of taking raw product and drying it
19 out so that it can be used. You all heard the process, way
20 over my head.

21 But every time Doug got a chance, he said, "I'm the
22 operations guy. I do the work." He ain't a paper guy.

23 And the interesting thing, Molly McKinnon, when she was
24 talking about the roles in the company, said the same thing,
25 Doug is not a paper guy. He does the work. Now, does he do it

1 well? Maybe not.

2 Interesting thing that Mr. Chapman said. It's not illegal
3 to be bad at business. That's right. That's right. If people
4 lost money because Doug didn't do a good job in his business,
5 that's not a crime. That's civil. You know, does Doug owe
6 some of these people money? Sure. Does he owe Koch some
7 money? Sure. Maybe the Shumards, maybe Mr. Deware. Doesn't
8 mean he did anything illegal.

9 Now, if you remember the very first witness in this case
10 was April Francis. And she became, for lack of another term, a
11 whistleblower, if you will. Doug asked her to print off a bank
12 statement. Do you remember? This is like the first testimony
13 you heard. Doug asked her to run off a bank statement and left
14 it with her. And April, Ms. Francis, saw some things on it
15 that she thought were not on the up and up.

16 Now, Doug found out that she had looked at this bank
17 statement, had this bank statement. Was there any testimony
18 from Ms. Francis that Doug got upset and had a fit, if you
19 will? No. No. He asked her to print out a bank statement to
20 send to Molly, because she asked him to.

21 What Mr. Chapman pointed out is, when Ms. Francis did this
22 bank statement, one person -- and thought there was something
23 wrong with it, one person got irate. Molly McKinnon. Not Doug
24 Vance. If there was something wrong with this bank statement,
25 Doug didn't know it.

1 He's trying to build these machines and deal with
2 customers and come up with product.

3 So how did this, everything start? Ms. McKinnon knew
4 somebody in Georgia -- she lives in Georgia -- who wanted to
5 put them together with the Shumard people, who are from
6 Georgia, and said that somebody might -- that there's somebody
7 that might be able to do some business. So she brought them
8 to, I guess, Richlands, Virginia, at the time and then to
9 Kentucky to meet Doug Vance.

10 And they tried to put something together. And we have
11 heard all about, you know, Doug's garage in Virginia the size
12 of this room, and then this place, the Trus Joist place. And
13 it just seems like it was never going to work out,
14 business-wise or whatever. I mean, you know, the government
15 would like to point out to people that this place wasn't doing
16 any -- there never seemed to be any product going in or out.
17 Like that made Doug guilty of something. It just meant he
18 wasn't getting the business off the ground.

19 So the Shumards pump some money into this and then, as
20 Doug testified, there was this -- this confusion about where
21 the money came from, Shumard kicked in some money in terms of
22 equity, and then all of a sudden, Gary Chamblee started to loan
23 money to the company. And Doug said, I didn't know it was a
24 loan. I thought it was equity. Mr. Shumard loaned money to
25 the company. All of a sudden these are now individual loans to

1 these people. And again, they were trying to get the business
2 up and running and it wasn't working.

3 Now, one of the things I asked all of these people is,
4 what investigation did you do into Mr. Vance and his ability to
5 run a business? We talked to him. We talked to him. We
6 looked at the place. There was some impressive -- big
7 impressive machines in this big impressive building. So we
8 just started pumping money into this and it wasn't working out.

9 Now, in order for them to keep money coming, they needed
10 to see something in return. And if you remember, there was
11 testimony that Mendie Hogan, who was the core member of the
12 Shumard Group, requested some bank statements. And there was
13 testimony that these bank statements were fabricated to satisfy
14 Ms. Hogan, who was the accountant for Shumard, so that they
15 would continue to loan money.

16 Okay. That's wrong. I get it. Who fabricated those bank
17 statements? Did Doug Vance fabricate the bank statements?
18 Nope. Did he send them to Mendie Hogan, no. Ms. McKinnon said
19 she did the bank statements, she sent them to Mendie Hogan.
20 Doug didn't know anything about it.

21 And I want to take issue right here and now with something
22 Mr. Chapman said. And I do this because I'm going to be saying
23 some things about Molly McKinnon in this case that she's not
24 going to like. But Mr. Chapman said to you she was talking
25 about -- he was talking about this one exhibit, about the

1 exhibit for -- I'm going to put it up on the Elmo, Government's
2 Exhibit 153, as to why this is so important.

3 And she was shown this exhibit. I'm asking her questions
4 about being involved in -- did she have access to Doug's email
5 account? She said she had for some time.

6 Has she ever sent email? Yes, she has.

7 And what kind of emails? And she said, well, you know, I
8 sent those banks statements to Mendie Hogan and copied Doug and
9 he never got them because I would get into the email account
10 and make sure he didn't.

11 And I asked her about this one, because you heard Doug, he
12 said, I didn't send that. And I know -- I know the government
13 thought it was kind of funny about the email signature that
14 Doug always said "Best, Doug Vance."

15 And how was this one signed? "Doug." Well, Doug said if
16 that email said "Doug," I didn't send it because I wouldn't
17 have. So I showed this email to Ms. McKinnon, and Mr. Chapman
18 is right, she kind of went, well, you know, I don't know. And
19 then she said, yeah, I probably sent it.

20 And you've got to remember, if she had not done that, if
21 she had not sat up there and admitted that she sent it, then
22 what you have is Doug Vance sitting up in the witness stand and
23 saying "I didn't send the email" with absolutely nothing to
24 back it up. And trust me -- well, let me ask, would you have
25 believed him? No.

1 But Mr. Chapman is saying well, the way she answered the
2 question, is that believable? Heck yeah, it's believable,
3 because what she said was incriminating to herself. So of
4 course that email was -- that email was sent by Molly McKinnon.
5 And it's the bank statements that were forged and faked and
6 sent to Dell Jagers.

7 It is Count 5 of the indictment, there is only one count
8 that deals individually with Doug Vance, that's this one. They
9 are saying that he committed wire fraud by sending this email.

10 Well, you know why this is in there. You know why this is
11 the one count, because this one was seen by the government as
12 the easy one. Hey, we've got an email from Doug Vance's email
13 account to Dell Jagers with admittedly fake bank accounts.
14 How can we lose?

15 If he beats the conspiracy charge, if he beats the other
16 stuff, he can't beat this. Except he did, because Molly
17 McKinnon sat up there and said, yeah, I probably said that.
18 And Doug Vance looked at you and emphatically said "I did not
19 send that." That was Count 5, that was easy.

20 Now, Doug Vance talked about his business with the various
21 people and there was -- we had the Shumards. And I don't know
22 what's going on with Gary Chamblee and Molly McKinnon, I do
23 not.

24 I mean, I've been privy to all the discovery in this case,
25 and I don't know what they were doing. But apparently Molly

1 was taking instruction from Gary Chamblee to provide falsified
2 items. I don't know why. But she was. And by her own
3 testimony, Doug didn't know anything about it.

4 And by his testimony, said I didn't know anything about
5 it. I didn't know what Chamblee was telling her to do. I
6 don't know that Chamblee was telling her to doctor up the
7 QuickBooks account and send it so it would look better. They
8 had something going on to try and, I don't know, to save the
9 company or what. But Doug was not involved in it, that he knew
10 nothing about. As he testified, if there were anything
11 fraudulent sent, he said, I didn't send it and I didn't know
12 about it.

13 And he was emphatic. And notwithstanding the fact that
14 Mr. Chapman, who has never met Doug Vance before, has never
15 heard him speak before, who has never had a conversation with
16 him, ever, even now, that Mr. Chapman is apparently a body
17 language expert, who is going to tell you that because Doug
18 Vance mumbled, he shouldn't be believed; because he shifted
19 around, he shouldn't be believed. Heck, my direct examination,
20 and I've known the guy for two years. Half the time I had to
21 ask him to repeat his answer because he mumbles.

22 It's almost frightening that Mr. Chapman was asking you to
23 base your decision on body language and speech pattern, whether
24 he was looking you in the eye or looking me in the eye as he
25 was doing and saying, I didn't do this. I didn't do this.

1 But I digress.

2 Shumards were involved in this and it wasn't working out,
3 somebody came up with Allan Deware, again not Doug Vance, Doug
4 Vance doesn't know these people, this was brought to him by
5 somebody else.

6 And Mr. Deware, fascinating guy. He was very interesting.
7 You know, I was kind of joking around and said, I would like to
8 have dinner with the guy. He just seems like he's got all
9 these interesting things to talk about.

10 But he said when he got involved in this case, frankly, I
11 thought it was a little confusing because he was the first
12 witness and should have come after the Shumard people, because
13 Shumard people were involved. And on his direct testimony he
14 stated over and over again, I don't know the Shumards. I don't
15 know anything about the Shumards. Mr. Chapman says he didn't
16 know them as investors. That's not what he said. He said he
17 didn't know them at all.

18 And if you remember, I got the chance to cross-examine
19 him. I didn't do much, but I think I came up with two, maybe
20 three emails. And I'm going to show you one, and this is
21 Government's Exhibit 620 that I'm going to put on the Elmo.
22 Now, I don't know how big a deal this is, but he seemed to
23 think it was a big deal to say he didn't know Shumards.

24 And yet here's an email from Molly McKinnon to him in
25 which she says, I think the next wire was supposed to be for

1 \$170,000 so Doug could refund money to the Shumards."

2 And Allan Deware's response was, Molly, a wire for \$50,000
3 went out of my account.

4 You know what it didn't say? It didn't say, who the heck
5 are the Shumards?

6 It didn't say, why does he have to refund money to them
7 and what does that have to do with me?

8 Mr. Deware knew what was going on. He knew that the
9 arrangement was to try to buy out the Shumards. He invested
10 money and that was the goal.

11 And it -- it turns out that the big problem that everybody
12 in this case had was this Trus Joint facility. Everybody
13 wanted to buy it until they figured out it cost \$3 million.
14 Mr. Deware looked at it and said, I'm putting some in because I
15 kind of like this business. When push came to shove about
16 actually buying the facility, well, he just doesn't pull that
17 trigger. So he's out.

18 And he was shown these bank statements by April Francis
19 that Doug asked her to print and didn't have a problem leaving
20 with her, because he didn't know there was anything wrong with
21 them, that's how this case got rolling.

22 Well, you got to hear it's not illegal to be bad in
23 business. Mr. Chapman's absolutely right. I thought the most
24 telling thing he said, because my position in this case has
25 been all along, these are all a whole bunch of civil matters.

1 For some reason, these people just kept giving Doug and Molly
2 money.

3 I've got to admit, I got a kick from the Koch
4 Industries -- I mean Koch. Koch is this -- you know, biggest
5 company in the world. I mean, it's huge. And here's Dave
6 Severson, they asked for another \$50,000, stroked it out.
7 Asked for \$170,000? Yes. \$600,000? Okay. That's money they
8 had in their couch cushions. I mean, all the money in the
9 world to us, but that's just nothing to them.

10 But all along, you know -- and what were the -- what did
11 he want to see? He wanted to see -- again, I thought this was
12 interesting. Molly sent him supporting documentation from --
13 where is it -- Washington Mills and these Nucor Steel spec
14 sheets. And what did Molly McKinnon say? These are things she
15 did. These are things she sent off of Doug's email address and
16 Doug didn't know anything about them. So who is providing the
17 information to Koch, supposedly this, you know, fake
18 information in order to get them to give more money? It was
19 not Doug Vance. He didn't do it.

20 And how do we know he didn't do it? Well, one, he said he
21 didn't. But two, somebody else said he didn't. Somebody said
22 he didn't in a way that incriminates her. I don't know what
23 else we can ask for.

24 As they said, Doug Vance had a good idea but did not know
25 how to execute it. No argument. No argument. But you know

1 what? That's not illegal. Being bad at business is not
2 illegal.

3 Now, in these wire fraud instructions, I'm not going to go
4 through them because, you know, you know what they are and you
5 can look at them, read them yourself. But the wire fraud
6 instruction and the money laundering instruction, those are the
7 two substantive pattern instructions, if you will.

8 Both say that you must believe beyond a reasonable doubt
9 that Doug Vance and Molly McKinnon entered into a conspiracy.
10 Not Doug Vance, Molly McKinnon, maybe Gary Chamblee, maybe, you
11 know, somebody, Allan Deware. No, it's Doug Vance and Molly
12 McKinnon.

13 Now, there is some instruction that you won't consider
14 other people who are involved or should have been charged in
15 this indictment. We know we're talking about Gary Chamblee.
16 How Gary Chamblee did not get indicted in this is beyond me.
17 But he's not in this indictment. And this instruction is are
18 very clear, if you believe that Doug Vance and Molly McKinnon
19 did not enter into a conspiracy, then you must find them not
20 guilty.

21 And with Doug Vance, you have no evidence that he did.
22 And not just because he said so, not because he said "I never
23 provided anything that was false," "I didn't fake any bank
24 statements," "I didn't send anything to anybody," but because
25 another person, at great cost to her in incrimination, told you

1 the exact same thing. He didn't know.

2 It's not a conspiracy. You know, I could show you these
3 emails, the Nucor emails, Doug Severson, I mean it's
4 Exhibit 166 and 166A, let me show you one.

5 I'm going to show you Government's Exhibit 166 that was
6 introduced. I think it's important because this email
7 supposedly comes from Doug Vance and it's sent to Dave Severson
8 with Koch. And the second page of it is one of these mockup
9 Nucor things. Doug Vance said, "I didn't send that email. It
10 doesn't say Best, Doug Vance on it." But not only did he say
11 he didn't send it, McKinnon said she did from his email
12 account. Again, at great cost to her in incrimination.

13 You know, they keep wanting to roll Doug Vance into this
14 because he's a good ol' boy from Virginia who became a good ol'
15 boy from Chavies, Kentucky, who mumbles a little bit. Who, you
16 know, lives in a two-bedroom apartment with his wife, and his
17 kids live in apartments next to him, and has worn the same
18 jacket every day to court. I mean, I don't think Doug looks
19 very comfortable in that sports jacket, what do you guys think?
20 They are trying to roll him into this, into whatever Gary
21 Chamblee and Molly McKinnon were doing, and why ever they were
22 doing it.

23 But everyone agrees with one thing -- with two things.
24 Doug Vance is the operations, he deals with customers.
25 Apparently he talks people into -- he can convince people that

1 I can dry some coal or whatever. I can calcine coal.

2 But he had nothing to do with the paperwork and nothing to
3 do with the finances. Now, did he get money out of all this?
4 Sure, he did. Sure, he did. You know, but did he defraud
5 anybody? No. He was running a business.

6 They talked about, you know, his credibility. And the
7 body language still is my favorite, my favorite 45 seconds in
8 this trial. Then Mr. Chapman said, "Isn't it ironic that the
9 only emails that Doug Vance said that he didn't send out of his
10 account were the ones with fraudulent information?" Well,
11 yeah, that makes sense to me. I mean, he said, "I didn't send
12 them." But more importantly, somebody else said that they did.

13 In this case you're going to look through the
14 instructions. There was a lot of technical stuff you're going
15 to need to look at. But remember one thing, Doug operations,
16 not money, not finances, not bank accounts. And, gee, didn't
17 fabricate or doctor up one bank account, did not fabricate or
18 doctor up one QuickBooks account, did not doctor up or
19 fabricate any supporting-type documents to send to potential
20 customers.

21 He didn't do it. He just didn't do it. And why do we
22 know that? Because he said he didn't do it, and because
23 somebody also said he didn't do it, and unfortunately that
24 happens to be the person who did.

25 You're going to look through all of this and you're going

1 to go down the list and say, Doug Vance didn't conspire with
2 Molly McKinnon to do anything. He didn't send any of these,
3 you know, the emails or wire transfers.

4 You know, Mr. Chapman said to you, the parties have
5 stipulated that this type of wire transfer would be something
6 that traveled in interstate or foreign commerce that makes him
7 guilty. Of course we admit that, we know that. That doesn't
8 mean he did it or doesn't mean he knew it was done.

9 You get to look at this and very quickly you're going to
10 say, Doug Vance isn't guilty of anything in this case and we're
11 going to find him not guilty.

12 Again, thank you so much for your time and your attention
13 in every part of this trial. It means an awful lot to Doug
14 Vance.

15 Thank you.

16 THE COURT: All right. Thank you, Mr. Darling.

17 And, Ms. Lewis, on behalf of Ms. McKinnon.

18 MS. LEWIS: May it please the Court.

19 THE COURT: Ms. Lewis.

20 MS. LEWIS: United States, Mr. Darling, Mr. Vance,
21 Ms. McKinnon, ladies and gentlemen, thank you so much for your
22 attention these six days. I as well know this wasn't
23 interesting stuff, and it was very long, very detailed, but I
24 know you paid attention and took all that information in and
25 you're going to make the right decision today.

1 I was thinking about how to sum this up most accurately
2 and the best. And basically what came to mind was a picture
3 perfect pond that's perfectly still, no wind blowing. And then
4 someone throws a large stone right into the middle. Then there
5 is a ripple effect that affects everyone involved in this pond,
6 which the main fish, if you will, are Mr. Vance and
7 Ms. McKinnon. That stone is Gary Chamblee. And this isn't me
8 just trying to blow smoke or redirect you to somebody else so
9 you don't look at my client, Ms. McKinnon.

10 I want you to think back to Mr. Chamblee's testimony. And
11 one thing that keeps sticking out to me is important. He had
12 this long story about RJF Logistics, that yes, he is a member
13 and he offered up their services to Mr. Vance to use them for
14 his trucking needs, but he declined. That was very detailed.

15 And then we move on to Mendie Hogan, and I went through
16 with her the bank records, checks paying RJF Logistics to the
17 tune of \$16,000. Which, to me, that's quite substantial to
18 remember, especially if you're Gary Chamblee and a member in
19 that business. So he lied to you but the government didn't
20 point out that lie to you today though.

21 Molly's testimony, she's maintained her innocence from the
22 beginning of this case when she was indicted. She wanted her
23 day in court to tell the truth, and she didn't have to take the
24 stand and testify and admit to things. She could have remained
25 silent but she wanted to tell the truth. And that was that

1 Gary Chamblee told her to report all of these inaccurate
2 numbers to other people. But for him, we wouldn't be here
3 today.

4 I would also submit to you that, based upon that, there is
5 no agreement between Mr. Vance and Ms. McKinnon to commit a
6 conspiracy to commit wire fraud, to commit a conspiracy to
7 commit money laundering. They have to have an agreement, and
8 the government didn't prove that to you beyond a reasonable
9 doubt.

10 Molly, unfortunately, was the puppet of Mr. Chamblee,
11 feeding her this information, and then she was passing it on to
12 other people. We've also learned she did not profit. So who
13 does this and not profit in some way? She risked everything to
14 do what her boss, Mr. Chamblee, told her to do.

15 I would direct you, when you get the instructions that
16 Judge Reeves has given you, to look at instruction number 14
17 regarding good faith. Molly honestly believed that the
18 information she was receiving from Mr. Chamblee was accurate.
19 Unfortunately, she passed that on to other people and that was
20 to their detriment when they funded Mr. Vance's businesses.
21 This is the honest mistake in believing that information was
22 accurate.

23 It's not a criminal act, it was never her intent to
24 defraud others. And I get back to, she didn't profit and I
25 think that makes that point quite evident.

1 Therefore, I would ask for you to find her not guilty of
2 all the wire fraud counts.

3 It's Molly's testimony that she drives a car furnished by
4 her sister, she lives with her sister, helps take care of her
5 mother. Again, further demonstrating that she didn't profit.

6 Also, Agent Hubbuch noted he didn't even go after her bank
7 records. If he was really that concerned about her and wanted
8 to follow the trail, he would have done that, but he knew she
9 wasn't profiting.

10 If she had this diabolical plan to defraud people with
11 Mr. Vance, why would she have not objected to the Shumard
12 Company doing the accounting like Mr. Vance wanted them to?
13 She was involved at that point, he wanted them to handle
14 accounting and administrative needs of the company because
15 that's not his area, obviously. She didn't want that
16 responsibility either. But I think -- I would submit to you
17 that Gary Chamblee saw somebody that he could use as his puppet
18 to fulfill his needs to get more money in.

19 Again, I would submit to you that she acted in good faith,
20 she did Mr. Chamblee's bidding in passing on this information,
21 and I would ask for you to find her not guilty.

22 Thank you.

23 THE COURT: All right. Thank you, Ms. Lewis.

24 Mr. Chapman, you may use the balance of your time for
25 rebuttal.

1 MR. CHAPMAN: Thank you.

2 Ladies and gentlemen, good afternoon again. This is my
3 opportunity to respond to the arguments by defense counsel. I
4 would like to begin with Ms. McKinnon. So Ms. McKinnon's
5 defense, as you have heard, is essentially Gary Chamblee fed me
6 this information.

7 Ladies and gentlemen, I ask you, where in the records that
8 you've seen, where in the emails, where in the documents is
9 there a shred of proof that Mr. Chamblee provided Ms. McKinnon
10 information to be put into those financial documents?

11 There isn't a single item of proof in the document -- in
12 the emails that prove that. The only thing you can rely on is
13 Ms. McKinnon's word and, ladies and gentlemen, I doubt I need
14 to remind you why Ms. McKinnon's word should not be trusted.

15 There are misrepresentations about something as basic as
16 what her title is. She admitted falsifying financial
17 information to Mr. Deware, falsely representing information
18 about the sale of product, false statements to the Shumard
19 Group in those emails, falsifying the bank documents sent to
20 Ms. Hogan. When that's -- when the word from someone who would
21 do those things is all you have to work on, I don't think
22 that's very persuasive.

23 Ladies and gentlemen, Ms. Lewis made the point that
24 Ms. McKinnon did not profit from this. Of course we have
25 Ms. McKinnon's testimony that she did receive about \$36,000

1 total. But the point -- the point being there were no large
2 transfers to Ms. McKinnon like there were to Mr. Vance. That's
3 accurate. The money was flowing, and the biggest proportion of
4 it to Mr. Vance.

5 But, ladies and gentlemen, the judge has already
6 instructed you, it's in instruction number 20, I'm going to
7 read this to you since you'll have it back in the jury room
8 with you. Instruction number 20, "it is not necessary that the
9 government prove that the defendants obtained money or property
10 for their own benefit." The judge has instructed you that that
11 is not something we have to prove in this case.

12 So Ms. McKinnon's argument that you should acquit her
13 because she did not receive large financial contributions
14 herself, that simply has no relevance.

15 It also didn't account for the unaccounted cash in the
16 case, very large portion of cash that we just don't know where
17 it went.

18 Ms. McKinnon's counsel also referenced the good faith
19 instruction. I would like to read a portion of that
20 instruction to you. That's instruction number 14, ladies and
21 gentlemen.

22 And it says, "a defendant does not act in good faith if,
23 even though he honestly holds a certain opinion or belief, the
24 defendant also knowingly makes false or fraudulent pretenses,
25 representations or promises to others."

1 Ladies and gentlemen, Ms. McKinnon admitted to you on the
2 stand she made false representations. The Judge's own
3 instruction says when a defendant knowingly makes false
4 representations, they do not act in good faith.

5 Ladies and gentlemen, I would also point out by
6 Ms. McKinnon's arguments, even if you believe every word of it,
7 she would still be guilty of these crimes. Mr. Chamblee had
8 nothing to do with Mr. Deware. Mr. Deware said he didn't know
9 Mr. Chamblee. Mr. Chamblee said he didn't know Mr. Deware.
10 Ms. McKinnon also defrauded Mr. Deware. So even if you believe
11 everything they are saying about Mr. Deware, she would still be
12 guilty, and it's the same thing with Kentucky River Properties
13 and Koch Industries.

14 Further, the Judge has also instructed you that the
15 possible guilt of others is no defense to a criminal charge.
16 So even if you somehow think that Mr. Chamblee should have been
17 included in this case or should be charged with a crime of some
18 sort, the judge has instructed you, "keep in mind that whether
19 anyone else should be prosecuted and convicted for the crimes
20 is not a proper matter for you to consider. The possible guilt
21 of others is no defense to a criminal charge." That's
22 instruction number 10.

23 This defense about Mr. Chamblee doesn't address all the
24 emails you have seen of Mr. Vance and Ms. McKinnon and copying
25 between them. You know what wasn't on all of those documents

1 and falsifying documents and providing false information? Gary
2 Chamblee. It was the two of them, Mr. Vance and Ms. McKinnon.

3 If Mr. Chamblee was instructing Ms. McKinnon to falsify
4 documents in the way she suggested, why is she involving
5 Mr. Vance in this? Why isn't she emailing it to Mr. Chamblee
6 for approval?

7 The instructions tell you to use your common sense, ladies
8 and gentlemen. Is this how, in your common sense and everyday
9 experience, people operate? I don't believe it is.

10 It's not consistent with Mr. Chamblee being some sort of
11 puppet master or mastermind. It's consistent with Mr. Vance
12 and Ms. McKinnon scheming to defraud.

13 You also heard, I'm sure you remember, Ms. Hogan stood up
14 for Mr. Chamblee and said that she knows that he has a
15 reputation for truthfulness. She's worked with him every day
16 for about 15 years, knows him very well. He works for a
17 Christian organization, ladies and gentlemen. He works for a
18 foundation that tries to build schools and bring employment to
19 hard hit areas. Do you really think he's the puppet master
20 behind this?

21 Even Mr. Vance stuck up for Mr. Chamblee. He told you he
22 liked Gary a lot and he got along with him and Gary never asked
23 him to fabricate documents.

24 Again, ladies and gentlemen, ask yourselves when you go
25 back into your jury room, where in the evidence does it suggest

1 that Mr. Chamblee was involved? And you won't see a single
2 email or document that supports that claim.

3 Now let's talk a little bit about Mr. Vance's closing
4 argument. Mr. Darling and I certainly agree on one thing, and
5 that is being bad at business is not a crime. I said that to
6 you all in my opening. That is not why we're here. We're not
7 here because Nex-Gen was one of countless startups that
8 happened to fail.

9 Do you remember Mr. Deware early on in this trial, he said
10 look, I'm an investor, startups fail sometimes, I've been a
11 part of many startups that have failed.

12 Do you remember he said -- I asked him, have you ever
13 reported any of those other business partners to the FBI? He
14 said no. This case didn't come to the FBI, this case was not
15 investigated and indicted because Nex-Gen failed as a business.
16 This case is in court today because Doug Vance and Molly
17 McKinnon lied to investors and lenders to get their money.

18 Now, Mr. Vance made sort of a general lack of knowledge
19 argument. Essentially he didn't really know what was going on.
20 Really, ladies and gentlemen, is that believable to you? He is
21 in charge of Nex-Gen, he is the operator. He does operations.
22 He's on the site, does he really not know who the customers are
23 when there are misrepresentations about customers? Does he
24 really not know the level of production and sales? Of course
25 he does, ladies and gentlemen. How could he not?

1 I do also feel a need to discuss the accusation about some
2 sort of improper argument to you asking you to look at or to
3 remember Mr. Vance's body language. That was made a lot of in
4 closing argument.

5 Ladies and gentlemen, it's not me who told you to look at
6 that, it's the judge, instruction number 7. "Ask yourself how
7 the witness acted while testifying." You will read that for
8 yourselves when you go back into the jury room.

9 Now, ladies and gentlemen, there was discussion in
10 Mr. Vance's closing about Mr. Deware. I know you all will
11 remember, Mr. Deware told you very plainly that he knew the
12 Shumard Group was involved as a potential investor in this
13 project. Of course he did. You were shown emails where the
14 Shumard Group is mentioned to Mr. Deware.

15 But he never knew that the Shumard Group were actual
16 investors, that they had formed that separate company, NexGen
17 Energy Partners, with Mr. Vance. He told you that very
18 clearly. And if his intent all along, as you've heard
19 discussed, was to buy out the Shumards, why is that nowhere in
20 the documents you've seen in this case?

21 There's no email that says that. That's not in legal
22 documents that you've seen, and that's because that's simply
23 not true. Mr. Deware did not know that they were actually
24 invested in this endeavor.

25 Mr. Vance made a comment that all these investors and

1 lenders gave money to Vance and McKinnon for some reason. It
2 wasn't just for some reason, ladies and gentlemen, it was
3 because Mr. Vance and Ms. McKinnon lied to them, because they
4 made false representations about sales of product, about income
5 from the sales of product, about production capabilities. And
6 there was specific discussion about Koch Industries and about
7 Dave Severson making it sound like he was just throwing money
8 around willy nilly.

9 Well, ladies and gentlemen, I would invite you to look at
10 Exhibit 148. You remember Mr. Severson specifically asked for
11 a Nucor spec sheet. He wasn't just throwing it around, he was
12 asking for proof, for verification that sales were being made
13 to a company like Nucor.

14 What did Mr. Vance and Ms. McKinnon do to satisfy him to
15 get more money from Koch? They schemed up and created a false
16 Nucor spec sheet, which was then passed along to Mr. Severson.

17 So, ladies and gentlemen, the defenses you've been offered
18 should have no weight. Where are the emails with Mr. Chamblee
19 expressing all these false production numbers, these false
20 sales? They don't exist. The emails that do exist show that
21 Mr. Vance and Ms. McKinnon schemed together to lie and to
22 misrepresent to lenders and investors and get their money.

23 I ask that you find both defendants guilty of all crimes
24 charged.

25 Thank you.

1 THE COURT: Thank you, Mr. Chapman.

2 Ladies and gentlemen of the jury, at this time I will send
3 you back to begin your deliberations. Before I do that, I do
4 want to excuse our two alternates. The admonition is not
5 lifted with regard to the alternates because it may become
6 necessary to call one or both back in for deliberations if
7 someone were to become ill.

8 So I will ask our alternates, you can leave your notebooks
9 in the chair and the clerk will pick those up after you've left
10 the courtroom. The clerk will also advise you if a verdict is
11 returned by the full jury at that point, you can discuss the
12 case with anyone if you choose to do so, but you're not
13 required to.

14 So when the jury goes back to begin deliberations, the two
15 alternates in the case are Numbers 875 and 948. With the
16 thanks of the Court, you're excused, subject to being recalled.

17 For the balance of the jurors, you'll go back. The clerk
18 will bring back to you in just a moment the documents that were
19 admitted into evidence. Also my original jury instructions. I
20 made three handwritten changes to the instructions, or
21 clarifications to the instructions on pages 21, 22, and 33.
22 And during the break, I was able to make those changes on the
23 copies as well.

24 The original jury instructions will have the verdict form,
25 the four-page verdict form attached. These extra copies that

1 are stapled will not. So there will not be a verdict form on
2 those copies.

3 Additionally, you will get a copy of the indictment in
4 this case. You are again reminded that the indictment is not
5 evidence, it's only being submitted to you so you will
6 understand the charges that have been made against the
7 defendants.

8 We will be in recess after you begin your deliberations
9 and we'll stay as long as you would like to stay tonight. I
10 have not made arrangements for meals to be brought in, so if at
11 some point you want to recess for the evening, you can
12 certainly do that by sending me a note.

13 Or if you want to continue to deliberate, you can stay as
14 long as you wish and I'll attempt to make arrangements to have
15 air conditioning for a couple of additional hours in the event
16 you do decide to stay.

17 Let me see if the parties have any other issues to take up
18 before I excuse the jury.

19 MR. CHAPMAN: No, Your Honor.

20 MR. DARLING: No, Your Honor.

21 MS. LEWIS: No, Your Honor.

22 THE COURT: Thank you.

23 At this time, the 12 jurors selected in the case will be
24 excused to begin their deliberations and the two alternates
25 will be excused.

1 (Jury left courtroom at 3:44 p.m.)

2 THE COURT: Thank you.

3 Madam Clerk, if you could check on our air conditioning
4 until 7:00, if you would, please.

5 We will be in recess to await the verdict of the jury.

6 (A recess was taken from 3:46 p.m. to 5:05 p.m. Jury
7 excused until 9:00 a.m. on October 13, 2022. A verdict was
8 returned at 11:55 a.m. on October 13, 2022, transcript not
9 requested.)

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C E R T I F I C A T E

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I, Linda S. Mullen, RDR, CRR, do hereby certify that
the foregoing is a correct excerpted transcript from the record
of proceedings in this above-entitled matter.

15

/s/Linda S. Mullen
Linda S. Mullen, RDR, CRR
Official Court Reporter

April 20, 2023
Date of Certification

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