No. _____

In The

Supreme Court of the United States

LINDA MARIE KOT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

RICHARD A. SCHONFELD, ESQ.
Counsel of Record for Petitioner
ROBERT Z. DEMARCO, ESQ.
CHESNOFF & SCHONFELD
520 South Fourth Street
Las Vegas, Nevada 89101
(702) 384-5563
rschonfeld@cslawoffice.net

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTION PRESENTED

Whether the Ninth Circuit Court of Appeals was permitted to consider the vouched-for testimony when determining that the error in this case was harmless.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

OPINION BELOW

The Ninth Circuit Court of Appeals did not select its opinion for publication in the Federal Reporter. The decision from the Ninth Circuit is reprinted in the Appendix ("App.") at 1. The District Court's entry of judgment is reprinted in the Appendix at 9.

JURISDICTION

The Ninth Circuit Court of Appeals filed its decision on July 21, 2014, and entered an order denying Petitioner's Petition for Rehearing with a Suggestion for Rehearing En Banc on August 29, 2014. This Honorable Court has jurisdiction under 28 U.S.C. § 1254(1) to review the circuit court's decision on a writ of certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

Under the Fifth Amendment, "No person shall be . . . deprived of life, liberty, or property, without due process of law."

Under the Sixth Amendment, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . . ."

STATEMENT OF THE CASE

On April 11, 2012, a four-count Superceding Indictment was filed, charging Petitioner in Count I with Conspiracy to Commit Mail Fraud, Wire Fraud, and Bank Fraud, occurring from in or about April 2006, to in or about November 2006, in violation of 18 U.S.C. §§ 1341, 1343, and 1344(1) and (2); all in violation of 18 U.S.C. § 1349. Counts II through IV charged Petitioner with Bank Fraud and Aiding and Abetting, in violation of 18 U.S.C. § 1344(2) and § 2, occurring from in or about April 2006, to in or about December 2006.

Petitioner proceeded to a jury trial, and testified in her defense.

In the case at bar, there is no dispute that during cross-examination of the Petitioner at her trial, the prosecutor asked twenty-three times whether various government witnesses were lying. In addition, there is no dispute that the prosecutor's twenty-three improper questions applied to *six of the ten government witnesses*. The six government witnesses were not peripheral witnesses; rather, they were crucial government witnesses who testified to the allegedly materially false statements supporting the bank fraud charges against the Petitioner.

Not surprisingly, the government, as well as the Ninth Circuit Court of Appeals, recognized that the government committed plain error at trial. Thus, the issue before the Ninth Circuit was whether the error was harmless. In assessing its view of prejudice, the

Ninth Circuit stated that there was "overwhelming evidence," however, the Court did not specifically find that the government met its burden of proving beyond a reasonable doubt that the Petitioner would have been convicted absent the prosecutor's unconstitutional remarks. Nor did the Court excise the testimony of the tainted witnesses. It is respectfully submitted that this holding was in contravention of Ninth Circuit precedent, as well as precedent from other jurisdictions across this country.

Specifically, the government vouched for their substantive witnesses as follows:

> **Mr. Acker:** And it's your testimony, Ms. Kot, that you did not authorize Luiz Ortiz to be put on your bank account?
>
> **Petitioner:** Absolutely not.
>
> **Mr. Acker:** So Mr. Ortiz lied about that. Is that your testimony? (App. 30).
>
> **Petitioner:** He didn't exactly. Would you like me to explain?
>
> **Mr. Acker:** It's your testimony that when he said that you authorized him to put him on your account he was lying?
>
> **Defense counsel, Mr. Brown:** Your Honor, I don't believe Mr. Ortiz ever testified to that.
>
> **The Court:** He did. He did. He did. He testified that she spoke to him and told him to go in. (App. 31).

. . .

Mr. Acker: Okay. And Mr. Dadie lied, the – the bank employee, when he said that you had added Luiz Ortiz to his [sic] bank account. Is that your testimony, ma'am?

Petitioner: Yes, it is.

Mr. Acker: And it's your testimony that Mr. Dadie lied, the bank employee, when he – when he said that you came to the bank to put people on your bank accounts?

Petitioner: Mr. Dadie was a horror of lies. A horror of lies, sir. (App. 32).

Mistakenly, the District Court Judge intervened and vouched for Mr. Ortiz. However, later the Court corrected its mistake on the record and informed the jury that it meant to reference Mr. Campa's testimony, not Mr. Ortiz.

In addition, on cross-examination, the government's prosecutor, Mr. Acker, also improperly cross-examined Petitioner as to government witness Santiago Campa:

Mr. Acker: Now, ma'am, you put Santiago Campa – you authorized Santiago Campa to be on your bank – bank account?

Petitioner: No, sir – I did not. (App. 31).

Mr. Acker: You did not. So the witness – Mr. Campa lied – is that your testimony? –

when he said – [ ] Mr. Campa lied when he said that you authorized him to be on his bank account. Is that your testimony?

Petitioner: He grossly lied.

Mr. Acker: Grossly lied.

Petitioner: Grossly lied. (App. 31-32).

On cross-examination, the government also improperly cross-examined Petitioner as to Jeffery Palladino, pertaining to properties not charged in the Superceding Indictment and Verification of Rent:

Mr. Acker: And you – you asked him if you – if he would let you use his name and personal information to buy that house in his name; isn't that correct?

Petitioner: Totally incorrect, sir.

Mr. Acker: So Mr. Palladino is lying when he said that?

Petitioner: You're mis – misrepresenting it. (App. 33).

. . .

Mr. Acker: So Mr. Palladino lied about that when he testified [Verification of rent]? Is that – is that – is that what your testimony is, ma'am? . . . (App. 35).

Mr. Acker: – it's your position that Mr. Palladino lied?

> **Petitioner**: Yes, sir. It's my position on that matter – he did.
>
> **Mr. Acker:** The – the young man who looked up to you as an aunt – whose credit you put at risk – even though his credit didn't get ruined, whose credit you put at risk when you put a property in his name, that young man, who looked up to you as an aunt, he lied? That's your testimony, ma'am? (App. 36).

The government's questions were improper because they compelled the Petitioner to offer opinions regarding the veracity of the government's witnesses.

Thereafter, the government's error was compounded by impermissible vouching by the prosecutor during his closing argument. (App. 24-29).

During closing arguments, the government vouched as to the veracity of their witnesses:

> Mr. Brown would like you to believe that all of these people are lying. In fact, the defendant told you from the stand that all of these people have lied. (App. 24).
>
> . . .
>
> If you were to believe the defendant's version of events, then that would mean that all of the these def – all – all – excuse me – all of these witnesses are lying; Mr. Palladino is lying; Mr. Palladino who thought of the defendant as an aunt. Mr. Ortiz is lying. Mr.

> Coutelin is lying. Mr. Perry is lying; Mr. Perry who said that the defendant offered to put anyone on her bank account if it would, you know, help to sell houses. And Mr. Campa. (App. 25).
>
> . . .
>
> Either their testimony is not credible or the defendant's testimony is not credible. (App. 26).

The government further vouched for their case-in-chief by describing this case as a "Hail Mary Pass" in regards to government witness Stephane Dadie. The government's prejudicial closing argument continued during rebuttal by attacking Defense counsel, "Mr. Brown wants you to believe that you should disregard all of the witnesses – witnesses' testimony including, as I said, the – Mr. Dadie." (App. 28).

Thereafter, the government continued to vouch for the witnesses, "[a]nd every witness who testified under the plea agreement testified to you that they understood what their obligation was under the plea agreement, to tell the truth, and that they understood if they failed to tell the truth they could lose the benefits of the plea agreement and they could be prosecuted for perjury." (App. 29). "Mr. Palladino, by way, didn't have a plea agreement; he had a pretrial diversion agreement. And, if you remember the testimony, his agreement has already expired. I mean, that agreement is done and he's – he testified

after that at this trial." (App. 29). The government vouched for the witnesses by suggesting that they had no motivation to lie; thus, advising the jury to find the same conclusion as it pertained to the witnesses' personal testimony.

The jury returned a verdict of guilty on all counts of the Superceding Indictment. Petitioner filed a timely appeal with the Ninth Circuit Court of Appeals. The appeal in the case at bar was submitted to the panel for decision after oral argument on April 7, 2014. The Memorandum from the Ninth Circuit was filed on July 21, 2014.

In its Memorandum filed on July 21, 2014, the Ninth Circuit Court of Appeals, in addition to rejecting Petitioner's additional arguments, recognized that there was plain error in regards to the government vouching, yet stated:

> ***The prosecutor's admitted error in asking Kot about the veracity of government witnesses*** does not warrant reversal; nor did the government improperly comment on the veracity of various witnesses in its closing argument. Although "it[is] black letter law that a prosecutor may not ask a defendant to comment on the truthfulness of another witness," the defendant must show prejudice to warrant a new trial. *United States v. Harrison*, 585 F.3d 1155, 1158-59 (9th Cir. 2009).
>
> Here, the evidence of Kot's guilt – in the form of both exhibits ***and testimony by numerous***

> ***witnesses*** – was overwhelming. In addition, the district court clearly instructed the jury that it should make its own judgment as to the veracity of witnesses. Accordingly, there was no prejudice."

(App. 4) (emphasis added).

Petitioner filed a timely Petition for Rehearing. On August 29, 2014, the Ninth Circuit denied Petitioner's Petition for Rehearing with a Suggestion for Rehearing En Banc.

REASONS FOR GRANTING PETITION

THIS HONORABLE COURT SHOULD SPECIFICALLY HOLD THAT A FEDERAL APPELLATE COURT CANNOT CONSIDER VOUCHED-FOR EVIDENCE IN ANALYZING WHETHER PETITIONER SUFFERED PREJUDICE AT TRIAL

In the case at bar, the Ninth Circuit Court of Appeals recognized that there was plain error due to the government's vouching at trial. Significantly, the Government's Answering Brief in the Ninth Circuit also conceded that it was plain error for the prosecutor to ask Petitioner whether any of the government's witnesses were lying. The government's questions were improper because they forced the Petitioner to

offer opinions regarding the veracity of the government's witnesses.[1]

In its review of this error, the court failed to find that the government met its burden to prove beyond a reasonable doubt that the defendant would have been convicted absent the prosecutor's unconstitutional remarks. As such, it is respectfully submitted that it was error for the Ninth Circuit Court of Appeals to simply state that: "Here, the evidence of Kot's guilt – in the form of both exhibits ***and testimony by numerous witnesses*** – was overwhelming." (App. 4) (emphasis added).

---

[1] *See, e.g.*, *United States v. Combs,* 379 F.3d 564, 572 (9th Cir. 2004), the prosecutor committed misconduct when he asked the defendant whether a government agent "was lying." In *United States v. Geston,* 299 F.3d 1130, 1136 (9th Cir. 2002), the prosecutor improperly asked two defense witnesses whether other law enforcement witnesses were lying and asked one of them about the veracity of five other government witnesses. In *United States v. Sanchez,* 176 F.3d 1214, 1219 (9th Cir. 1999), the Ninth Circuit held it was error "for a prosecutor to force a defendant to call a [testifying government agent] a liar." In *United States v. Sullivan,* 85 F.3d 743, 749-50 (1st Cir. 1996), the First Circuit opined that "counsel should not ask one witness to comment on the veracity of the testimony of another witness." In *United States v. Boyd,* 54 F.3d 868, 871 (D.C. Cir. 1995), the D.C. Circuit concluded it was "error for a prosecutor to induce a witness to testify that another witness, and in particular a government agent, has lied on the stand." And in *United States v. Richter,* 826 F.2d 206, 208 (2d Cir. 1987), the prosecutor was guilty of misconduct when he forced the defendant to testify that an FBI agent was either mistaken or lying.

This is because the Ninth Circuit considered the vouched-for evidence in assessing whether Petitioner suffered prejudice. It is respectfully submitted that the court should not have considered the vouched-for evidence in assessing its view on prejudice, as this conflicts with prior decisions from the Ninth Circuit, as well as other circuits from around the country. *See, e.g.*, *United States v. Brooks*, 508 F.3d 1205 (9th Cir. 2007) ("We have upheld convictions in vouching cases where there is substantial *independent* evidence of guilt.") (emphasis added) (citing *United States v. Daas*, 198 F.3d 1167 (9th Cir. 1999) (no plain error where there was "other 'non-vouched' evidence" of criminal intent); *United States v. Lew*, 875 F.2d 219, 223-24 (9th Cir. 1989) ("Because there was substantial evidence against Lew *independent* of the credibility of Chang and Lin. . . .") (emphasis added); *United States v. Gracia*, 522 F.3d 597 (5th Cir. 2008) ("Even crediting the district court's cautionary instructions, we are convinced that the prosecutor's statements, considered as a whole, prejudicially affected Gracia's substantial rights when viewed in comparison to the dearth of other evidence of Gracia's guilt. Simply put, other than the agents' testimony, there is none."); *United States v. Dispoz-O-Plastics, Inc.*, 172 F.3d 275 (3d Cir. 1999) ("The witnesses' testimony was clearly central to the government's case. Without it, the prosecution could not establish that there was an agreement to fix prices."); *United States v. Eyster*, 948 F.2d 1196, 1207 (11th Cir. 1991) (holding prosecutor's vouching for credibility of key witness was reversible error because undermining credibility of witness was

essential to defense and reasonable probability existed that but for prosecutor's improper comments outcome of proceeding would have been different); *United States v. Cotnam*, 88 F.3d 487, 500 (7th Cir. 1996).

As the court in *United States ex rel. Burke v. Greer*, 756 F.2d 1295, 1302 (7th Cir. 1985) stated:

> Once a constitutional violation has been established, the government can only prevail if it sustains the burden of proving beyond a reasonable doubt that the defendant would have been convicted absent the prosecutor's unconstitutional remarks.

Id. (citing *United States v. Hasting*, 461 U.S. 499, 103 S.Ct. 1974, 76 L.Ed.2d 96 (1983)).

As such, the Ninth Circuit should have identified what evidence it was referring to when it found that there was "overwhelming" evidence of Petitioner's guilt, and should not have considered the testimony of vouched-for witnesses.

For example, in *United States v. Moreland*, 622 F.3d 1147 (9th Cir. 2010), the defendant was prosecuted for mail fraud, wire fraud, money laundering, and conspiracy to commit wire fraud and mail fraud. *Id.* On appeal, the defendant asserted that his due process rights were violated by the prosecutor's cross-examination of defendant as to the veracity of the testimony of two government witnesses. *Id.* at 1160-61.

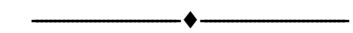
The government had asked the defendant only twice about the veracity of two government witnesses during cross-examination. *Id.* at 1159. The *Moreland* court held, that although the questioning was improper, the two witnesses were peripheral to the case, because they testified regarding matters of minor importance, and the government presented over seventy-five witnesses at a trial that lasted a considerable amount of time. *Id.* at 1160-61.

Unlike *Moreland*, in the case at bar, the government presented a total of ten witnesses to testify in its case-in-chief, and the trial only lasted a span of five days. The prosecutor's twenty-three improper questions applied to six of the ten government witnesses. The six witnesses were not peripheral witnesses; rather, they were crucial government witnesses, who testified to the materially false statements supporting the bank fraud charges alleged against the Petitioner. The other four government witnesses were lender employees, who had no interaction with Petitioner; therefore, the government found no need to vouch for them or ask Petitioner to comment on their veracity.

Petitioner was prejudiced by the improper questions, because they compelled her to offer opinions regarding the veracity of the government's witnesses, ultimately undermining her testimony when the government vouched for its cooperating witnesses. It is respectfully submitted that when the evidence is viewed absent the vouched-for witnesses, reversal is warranted as Petitioner suffered prejudice.

It should be noted that the vouching at issue was not cured by the jury instructions presented at trial because the instructions did not address the government's method of vouching, as well as the implication, made by some of the vouching, that the government was monitoring the witness's conduct. Moreover, there were no curative instructions given by the district court immediately after these statements. As such, the jury was not properly informed as to how to interpret the government's vouching. *See United States v. Necoechea*, 986 F.2d 1273, 1278 (9th Cir. 1993) (noting that on appeal, the court must "balance the seriousness of the vouching against the strength of the curative instruction and closeness of the case"); *United States v. Simtob*, 901 F.2d 799, 806 (9th Cir. 1990) (Generally, "*[p]rompt and effective* action by the trial court may neutralize the damage [of vouching or other prosecutorial misconduct] by admonition to counsel or by appropriate curative instructions to the jury.") (emphasis added).

Here, in conjunction with the fact that the Ninth Circuit did not view the non-vouched-for evidence in isolation, the generic credibility instruction was insufficient to cure the clear prejudice of the government's vouching throughout the trial. Thus, a new trial is warranted.



CONCLUSION

The Honorable Court should grant the petition for a writ of certiorari and reverse the decision of the Ninth Circuit Court of Appeals.

Respectfully submitted,

RICHARD A. SCHONFELD, ESQ.
Counsel of Record for Petitioner
ROBERT Z. DEMARCO, ESQ.
CHESNOFF & SCHONFELD
520 South Fourth Street
Las Vegas, Nevada 89101
(702) 384-5563
rschonfeld@cslawoffice.net

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. LINDA MARIE KOT, Defendant-Appellant.	No. 13-10000 D.C. No. 2:10-cr-00280-KJD-GWF-4 MEMORANDUM* (Filed Jul. 21, 2014)

Appeal from the United States District Court
for the District of Nevada
Kent J. Dawson, District Judge, Presiding

Argued and Submitted April 7, 2014
San Francisco, California

Before: SCHROEDER, LIPEZ**, and CALLAHAN, Circuit Judges.

I.

Linda Marie Kot ("Kot") challenges: (1) her conviction for mail fraud, wire fraud, bank fraud and conspiracy to commit mail fraud, wire fraud, and

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Kermit V. Lipez, Senior Circuit Judge for the First Circuit, sitting by designation.

bank fraud; (2) her 2-level sentencing enhancement for relevant conduct; and (3) the district court's loss calculation of $2.5 to $7 million, resulting in an increase of 18 in the base offense level. Kot's convictions arose out of her alleged masterminding of a scheme whereby she sold properties to a real estate trust (the "Trust") – created by Hugo Coutelin ("Coutelin") and Michael Perry ("Perry"), and later joined by Jeff Thomas ("Thomas") – in exchange for brokerage commissions. We have jurisdiction pursuant to 28 U.S.C. § 1291. Kot's evidentiary claims and other objections are not persuasive; therefore we affirm her conviction and sentence.[1]

II.

A. Contrary to Kot's assertions, there was sufficient evidence to support the jury's finding that her alleged falsehoods were material to the issuance of the bank loans in question, and that the funds were under the custody and control of an FDIC-insured institution. As to materiality, the jury heard testimony from employees of the mortgage brokers/banking subsidiaries that absent the falsifications provided by Kot the loans in question would not have been approved. Further, custody and control by an FDIC-insured institution was established because:

[1] Because the parties are familiar with the facts and procedural history, we do not restate them here except as necessary to explain our decision.

(1) the parties stipulated that Wells Fargo, Fremont and North Fork Bank ("North Fork") were federally insured institutions within the meaning of 18 U.S.C. § 1344; (2) the parties stipulated that for all sales in which North American Title was the settlement agent, Wells Fargo was the funding bank; and (3) there was testimony that North Fork Bank funded the loans underwritten by its subsidiary, GreenPoint Mortgage Funding, Inc. ("GreenPoint"). Accordingly, viewed in the light most favorable to the prosecution, a rational juror could have found the elements of the crime beyond a reasonable doubt. *United States v. Rizk,* 660 F.3d 1125, 1134 (9th Cir. 2011).

B. The district court did not err in allowing testimony regarding other real property transactions that were the subject of a dismissed indictment. The admission of testimony by government witness Jeffrey Palladino ("Palladino") and defense witness Gary Krape ("Krape") was not a Fifth Amendment violation because Kot was not "held to answer" for any crimes not charged in the Indictment. *United States v. Shipsey,* 190 F.3d 1081, 1085 (9th Cir. 1999). Further, the evidence was admissible because it concerned events inextricably intertwined with the charged offenses and therefore was necessary to the government's ability to offer a coherent and comprehensible story regarding the crime's commission. *See United States v. Vizcarra-Martinez,* 66 F.3d 1006, 1012-13 (9th Cir. 1995). In the alternative, the testimony was admissible as evidence of other acts under Fed. R. Evid. 404(b) because it tended to prove motive, intent,

plan and knowledge, and refuted Kot's claims of innocence and mistake. *United States v. Jackson,* 84 F.3d 1154, 1159 (9th Cir. 1996). The testimony helped establish that Kot had previously devised and executed the same scheme with her friends and relatives, and sold properties she purchased in her friends' and relatives' names to the Trust.

C. The district court did not err in permitting the term "straw buyers" to be used at trial. The district court's ruling that the term "straw buyer" was not unduly prejudicial under Fed. R. Evid. 403 was not an abuse of discretion. *Tennison v. Circus Circus Enters., Inc.,* 244 F.3d 684, 688 (9th Cir. 2001). The district court instructed the jury as to the term's neutrality and stressed the jury's role in deciding whether a straw buyer relationship existed.

D. The prosecutor's admitted error in asking Kot about the veracity of government witnesses does not warrant reversal; nor did the government improperly comment on the veracity of various witnesses in its closing argument. Although "it[is] black letter law that a prosecutor may not ask a defendant to comment on the truthfulness of another witness," the defendant must show prejudice to warrant a new trial. *United States v. Harrison,* 585 F.3d 1155, 1158-59 (9th Cir. 2009). Here, the evidence of Kot's guilt – in the form of both exhibits and testimony by numerous witnesses – was overwhelming. In addition, the district court clearly instructed the jury that it should make its own judgment as to the veracity of witnesses. Accordingly, there was no prejudice.

Further, the prosecutor's use of the phrase "you know" and his immediate self-correction during closing argument did not amount to vouching for witnesses. There was no implication that he was making personal assurances or suggesting that information not presented supported the witnesses' testimony. *See United States v. Parker,* 241 F.3d 1114, 1119 (9th Cir. 2001). The prosecutor permissibly pointed out the discrepancies in testimony, and the jury was instructed to make its own judgment as to the credibility of the witnesses. *See Jackson,* 84 F.3d at 1158. Further, even if the comments were construed as vouching, they do not warrant reversal because they "did not 'seriously affect[ ] the fairness, integrity or public reputation of judicial proceedings,'" given the abundance of the evidence. *Id.* (alteration in original) (quoting *United States v. Olano,* 507 U.S. 725, 736 (1993)).

E. The district court did not err in not interviewing a juror regarding her spouse's communication with government witness Palladino. Upon learning from the prosecution of the brief exchange between a man in the audience, who was a juror's husband, and government witness Palladino regarding their common surname, the court interviewed the man and gave him a stern warning in the presence of the prosecution and defense. Because Kot did not request any further inquiry, the court's actions are reviewed for plain error. *United States v. Velasquez-Carbona,* 991 F.2d 574, 576 (9th Cir. 1993). Here, the communication was completely unrelated to the case, and

there is no evidence that the exchange between the two was relayed to the juror. Contrary speculation is insufficient to establish prejudice. *See United States v. Yousef*, 327 F.3d 56, 161 (2nd Cir. 2003). Accordingly, there was no error, much less plain error.

F. The district court's exclusion of the Suspicious Activity Report ("SAR") did not amount to a *Brady*/*Giglio* error.[2] Suppression by the prosecution of evidence favorable to an accused is a violation of due process "where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland,* 373 U.S. 83, 87 (1963). Here, the prosecutor disclosed the SAR on the second day of trial, after Kot's opening statement made clear that she would argue, in part, that the mortgage brokers were to blame for the false information provided on loan documents. Kot has not shown that the SAR was material to her guilt or innocence. In addition, although the court did not allow the admission of the document itself, it ruled that Kot's counsel could question the relevant government witnesses about the SAR, which Kot's counsel declined to do. Accordingly, there was no due process violation.

---

[2] Pursuant to 12 C.F.R. § 21.11, a SAR must be filed with the Financial Crimes Enforcement Network of the Department of the Treasury by a national bank in predefined situations that indicate possible violations of banking laws.

G. The district court did not err in (1) enhancing Kot's base offense level by 2 for relevant conduct, or (2) calculating a loss range of $2.5 to $7 million, resulting in an increase of 18 in the base offense level. The Ninth Circuit reviews the district court's interpretation of the United States Sentencing Guidelines ("U.S.S.G." or the "Guidelines") de novo, its application to the facts of a case for abuse of discretion, and its factual findings for clear error. *United States v. Grissom,* 525 F.3d 691, 696 (9th Cir. 2008). Here, the parties stipulated that the loss range was $2.5 to $7 million (a fact), necessarily resulting in an increase of 18 in the base offense level. The district court's acceptance of this figure was not clear error. In addition, it was not an abuse of discretion for the district court to apply a 2-level sentencing enhancement based on its independent judgment that Kot's conduct was more egregious than that of her co-conspirators and that she intentionally testified falsely as to a material matter.

H. The asserted trial errors, as a cumulative whole, do not warrant reversal for a new trial. Kot has raised only one possibly meritorious claim, that of the prosecutor questioning her as to witnesses' veracity, and that issue is insubstantial in light of the overwhelming evidence against her. *Parle v. Runnels,* 505 F.3d 922, 927-28 (9th Cir. 2007). Accordingly, reversal is not warranted on the basis of cumulative error.

III.

For the reasons stated above, we affirm Kot's conviction and sentence.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA	**JUDGMENT IN A CRIMINAL CASE**
V.	(Filed Dec. 21, 2012)
LINDA MARIE KOT	Case Number: 2:10-CR-0280 KJD-GWF-4
	USM Number: 45063-048
	WILLIAM H. BROWN (retained)
	Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☑ was found guilty on count(s) 1-4 of the Superseding Indictment after a plea of not guilty.

The defendants adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 1349	Conspiracy to Commit Mail Fraud, Wire Fraud, Bank Fraud	11/30/2006	1s

18 USC §§ 1344(2) & 2	Bank Fraud & Aiding and Abetting	11/30/2006	2s & 3s
18 USC §§ 1344(2) & 2	Bank Fraud & Aiding and Abetting	5/31/2005	4s

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☑ Count(s) 1-8 of the Indictment

☐ is ☑ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

12/19/2012
Date of Imposition of Judgment

/s/Kent J. Dawson
Signature of Judge

KENT J. DAWSON
U.S. District Judge
Name and Title of Judge

12/21/12
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

70 Months per Count; Concurrent

☑ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends the Defendant be permitted to serve her term of incarceration as close to Nevada or California as possible.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal

☑ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☑ before Noon on 6/14/2013

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ a _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

5 Years per Count, Concurrent

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court, not to exceed 104 tests annually. Revocation is mandatory for refusal to comply.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*

☐ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*

☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*

☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony,

unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

ADDITIONAL SUPERVISED RELEASE TERMS

1. The defendant shall not possess, have under her control, or have access to any firearm, explosive device, or other dangerous weapons, as defined by Federal, state or local law.

2. The defendant shall submit her person, property, residence, place of business and vehicle under her control to a search conducted by the United States Probation Officer or any authorized person under the immediate and personal supervision of the probation officer, at a reasonable time and in a reasonable

manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.

3. The defendant shall be prohibited from incurring new credit charges, opening additional lines of credit, or negotiating or consummating any financial contracts without the approval of the Probation Officer.

4. The defendant is restricted from engaging in employment, consulting or any association with any mortgage or real estate business for a period of five (5) years.

5. The defendant shall report in person to the Probation Office in the District to which he/she is released within 72 hours of discharge from custody.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	**Fine**	**Restitution**
TOTALS	$ 400.00	$ 0.00	$ 3,891,811.00 **

** Order of Forfeiture for restitution purposes

☐ The determination of restitution is deferred until ____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS	$0.00	$0.00	

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 400.00 due immediately, balance due

☐ not later than _____ , or

☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D or, ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment

of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☑ The defendant shall forfeit the defendant's interest in the following property to the United States:

See attached Order of Forfeiture

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, v. LINDA MARIE KOT, Defendant.	)	2:10-CR-280-KJD-(GWF)

ORDER OF FORFEITURE

(Filed Dec. 19, 2012)

This Court found on July 26, 2012, that LINDA MARIE KOT shall pay a criminal forfeiture money judgment of $3,891,811.00 in United States Currency, pursuant to Fed. R. Crim. P. 32.2(b)(1) and (2); Title 18, United States Code, Section 982(a)(2)(A); Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c); and Title 21, United States Code, Section 853(p). Superseding Criminal Information, ECF No. 120; Minutes of Trial Proceedings, ECF No. 156; Order of Forfeiture, ECF No. 183.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the United States recover from LINDA MARIE KOT a criminal forfeiture money judgment in the amount of $3,891,811.00 in United States Currency pursuant to Fed. R. Crim. P. 32.2(b)(4)(A) and (B); Title 18, United States Code,

Section 982(a)(2)(A); Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c); and Title 21, United States Code, Section 853(p).

DATED this 19th day of December, 2012.

/s/ Kent Dawson
UNITED STATES DISTRICT JUDGE

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. LINDA MARIE KOT, Defendant-Appellant.	No. 13-10000 D.C. No. 2:10-cr-00280-KJD-GWF-4 ORDER (Filed Aug. 29, 2014)

Before: SCHROEDER, LIPEZ*, and CALLAHAN, Circuit Judges.

The panel has unanimously voted to deny the petition for rehearing and to deny the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on the petition. Fed. R. App. P. 35.

The petition for rehearing and for rehearing en banc is denied.

* The Honorable Kermit Victor Lipez, Senior Circuit Judge for the First Circuit, sitting by designation.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THE HON. KENT J. DAWSON,
U.S. DISTRICT JUDGE, PRESIDING

UNITED STATES OF AMERICA, Plaintiff, vs. LINDA MARIE KOT, Defendant.	Case No. 2:10-cr-280-KJD-GWF (EXCLUDES READING OF JURY INSTRUCTIONS AND CLOSING ARGUMENTS)

ORIGINAL

REPORTER'S PARTIAL
TRANSCRIPT OF JURY TRIAL, DAY 5

Friday, May 25, 2012

APPEARANCES: (See page 2)

Court Reporter: Felicia Rene Zabin, FCRR, RPR, CCR 478

* * *

[1067-35] Mr. Ortiz, Mr. Campa, Mr. Palladino – they all took the stand and they admitted their wrongdoing; they admitted that they broke the law.

Mr. Brown would like you to believe that all of these people are lying. In fact, the defendant told you from the stand that all of these people have lied.

Now, the judge has instructed you on credibility. And I hope that you will take into account all of the witnesses', all of the witnesses' motives to lie. You'll take into account their demeanor; how they appeared on the stand; your, just, visceral impressions of them; whether you believe them.

I also hope that – strike that – you also should take into account their motives to tell the truth. Mr. Coutelin and Mr. Perry both talked about their plea agreements and they both said that all the Government ever told them to do was to tell the truth.

Now, all of these witnesses are consistent about the defendant's role. And, more than that, all of the documents corroborate what the witnesses say: the bank statements, signature cards, spreadsheets, emails, faxes. If you were to believe the defendant's version of events, then that would mean that all of the these def- – all – all – excuse me – all of these witnesses are lying: Mr. Palladino is lying; Mr. Palladino who thought of the defendant as an aunt. [1067-36] Mr. Ortiz is lying. Mr. Coutelin is lying. Mr. Perry is lying; Mr. Perry who said that the defendant offered to put anyone on her bank account if it would, you know, help to sell houses. And Mr. Campa.

Now, to believe the defendant you would have to believe that Mr. Campa was and still is in league with Mr. Coutelin. Mr. Campa, you heard him on the stand. He testified that Mr. Coutelin stole money from him – right? – the $20,000 from his refinance and the, whatever, $8,00 from his credit card. Mr.

Campa hates Mr. Coutelin. And then, of course, again, there's Mr. Dadie, the bank employee, who had absolutely no interest in this case.

So that's Mr. Palladino; Mr. Ortiz; Mr. Coutelin; Mr. Perry; Mr. Campa; also Alex Ward; Mr. Dadie; all of the other bankers on the signature cards; Oscar Marin; and Brandy Martin who you saw is a Notary public. A lot of these people there's no evidence they ever even met each other. Either their testimony is not credible or the defendant's testimony is not credible.

All right. So to talk about these crimes we have to talk about something called "elements." Elements are basically things the Government has to prove for you to find – oh, I've got my visual back. No. That's good. That's fine – for you to find the defendant guilty.

First, I'm gonna talk about Counts Two, Three, and [1067-37] Four. Those three counts allege Bank Fraud. Each one's for a different property. You got 7309 Buttons Ridge Drive, 11511 Capanna Rosso, and 2826 Kinknockie.

The elements of Bank Fraud are, as you see: There's a scheme, there were false statements, the false statements were material, there was intent, and there was a federally insured financial institution.

So first – first element here, was there a scheme? For all three of these properties, there's a scheme. The scheme was to get the loan applications approved

to get the money. For 11511 Capanna Rosso, the – they never got the funds but the application itself was submitted.

Second element, false statements. Well, you know – well, I shouldn't say "you know" – but you've heard testimony from the borrowers for all three of those properties that there were false statements on the application. So you know there were false statement – well, again, I shouldn't say that – there's significant evidence of false statements.

The third element is materiality. Basically, a lie is material if it's capable of influencing a lender's decision.

For 7309 Buttons Ridge Drive, Fremont Investment funded the loan. We brought in Mrs. Valdez, who worked at Fremont, and she told you that the lies influenced the lender. She told you that if an applicant doesn't have a certain amount of assets he won't get the loan; he's gotta have two months' reserves.

* * *

[1067-73] And Ms. Kot is the one who suggested the easier way to go. And right from the very beginning Ms. Kot, defendant, knew that the properties were gonna be – were gonna be in the names of individuals but that the trust was going to be responsible for them and make the payments. She knew it. It's obvious she knew it. It's what she was doing

before. You don't need Mr. Coutelin's testimony alone to tell you that.

Now, she was profitable, the venture with her family was profitable in 2005; and they sold most of the houses if not all. By the time this – this second series of events comes along, Ms. Kot is offering – she's able to arrange deep discounts. Well, the market was starting to soften at that point. That's why for phase two, with the Coutelin trust, things crashed whereas it didn't in phase one. But, either way, false statement were made to lenders to get loans; the loans wouldn't have been – would not have been given without the false statements; and both times Linda Marie Kot was at the heart of it.

Now, just so – so it's absolutely clear, it doesn't matter that Linda Marie Kot didn't sign any of the loan applications for the Coutelin trust. It doesn't matter. She actively, repeatedly worked with Mr. Coutelin, Mr. Perry, [1067-74] Mr. Thomas, and all the other people involved in that trust, to cause false statements to be made on loan applications. That's what she did. She doesn't get away with it because she didn't sign the applications.

Now, Mr. Brown wants you to believe that you should disregard all of the witnesses – witnesses' testimony including, as I said, the – Mr. Dadie. We've covered that. He wants you to disregard all of those because of inconsistencies. Well, inconsisten- – the fact that there may be some inconsistencies, ladies and gentlemen, tell you something. The fact that

there are inconsistencies may indicate to you that people are not lying because if they wanted to get together and tell the same story, don't you think they would?

And every witness who testified under a plea agreement testified to you that they understood what their obligation was under the plea agreement, to tell the truth, and that they understood if they failed to tell the truth they could lose benefits of the plea agreement and they could be prosecuted for perjury.

Mr. Palladino, by the way, didn't have a plea agreement; he had a pretrial diversion agreement. And, if you remember the testimony, his agreement has already expired. I mean, that agreement is done and he's – he testified after that at this trial.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THE HON. KENT J. DAWSON,
U.S. DISTRICT JUDGE, PRESIDING

UNITED STATES OF AMERICA, Plaintiff, vs. LINDA MARIE KOT, Defendant.	Case No. 2:10-cr-280-KJD-GWF ORIGINAL

REPORTER'S TRANSCRIPT
OF JURY TRIAL, DAY 4

Thursday, May 24, 2012

APPEARANCES: (See page 2)

Court Reporter: Felicia Rene Zabin, FCRR,
RPR, CCR 478

* * *

[863] Q. And you made commissions off those?

A. Yes, sir.

Q. And it's your testimony, Ms. Kot, that you did not authorize Luiz Ortiz to be put on your bank account?

A. – Absolutely not.

Q. So Mr. Ortiz lied about that. Is that your testimony?

A. He didn't exactly. Would, you like me to explain?

Q. It's your testimony that when he said that you authorized him to put him on your account he was lying?

MR. BROWN: Your Honor, I don't believe Mr. Ortiz ever testified to that.

THE WITNESS: He – he . . .

THE COURT: He did. He did. He did. He testified that she spoke to him and told him to go in.

MR. ACKER: Let – let me just move on to the next question.

* * *

[867] BY MR. ACKER:

Q. Now, ma'am, you put Santiago Campa – you authorized Santiaga [sic] Campa to be on your bank –

A. No, sir –

Q. – bank account?

A. – I did not.

Q. You did not.

So the witness – Mr. Campa lied – is that your testimony? – when he said –

A. Mr. Campa –

Q. Can I finish the question?

A. I'm sorry, sir.

Q. Mr. Campa lied when he said that you authorized him to be on his bank account. Is that your testimony?

A. He grossly lied.

Q. Grossly lied.

A. Grossly lied.

Q. Okay. And Mr. Dadie lied, the – the bank employee, when he said that you had added Luiz Ortiz to his [sic] bank account. Is that your testimony, ma'am?

A. Yes, it is.

Q. Okay. Now, let's talk about Jeffrey Palladino.

A. Yes, sir.

Q. He's the best friend of your nephew Matthew Capodici?

A. I believe so.

* * *

[874] Q. Okay. And Mr. – Mr. Capodici originally approached him and described the process to him, a process similar to what I just described: buy a house, put it in your name, we'll be responsible for

the payments, all the things we just described, money due as closing, any other expenses, et cetera. Correct?

A. Except for the first part. I want to clarify.

You're saying put it in your name. If you want to joint venture with us and buy a house, you buy the house. We don't forcibly put something in your name as though it's this devious thing that no one knows about. If you're gonna buy the house, you buy the house.

Jeff bought the house. Marie and Frank bought the house. We didn't pretend they bought the house. They bought the house. They applied for the loan. My father's got a 500 FICO – or 800 FICO. That's as high as you get. It's a perfect score. He bought the house. He showed assets. He go [sic] a loan. He signed. We sent a mobile Notary to his home in New Jersey. The mobile Notary signed him, got his ID. They bought the house.

Q. And you – you asked him if you – if you – if he would let you use his name and personal information to buy that house in his name; isn't that correct?

A. Totally incorrect, sir.

Q. So Mr. Palladino is lying when he said that?

[875] A. You're mis- – misrepresenting it. We did not say, Can we use your information to buy a house, Frank or pop. We said, Pop, you want to buy houses with us? Yes, that'll be fun. They thought it

was fun. They're 88. Well, they weren't then; they were 78.

So, yes, I'll join with you and buy houses. We didn't say: Give me your information. You go take a nap. And I'm gonna go pretend you bought a house. Your mischaracterizing that.

Q. You – you could have gotten loans, pooled your resources together and got loans for those houses in the name of some type of investment trust in which case you would have had to reveal all the financial information that was available as to how many properties were owned, correct –

A. We actually –

Q. – Ms. Kot?

A. – didn't even consider that as an option – I'm not – I just didn't –

Q. You could –

A. – even know –

Q. – you could have put the – you could have bought the properties yourself as Linda – Linda Marie Kot, could you not?

A. I did, sir. I did buy a lot of properties myself.

Q. All right.

A. At least seven.

* * *

[890] Q. Mr. – Mr. Palladino stated that – that you told him that you needed to write 1200 instead of 400 on the Verification of Rent form so he could qualify for the loan; isn't that what you told Mr. Palladino?

A. No, sir. And I could explain.

Q. I just want you to answer –

A. I'm sorry.

Q. – the question. You'll get a chance to explain on redirect.

A. I'm sorry.

Q. So Mr. Palladino lied about that when he testified? Is that – is that – is that what your testimony is, ma'am?

A. I think bas- – am I allowed to say? – I think basically everybody has a motive to lie.

Q. Everybody?

A. They are all –

Q. Everybody has a motive to lie?

A. Well, they have plea agreements and they have – they have reasons they need to say things bad about me. I don't know what else to say. I mean, they have really big reasons why they have to say things against me. It's –

Q. Okay.

A. – it's what it is.

MR. ACKER: Your Honor, I – I move to –

THE WITNESS: Uh-oh.

[891] MR. ACKER: – to strike the statement about whether everyone has a motive to lie.

THE COURT: Strike.

THE WITNESS: I'm sorry. I'm sorry, your Honor.

BY MR. ACKER:

Q. But it's your position, without asking you for anybody's reason –

A. I'm sorry.

Q. – it's your position that Mr. Palladino lied?

A. Yes sir. It's my position on that matter –

Q. The –

A. – he did.

Q. – the young man who looked up to you as an aunt –

A. Um-hum.

Q. – whose credit you put at risk – even though his credit didn't get ruined, whose credit you put at risk when you a property in his name, that young

man, who looked up to you as an aunt, he lied? That's your testimony, ma'am?

A. We never put a property in his name.

Q. Ma'am, it's your testimony that he lied?

A. That part, yes, was not true.

Q. And it's your testimony that Mr. Dadie lied, the bank employee, when he – when he said that you came to the bank to put people on your bank accounts?

A. Mr. Dadie was a horror of lies. A horror of lies, sir.

* * *