No.: _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2019

SADDAM SAMAAN DAOUD SAMAAN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTION(S) PRESENTED FOR REVIEW

1. Did Petitioner have a sufficient expectation of privacy in hotel guest registration information that a warrantless demand to the innkeeper for production of this information by law enforcement officials, in the absence of exigent circumstances or probable cause to believe that Petitioner had committed a crime, constituted a violation of Petitioner's Fourth Amendment right to be free from unreasonable searches and seizures?

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The undersigned, on behalf of Petitioner, Saddam Samaan Daoud Samaan, respectfully petitions for a Writ of Certiorari to review the Judgment and Opinion of the U.S. Court of Appeals for the 8th Circuit entered in this proceeding on September 11, 2019.

OPINIONS BELOW

The opinion of the 8th Circuit reproduced and attached to this Petition as Appendix A, is reported at 937 F.3d 1146, (8th Cir. 2019).

JURISDICTION

Petitioner Saddam Samaan Daoud Samaan was convicted by a jury of conspiracy to commit bank fraud in violation of 18 U.S.C. §§1344, 1349. He was also convicted of aggravated identity theft pursuant to 18 U.S.C. §1028A. Petitioner was sentenced to total of 87 months imprisonment by the Honorable Ann D. Montgomery, United States District Court Judge for the District of Minnesota. Sentence was imposed on April 20, 2018 and judgment was entered on April 24, 2018. Petitioner timely appealed his conviction and sentence.

United States Court of Appeals for the 8th Circuit affirmed both the Petitioner's conviction and sentenced in a published opinion on September 11, 2019. Petitioner subsequently filed a petition for rehearing en banc or panel rehearing and on October 24, 2019, this petition was denied. Petitioner now timely files this Petition for a Writ of Certiorari.

This proceeding potentially brings in to question the constitutionality of Minn. Stat. §§327.10-327.13 insofar as these provisions may have afforded the legal basis for the demands made by Minnesota peace officers for production of the guest registration information which ultimately resulted in the searches and seizures challenged by Petitioner. In accordance with 18 U.S.C. §2403(b), the notifications required by that statute and Rule 29.4(c) have been furnished to the Minnesota Attorney General.

Jurisdiction of this Court to review the judgments of the 8th Circuit is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitution Amendment IV – The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated...

Minn. Stat. §327.11 – Every person upon arriving in any lodging home...hotel or motel...and applying for guest accommodations...shall furnish to the operator...of the establishment, the registration information necessary to complete the registration in accordance with the requirements of § 327.10 and shall not be provided with accommodations unless such information shall be so furnished.

Minn. Stat. §327.10 – Every person operating within the state a...lodging house, hotel or motel...shall require the guest to enter in such register...the name and home address of the guest and every person, if any, with the guest or a member of the party and, if traveling by motor vehicle, the make of such vehicle, registration number and other identifying letters or characters...

Minn. Stat. §327.12 – The registration records provided for in §§327.10-327.13 shall be open to the inspection of law enforcement officers of the state and its subdivisions.

Minn. Stat. §327.13 – Every person who shall violate any of the provisions of §§327.10-327.12 shall be guilty of a misdemeanor.

STATEMENT OF THE CASE

The indictment filed against Petitioner and his co-defendants involved a series of transactions in which counterfeit checks were presented to various banking

institutions. These counterfeit checks were deposited into existing or recently opened bank accounts. Once the checks were deposited, the participants sought to withdraw a portion of the funds before the forgery was discovered and the check dishonored. This strategy frequently met with failure but, on occasion, substantial amounts were able to be withdrawn before the forged check was discovered.

Petitioner's activities initially came to the attention of law enforcement officials in May 2012. At Petitioner's trial, Nabil Gottwaldt ("Gottwaldt") a Hennepin County Sheriff's Deputy, testified that he was contacted on May 29, 2012 by Beth Anderson ("Anderson"), a fraud investigator employed by TCF Bank. (*Tr. 591, 592*). Anderson told Deputy Gottwaldt that a suspect had deposited what were believed to be forged checks at both TCF Bank and Wells Fargo Bank. (*Tr. 592*). Anderson believed that the suspect planned to return to the TCF Bank branch later that day to attempt withdrawing funds. (*Tr. 592*). The suspect's name was reported to Gottwaldt as Daoud Samaan Alseman ("D.S.A.") and Anderson also provided a photograph of D.S.A. made by bank surveillance equipment when he opened account(s) at TCF Bank. (*Tr. 593*).

The Deputy discovered that D.S.A. had initially opened a personal account at TCF Bank and, the following day, opened two business accounts at the bank. (*Tr. 593-594*). During her testimony, Anderson offered more details about these accounts. According to Anderson, an individual identifying himself as D.S.A. opened a personal account at TCF Bank on May 18, 2012 with a $25,000.00 opening

deposit. (*Tr. 125-126*). Several days later, on May 23, 2012, Alseman deposited a $12,800.00 check drawn on a BNY Melon asset account (*Tr. 127-128*).

Anderson testified the same individual also opened two business accounts on May 23, 2012. One account utilized the name Daoud Co., LLC and was opened with an initial deposit of $100.00. At the same time, another business account was opened in the name of Alseman Trade, LLC (*Tr. 133*). This account was opened with a $9,200.00 deposit followed, that same day, by a larger deposit of $15,438.00. (*Tr. 137*). These checks were drawn on accounts purportedly owned by NDA Marketing and Westfall Auto Sales. (*Tr. 138*). The NDA Marketing and Westfall Auto Sales checks were eventually returned unpaid on May 29 and May 30, 2012. (*Tr. 137*).

While at the TCF Bank branch gathering this information, Deputy Gottwaldt observed the person identified at D.S.A. enter the bank and the Deputy arrested him. (*Tr. 594*). After the arrest, Gottwaldt searched this individual and located identification bearing the name Saddam Samaan. (*Tr. 595*). At trial, Deputy Gottwaldt identified Petitioner as the individual he arrested on May 29, 2012. According to Gottwaldt, he also found two large checks purportedly issued by Westfall Auto Sales in the Petitioner's possession at the time of his arrest. (*Tr. 596-597*). [1] This arrest resulted in a state court prosecution of Petitioner. [2]

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[1] One check totaled $9,754.34. The other check was for $9,865.34.

[2] The state court Complaint charged Petitioner with possession or sale of stolen or counterfeit checks and unlawful possession of a controlled substance when a post-arrest search of Samaan revealed 2.99 grams of cocaine. Samaan eventually plead guilty to the controlled substance offense and the fraudulent check charge was dismissed as part of a plea negotiation.

This incident did not apparently lead law enforcement officials to connect Petitioner to the larger conspiracy which eventually resulted in his indictment. Petitioner's nexus to that scheme was discovered as the result of actions undertaken by peace officers in August 2012. By that date, Petitioner was a registered guest at the Star Lite Motel in Hilltop, Minnesota. (*Tr. 550*). A Columbia Heights [3] peace officer, Paul Bonesteel ("Bonesteel"), visited the Motel seeking a copy of its daily guest registry. (*Tr. 550*). According to the Officer, it was "a common practice...its an expectation that every day someone would stop by the Star Lite to get a copy of the guest registry." (*Tr. 551*).

After receiving the guest registry, Officer Bonesteel's customary practice was to drive to a nearby location where he would access the Minnesota Department of Motor Vehicles (DMV) website and begin conducting various searches to "determine a little bit more about them." (*Tr. 551-552*). Bonesteel testified that police wanted, "a picture of who's visiting the hotel." (*Tr. 552*). Among other items officers were searching for were individuals with active warrants, restraining orders, orders for protection (OFP), pickup orders or persons generally suspected of criminal activity. (*Tr. 552*).

After receiving the guest registry information on August 12, Officer Bonesteel entered the Minnesota identification number provided by Petitioner when he registered at the Motel into the DMV database. Bonesteel received a response "not on file." (*Tr. 555*). The Officer then attempted a license check utilizing the name on

[3] Columbia Heights, Minnesota and Hilltop, Minnesota are separate municipalities, but Columbia Heights police furnish law enforcement services to both cities.

the registry, D.S.A. This also came back "not on file." (*Tr. 555*). The Officer then entered only the last name, together with the listed date of birth and this inquiry, once again, resulted in a "not on file" response. At this point, the Officer believed the information provided to the motel was likely fraudulent. He returned to the Motel and knocked on the door of the room registered to the guest, number 131, receiving no answer. (*Tr. 555*).

Officer Bonesteel returned to the Star Lite Motel the following day and began surveillance of room 131. Bonesteel also spoke to another peace officer, Justin Fletcher ("Fletcher"), who suggested that Bonesteel compare the photocopy of the Minnesota ID card provided by D.S.A. to the driver's license photograph of Petitioner. (*Tr. 556*). When he did so, Officer Bonesteel discovered the photographs were identical.[4] (*Tr. 556*).

Officer Bonesteel continued his surveillance and observed an individual, matching Petitioner's description, exit room 131 and enter an automobile. (*Tr. 557*). Bonesteel followed the automobile as it left the Motel until the driver parked in a parking lot two blocks to the north. The peace officer then parked behind this automobile and officers approached the driver. Officer Bonesteel promptly arrested the Petitioner and directed an inventory search of his automobile. (*Tr. 561*). The Columbia Heights police then sought a warrant to search the Star Lite Motel room registered to Petitioner.

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[4] The record is, unfortunately, cryptic, concerning what might have led Officer Fletcher to suggest a search under the name Saddam Samaan.

During this search, police seized a computer. A subsequent search of the computer's hard drive showed images of counterfeit checks and check stock scanned into the computer together with a Versa Check check writing program. (*Tr. 689*). These documents led authorities to connect Petitioner with a larger conspiracy orchestrated by an individual named Momodu Sesay (Sesay"). Although peace officers were unable to find any direct contact between Petitioner and Sesay, they were able to utilize forged checks found in Petitioner's vehicle coupled with information on the computer hard drive to link Petitioner with one of Sesay's lieutenants, Fester Sayonkon ("Sayonkon").

Eventually, Sesay, Sayonkon, Petitioner and three others were indicted for conspiracy to commit bank fraud while Sayonkon and Petitioner were also charged with aggravated identity theft. Sesay struck a deal with the government to avoid a trial. Petitioner and Sayonkon opted to proceed with a jury trial. Before trial, Petitioner's counsel filed a motion seeking to suppress the evidence obtained by local police as a result of the search of Petitioner's automobile and motel room contending the searches were prohibited by the Fourth Amendment.

The District Court Judge rejected this argument. Following a jury trial, both Petitioner and his co-defendant, Sayonkon, were found guilty on October 30, 2017. Petitioner was convicted of conspiracy to commit bank fraud under 18 U.S.C. §§1344,1349 and aggravated identity theft under 18 U.S.C. §1028A. Following an April 20, 2018 hearing, Petitioner was sentenced by the District Court Judge to a total prison term of 87 months. Petitioner subsequently appealed both his

conviction and sentence to the 8th Circuit. Petitioner argued that the District Court Judge erred by denying his suppression motion. In his appeal, Petitioner argued that he had a legitimate privacy interest in safeguarding his hotel registration from the prying eyes of law enforcement officials. Petitioner asserted this argument was reinforced by this Court's decision in *City of Los Angeles v. Patel, 576 U.S. ____, 135 S. Ct. 2443 (2015).* When the government argued the "third party doctrine" negated Petitioner's privacy interest, he responded that the privacy values recognized by this Court in *Carpenter v. United States, ____ U.S. ____, 138 S. Ct. 2206 (2018)* sanctioned recognition of the privacy interest claimed by Petitioner.

Petitioner also challenged his aggravated identity theft conviction by asserting the government failed to present sufficient evidence to justify the guilty verdict. Petitioner argued that *Flores Figueroa v. United States, 556 U.S. 646 (2009)* required the government to demonstrate that Petitioner was aware the identification used by him rightfully belonged to an actual person. Petitioner noted that the government never located D.S.A. within the United States. The government merely demonstrated at trial that an individual named D.S.A. had a similar, but not identical, birthdate to the one used by Petitioner in 2012 for D.S.A. and that D.S.A. at one time had California and Michigan driver's licenses. However, D.S.A.'s Michigan driver's license expired in 1985 and his California driver's license expired in 1998 and was never renewed. (*Tr. 696-697*). D.S.A. was a citizen of another country and Petitioner argued, at most, this evidence showed that D.S.A. at one time resided in the United States. Yet, given the absence of any record of

D.S.A.'s presence in this country for more than 15 years, the evidence introduced by the government strongly suggested D.S.A. had most likely returned to his homeland and/or died.

The 8th Circuit rejected both challenges and affirmed Petitioner's convictions and sentence in a September 11, 2019 opinion. Petitioner then sought a Petition for Rehearing en Banc. That Petition was rejected by the 8th Circuit on October 24, 2019.

REASONS FOR GRANTING THE WRIT

I. THE COURT OF APPEALS ROTE APPLICATION OF THE "THIRD PARTY DOCTRINE" TO DEFEAT PETITIONER'S FOURTH AMENDMENT CLAIM IS IN CONFLICT WITH THE PRINCIPLES SET FORTH BY THIS COURT IN *CARPENTER V. UNITED STATES.*

Petitioner argued that his Fourth Amendment rights were violated when peace officers demanded a copy of the Star Lite Motel guest register and used this information to investigate Petitioner, stop his automobile and search his hotel room. Petitioner argued that the fundamental purpose of the Fourth Amendment was to secure a citizen's privacy in his or her dwelling. *Payton v. New York, 445 U.S. 573 (1980).* Consistent with this principle, the 8th Circuit has repeatedly held that individuals occupying hotel rooms have a reasonable expectation of privacy safeguarding them against warrantless searches. *United States v. Connor, 127 F.3d 663, 666 (8th Cir. 1997); United States v. Robie, 122 F.3d 1120, 1125 (8th Cir. 1997); United States v. Williams, 521 F.3d 902, 906 (8th Cir. 2008); United States v. Peoples, 854 F.3d 993, 996 (8th Cir. 2017).* These decisions were, of course, all

consistent with the framework established in *Katz v. United States* which emphasized that Fourth Amendment protections are afforded to people, not places. In assessing a Fourth Amendment challenge, a court must focus its attention on whether the accused had a reasonable expectation of privacy that he or she will be free from government scrutiny. *359 U.S. 347, 352-353 (1967).*

Petitioner asserted this Court's decision in *City of Los Angeles v. Patel, 576 U.S. ____, 135 S. Ct. 2443 (2015)* buttressed his claim to a societally recognized expectation of privacy in his Star Lite Motel registration. *Patel* addressed the legitimacy of a local ordinance which required hotels to collect a variety of personal information about guests. [5] The ordinance provided this information must be available to peace officers for inspection and imposed penalties on a hotel operator who refused to do so. *135 S. Ct.* at *2448.* This Court ruled the ordinance to be facially invalid unless the subject of the search was given a meaningful opportunity to challenge the police demand for records. *135 S. Ct.* at *2452.* Petitioner recognized that *Patel* focused on the rights of the innkeeper. This was for a very simple reason—in *Patel,* it was the innkeeper who objected to the search. This prosecution shifted that inquiry to whether similar protection extended to hotel guests.

The 8th Circuit rejected Petitioner's argument in a rote application of the "so-called third party doctrine." According to the 8th Circuit, Petitioner had "no legitimate expectation of privacy in information he voluntarily turns over to third

[5] This included the guest's name, address, number of people in each party, make, model and license number of vehicles parked on hotel property, arrival and scheduled departure date(s), room number and, in certain circumstances, a copy of the identification documents provided by the guest. *135 S. Ct.* at *2448.*

parties," citing, *Smith v. Maryland, 442 U.S. 735, 743-744 (1979).* This holding essentially mirrored the government's argument that Petitioner lacked a constitutionally recognized privacy interest in the hotel registration information because the registry itself was the property of a third party. Petitioner argued this emphasis was misplaced and this Court had very recently declared that "property rights are not the sole measure of Fourth Amendment violations." *Carpenter v. United States, ____ U.S. ____, 138 S. Ct. 2206, 2214 (2018).* The 8th Circuit barely acknowledged this concern and felt *Carpenter* was limited "to the novel phenomenon of cell phone location records." After dispatching with *Carpenter* in a single sentence, the 8th Circuit rebuffed Petitioner's claim to a legitimate expectation of privacy in hotel registration materials.

The 8th Circuit felt *Patel* was never intended to safeguard the privacy of individual hotel guests. The 8th Circuit observed the *Patel* opinion expressly stated that "hotel operators remain free to consent to searches of their registries." This statement, of course, assumed the Star Lite Motel was voluntarily cooperating with local police. At the pretrial suppression hearing in the instant case, it was revealed that Minnesota innkeepers refusing to provide these records upon police requests might be guilty of a crime. (*Mtn. Tr. 103*).[6] See *Minn. Stat. §327.13.* This statute is akin to the *Patel* ordinance in that it contains no condition precedent for police to demand personal records of hotel guests, such as probable cause, reasonable suspicion, consent or exigent circumstances. (*Mtn. Tr. 104*). This particular law

[6] The motion hearing transcript will be cited as *Mtn. Tr.* ___.

enforcement demand for information was made in express reliance upon the officer's statutory authority. The innkeeper's acquiescence was not truly voluntary cooperation so much as a desire to avoid criminal prosecution by raising an intemperate objection to the peace officer's demand.

More importantly, by limiting the scope of *Carpenter* to nothing more than cell phone location records, the 8th Circuit has effectively emasculated application of its principles. In *Carpenter,* the government sought to use of cell phone records to obtain "a detailed and comprehensive record of the person's movements." *Id.* at *2217.* The Court explicitly "decline[d] to extend *Smith* and *Miller* to cover" this information. *Id.* at *2217.* This Court explained:

> ...the fact that the information is held by a third party does not by itself overcome the user's claim to Fourth Amendment protection...an individual maintains a legitimate expectation of privacy in the record of his physical movements...
>
> A person does not surrender all Fourth Amendment protection by venturing into the public sphere. To the contrary 'what [one] seeks to preserve as private, even in an area accessible to the public may be constitutionally protected.'

Id. at *2217,* citing *Katz v. United States, 389 U.S.* at *351-352.*

This is precisely the type of information which Petitioner sought to keep private. Petitioner asserted that his choice of temporary lodging should be free from warrantless government snooping. When weighing whether an individual's subjective privacy expectation should be honored, this Court has placed particular emphasis on the sanctity afforded to a person's dwelling. In *Minnesota v. Olson,* this Court recognized:

> We are at our most vulnerable when we are asleep because we cannot monitor our own safety or the safety of our belongings. It is for this reason that, although we may spend all day in public places, when we cannot sleep in our own home we seek out another private place to sleep, whether it be a hotel room or the home of a friend.

495 U.S. 91, 99 (1990).

This principle was reinforced by Chief Justice Roberts in *Carpenter:*

> Although no single rubric definitively resolves which expectations of privacy are entitled to protection...our cases have recognized some basic guideposts. First, that the amendment seeks to secure the 'privacies of life' against 'arbitrary power' (citation omitted). Second, and relatedly, that a central aim of the framers was to place obstacles in the way of a too permeating police surveillance.

138 S. Ct. at *2213-2214.*

The tactics utilized here, while admittedly not involving sophisticated technology, were highly intrusive. Without suspicion of any criminal activity, peace officers demanded disclosure of information relating to all guests staying at the Star Lite Motel. Armed with this data, the police ran various background checks on each guest and, after targeting Petitioner, surveilled him as he left the premises. A hotel guest has a legitimate expectation that merely staying at a public accommodation will not expose him or her to this type of government scrutiny or a police dragnet.

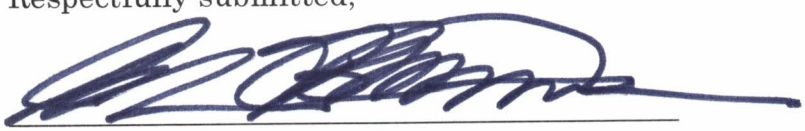
If this were a single, isolated instance of a Court's reluctance to adhere to the principles outlined in *Carpenter,* this would, perhaps, justify certiorari but would hardly demonstrate a compelling need for this Court to do so. Unfortunately, the 8th Circuit's reading of *Carpenter* is hardly an isolated instance. Courts throughout the United States have declined to embrace *Carpenter's* principles and, instead, have quietly attempted to nullify the decision. Numerous courts have declined to follow

Carpenter in an effort to render the Third Party Doctrine inviolable. See *United States v. Morel, 922 F.3d 1 (1st Cir. 2019); United States v. Goldstein, 914 F.3d 200 (3rd Cir. 2019); United States v. Saenisch, 371 F.Supp.3d 37 (D. Mass. 2019); United States v. Monroe, 350 F.Supp.3d 43 (D.R.I. 2018); United States v. Kidd, 394 F. Supp.3d, 357 (S.D.N.Y. 2019); United States v. Felton, 367 F.Supp.3d, 569 (W.D. La. 2019).* State courts have also implemented this strategy. See *People v. Cutts, 88 N.Y.S. 3d 334 (2018); State v. Mixton, 447 P.2d 829 (Ariz. App. 2019).* This apparent recalcitrance demands a decision by this Court clarifying whether the principles articulated in *Carpenter* are limited to "novel" situations, coupled with rapidly developing technology, or have broader implications for safeguarding citizens from intrusive government conduct.

CONCLUSION

For the reasons discussed above, Petitioner respectfully requests that the Petition for a Writ of Certiorari to review the Judgment of the U.S. Court of Appeals for the 8th Circuit be granted.

January 22, 2020
Respectfully submitted,



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United States Court of Appeals
For the Eighth Circuit

No. 18-1071

United States of America,

Plaintiff - Appellee,

v.

Momodu Babu Sesay,

Defendant - Appellant.

No. 18-1979

United States of America,

Plaintiff - Appellee,

v.

Saddam Samaan Daoud Samaan,

Defendant - Appellant.

No. 18-3046

United States of America,

Plaintiff - Appellee,

v.

Fester Sayonkon,

Defendant - Appellant.

Appeals from United States District Court
for the District of Minnesota

Submitted: June 13, 2019
Filed: September 11, 2019

Before COLLOTON, KELLY, and ERICKSON, Circuit Judges.

COLLOTON, Circuit Judge.

A jury convicted Fester Sayonkon and Saddam Samaan of aggravated identity theft and conspiracy to commit bank fraud. *See* 18 U.S.C. §§ 1028A, 1344, 1349. A third defendant, Momodu Sesay, pleaded guilty to one count of conspiracy to commit bank fraud and testified for the prosecution. The district court[1] sentenced the defendants to terms of imprisonment. Sayonkon and Samaan appeal their convictions, and all three defendants challenge their sentences. We affirm the judgments.

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[1]The Honorable Ann D. Montgomery, United States District Judge for the District of Minnesota.

I.

In 2008, the Minnesota Financial Crimes Task Force began receiving reports of an uptick in counterfeit checks deposited at banks around the Minneapolis-St. Paul area. An investigation revealed a three-tiered check-fraud scheme. "Check printers" generated counterfeit checks using check-writing software, blank check stock, and valid bank account and routing number information. "Runners" negotiated or deposited the fraudulent checks, often opening their own bank accounts and attempting to withdraw as much cash as possible before the fraud was discovered. "Recruiters" solicited and managed runners, transported them to bank locations, coached them on how to carry out the transactions, and served as the intermediaries between the printers and the runners.

The Task Force identified Sesay and Sayonkon as two of the primary check printers and recruiters. At trial, Sesay admitted that from October 2009 to December 2012, he generated up to six counterfeit checks per month, and coordinated a team of runners and recruiters to negotiate or deposit those checks. During this same period, Sayonkon printed his own fraudulent checks and recruited runners, but also obtained fraudulent checks from Sesay and shared information and coordinated runners with him.

In late 2011, Sayonkon recruited Samaan to the conspiracy. Samaan was incarcerated at the time, but he began providing Sayonkon with the names and addresses of contacts in Jordan who might serve as runners and negotiate counterfeit checks. After his release in March 2012, Samaan served as a runner for Sayonkon.

In June 2012, the Task Force executed a search warrant at an apartment shared by Sesay and another conspirator. Investigators seized two laptops loaded with VersaCheck, a check-writing software designed for small businesses. Data obtained from the computers showed names of payees and other details about the checks

generated by the software. Investigators matched these payees to a number of known runners, including Sayonkon. After Sesay agreed to cooperate with authorities, he acknowledged that from October 2009 through June 2012, he and his fellow conspirators caused or intended to cause over $1.4 million in losses at more than forty financial institutions.

A grand jury charged Sesay, Sayonkon, Samaan, and three others with conspiracy to commit bank fraud, *see* 18 U.S.C. §§ 1344, 1349, and alleged that Sayonkon and Samaan committed aggravated identity theft. *See id.* § 1028A. Sesay pleaded guilty to one count of conspiring to commit bank fraud, and became a witness for the government. A jury convicted Sayonkon and Samaan of the conspiracy and aggravated identity theft charges.

At Sesay's sentencing, the court departed downward from the advisory guideline range and imposed a term of 63 months' imprisonment. Sayonkon was sentenced to a total of 151 months in prison and Samaan to 87 months' imprisonment.

II.

Sayonkon and Samaan challenge their convictions for conspiracy to commit bank fraud. Each argues that the government presented evidence of two separate conspiracies and created a prejudicial variance from the single conspiracy charged in the indictment. Where a defendant claims a variance based on proof of multiple conspiracies, we will reverse only if the evidence is insufficient to support a finding of a single conspiracy and the defendant was prejudiced. *United States v. Longs*, 613 F.3d 1174, 1176 (8th Cir. 2010).

The evidence presented at trial supports the jury's finding of a single conspiracy. Sayonkon played a key role in the conspiracy, serving as both a check printer and a recruiter. Sayonkon brought Samaan into the fold, recruiting him while

he was still incarcerated. Samaan quickly became an active member in the conspiracy: jailhouse telephone calls reveal that he encouraged Sayonkon to send counterfeit checks to Samaan's relatives in Jordan, where Samaan believed his contacts would cash them and send back the resulting gains.

While still in jail, Samaan also gained the confidence of another inmate, K.F. Samaan acquired legitimate account information for K.F.'s former employer, Visi, Inc., and for K.F.'s 401(k) account at BNY Mellon Asset Servicing. Sayonkon and Sesay used K.F.'s information to produce several counterfeit checks that drew on these accounts. Data gathered from Sesay's VersaCheck program included account information for Visi, Inc. Sesay himself signed and deposited a check allegedly from Visi, Inc. in April 2012. During April and May 2012, Samaan deposited fraudulent checks linked back to Sesay's computer and was arrested in possession of more such checks.

This evidence is sufficient to show that Samaan, Sayonkon, and Sesay were participants in one check-writing fraud scheme. A reasonable jury could have concluded that all three defendants shared a common purpose and acted in furtherance of a single conspiracy. *See Longs*, 613 F.3d at 1176.

Samaan maintains that his criminal endeavor was separate from the larger conspiracy involving Sesay. He notes that the government presented no evidence that the two defendants knew each other. He highlights Sesay's testimony that he did not remember anything about the Visi, Inc. account and did not recall working with Samaan as part of the check-fraud scheme. This argument is unavailing, for there is no requirement that all conspirators know each other. *United States v. Watts*, 950 F.2d 508, 512 (8th Cir. 1991). "A single conspiracy may exist even if the participants and their activities change over time, and even if many participants are unaware of, or uninvolved in, some of the transactions." *Longs*, 613 F.3d at 1176 (internal quotation omitted).

Sayonkon also argues that the district court erred in denying his request for a jury instruction on multiple conspiracies. He contends that without the instruction, the jury may have improperly transferred guilt from one conspiracy to another. Sayonkon cites a question from the jury during deliberations about whether it was sufficient to find that the two defendants conspired with each other, rather than with the members of the larger conspiracy. He maintains that this inquiry demonstrates the jury's confusion and shows that he was prejudiced by the absence of an instruction on multiple conspiracies.

Even assuming for the sake of analysis that the evidence supported giving a multiple-conspiracies instruction, *see United States v. Nevils*, 897 F.2d 300, 307 (8th Cir. 1990), Sayonkon cannot demonstrate prejudice from the court's unwillingness to include it. Sayonkon was free to argue his multiple-conspiracies theory to the jury, and the court instructed the jury that it could convict him only if he was a member of the single conspiracy charged in the indictment. When the jury asked a question about conspiracy law, the court properly referred the jury back to the indictment and the instructions. "If the evidence supports a single conspiracy, the failure to give a multiple conspiracies instruction is not reversible error." *United States v. Roach*, 164 F.3d 403, 412 (8th Cir. 1998). As noted, the government presented sufficient evidence of a single conspiracy involving Sesay, Sayonkon, and Samaan, so there was no reversible error in the instructions.

III.

Samaan raises two more challenges to his conviction. He first claims that the district court erred in denying his motion to suppress evidence gathered when police examined the guest registry at a motel where he was staying. While Samaan was registered at a motel in August 2012, officers inspected the registry and used the information to check for outstanding warrants. While performing this work, officers determined that Samaan had presented a fraudulent identification card to the motel.

The next day, officers followed Samaan as he left the motel. When Samaan stopped in a parking lot, officers approached him concerning a traffic violation. After he failed to provide a legitimate form of identification, police arrested him. Officers seized a fake Minnesota identification card from Samaan's wallet and other documents from his vehicle. These materials included a resident alien card for a person with initials D.S.A., a social security card for D.S.A., and several counterfeit checks. Police then executed a search warrant at Samaan's motel room and seized a computer and a printer.

Samaan argues that the search of the motel's guest registry violated his Fourth Amendment rights, and that the evidence seized from his hotel room and during the traffic stop must be suppressed as fruit of an unlawful search. To establish a violation of rights under the Fourth Amendment, a person must have a "constitutionally protected reasonable expectation of privacy" in the area searched or the items seized. *United States v. McIntyre*, 646 F.3d 1107, 1111 (8th Cir. 2011) (quoting *California v. Ciraolo*, 476 U.S. 207, 211 (1986)). A motel guest, for example, has a reasonable expectation of privacy in his rented room. *See United States v. Williams*, 521 F.3d 902, 906 (8th Cir. 2008). Samaan argues that he also had a reasonable expectation of privacy in his *registration* as a guest at the motel, and that officers violated his Fourth Amendment rights by demanding to inspect the registry. He relies on *City of Los Angeles v. Patel*, 135 S. Ct. 2443 (2015), which held that "*a hotel owner* must be afforded an opportunity to have a neutral decisionmaker review an officer's demand to search the registry before he or she faces penalties for failing to comply." *Id.* at 2453 (emphasis added and omitted).

Samaan's contention fails under the so-called third-party doctrine: "a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties." *Smith v. Maryland*, 442 U.S. 735, 743-44 (1979). Even where a person discloses information to a third party "on the assumption that it will be used only for a limited purpose," the government typically is free to obtain that information

without infringing on a legitimate expectation of privacy of the person who made the original disclosure. *See United States v. Carpenter*, 138 S. Ct. 2206, 2216 (2018) (quoting *United States v. Miller*, 425 U.S. 435, 443 (1976)). While this doctrine does not extend to the novel phenomenon of cell phone location records, *id.* at 2217, it encompasses checks and deposit slips retained by a bank, income tax returns provided to an accountant, and electricity-usage statistics tracked by a utility company. *See McIntyre*, 646 F.3d at 1111 (collecting cases). We conclude that Samaan likewise had no legitimate expectation of privacy in the identification card that he provided when registering at the motel. *Patel*'s ruling in favor of hotel owners does not support Samaan's contention. The Court did not hold that *motel guests* have a privacy interest in registration records; to the contrary, the decision acknowledged that "hotel operators remain free to consent to searches of their registries." 135 S. Ct. at 2454.

Samaan next challenges the sufficiency of the evidence supporting his conviction for aggravated identity theft under 18 U.S.C. § 1028A(a)(1). Although he concedes that he used an identification card bearing the name of a person with the initials D.S.A. when opening bank accounts, he claims that the government failed to show that D.S.A. was a real person and that Samaan knowingly stole his identity.

The evidence supports the jury's finding. At the time of Samaan's arrest, police seized a fake Minnesota identification card from Samaan's wallet and resident alien card and social security cards for D.S.A. from Samaan's vehicle. Although the identification card bore Samaan's photograph, the name matched that from D.S.A.'s legitimate resident alien and social security cards, and the birth date varied from D.S.A.'s by only one day. The government presented D.S.A.'s Michigan driving records and California driver's license to prove that the resident alien card belonged to a real person. The resident alien card displayed a photograph of a person who was not Samaan. And Samaan used the Minnesota identification and the social security card to open various bank accounts. Viewing the record in the light most favorable

to the verdict, a reasonable jury could find that Samaan knowingly used another person's identification.

Samaan also suggests that the statute's requirement that an offender knowingly use "a means of identification *of another person*" means that the government must prove the theft of a *living* person's identity. *See* 18 U.S.C. § 1028A(a)(1) (emphasis added). Samaan did not raise this point in a motion for judgment of acquittal, so we review for plain error, *United States v. Samuels*, 874 F.3d 1032, 1036 (8th Cir. 2017), and the contention is foreclosed in any event by circuit precedent. We held in *United States v. Kowal*, 527 F.3d 741 (8th Cir. 2008), that "another person" includes both the living and the deceased. *Id.* at 746-47. Samaan questions the continuing vitality of *Kowal* after *Flores-Figueroa v. United States*, 556 U.S. 646 (2009), where the Supreme Court concluded that § 1028A(a)(1) requires proof "that the defendant knew that the means of identification at issue belonged to another person." *Id.* at 657. But *Flores-Figueroa* did not address liability for the theft of a decedent's identity and thus did not undermine *Kowal*'s conclusion that "person" in § 1028A(a)(1) includes a deceased person.

IV.

All three defendants challenge their sentences. Sayonkon contends that the district court erred in applying a two-level increase under the advisory sentencing guidelines for his role as "an organizer, leader, manager, or supervisor" of the check-fraud scheme. USSG § 3B1.1(c). He describes himself as "simply a participant," and argues that he "never controlled or directed the actions of others." We review the district court's interpretation and application of the guidelines *de novo* and its factual findings for clear error. *United States v. Markert*, 732 F.3d 920, 932 (8th Cir. 2013).

Although mere participation in a conspiracy is not sufficient to establish a leadership role, the two-level increase applies if a defendant was the organizer,

leader, manager, or supervisor of one other participant in criminal activity that did not involve five or more persons. USSG § 3B1.1(c) & comment. (n.2). Sayonkon managed at least one runner as part of the charged conspiracy from October 2009 through December 2012. Sayonkon also recruited Samaan into the conspiracy, and he coordinated sending counterfeit checks to Samaan's contacts in Jordan while Samaan was still in jail. The district court did not clearly err in applying an increase under § 3B1.1. Whether Sayonkon should have received a three- or four-level increase based on criminal activity involving five or more participants is not before us, because the government has not cross-appealed. *See Greenlaw v. United States*, 554 U.S. 237 (2008); *cf.* USSG § 3B1.1(a), (b).

Samaan argues that the district court erred in calculating his loss amount at more than $250,000 and applying the corresponding twelve-level increase to his base offense level under USSG § 2B1.1(b)(1)(G). He claims that the district court's finding of $395,535.87 was inflated and that the evidence supported a loss of no greater than $95,000 and a six-level increase. *See id.* § 2B1.1(b)(1)(D). We review a district court's loss calculation for clear error. *See United States v. Killen*, 761 F.3d 945, 948 (8th Cir. 2014).

Under the guidelines, the district court is to "make a reasonable estimate of the loss" by considering "the greater of actual loss or intended loss." USSG § 2B1.1, comment. (n.3(A), (C)). Intended loss is "the pecuniary harm that the defendant purposely sought to inflict," *id.* § 2B1.1, comment. (n.3(A)(ii)), and it includes actual losses suffered. *See United States v. Ware*, 334 F. App'x 49, 50 (8th Cir. 2009) (per curiam); *United States v. Carboni*, 204 F.3d 39, 47 (2d Cir. 2000).

The district court did not clearly err in concluding that Samaan was responsible for a loss amount of over $250,000. In the period from May 23 to May 29, 2012, Samaan deposited and was arrested in possession of counterfeit checks valued at $83,670.68. Investigators seized counterfeit checks totaling at least another

$236,112.12 from the vehicle that Samaan was driving at the time of his second arrest in August 2012. This evidence totals $319,782.80 and supports the court's finding that Samaan was responsible for an intended loss of over $250,000.

Sesay challenges the length of his sentence. He disputes the extent of the district court's downward departure under the guidelines, but alleges no unconstitutional motive by the court, so the extent of the downward departure is unreviewable. *United States v. Sykes*, 356 F.3d 863, 865 (8th Cir. 2004).

Sesay also contends that the sentence is unreasonable under 18 U.S.C. § 3553(a), and we review that challenge under a deferential abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 51 (2007). Sesay complains that the district court gave too little weight to his difficult childhood, his significant family responsibilities, an asserted low risk of recidivism, and the substantial assistance that he provided to the government. The district court expressly addressed Sesay's familial responsibilities and provision of assistance, and presumably considered the other proffered mitigating circumstances. But the court also weighed Sesay's lengthy criminal history, his failure to maintain legitimate employment, and his violation of the terms of his supervised release. Given the deference accorded to the district court in balancing the relevant factors, we conclude that the district court did not abuse its discretion in imposing Sesay's below-guidelines sentence.

* * *

For the foregoing reasons, the judgments of the district court are affirmed.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 18-1979

United States of America

Plaintiff - Appellee

v.

Saddam Samaan Daoud Samaan

Defendant - Appellant

Appeal from U.S. District Court for the District of Minnesota - St. Paul
(0:16-cr-00265-ADM-6)

JUDGMENT

Before COLLOTON, KELLY and ERICKSON, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

September 11, 2019

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 18-1979

United States of America

Appellee

v.

Saddam Daoud Samaan

Appellant

Appeal from U.S. District Court for the District of Minnesota - St. Paul
(0:16-cr-00265-ADM-6)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

October 24, 2019

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans