NO.

SUPREME COURT OF THE UNITED STATES

ADAM VANCE	)
	)
Petitioner	)
	)
- VS. -	)
	)
UNITED STATES OF AMERICA	)
	)
Respondent.	)

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

/s Michael Losavio
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Adam Vance

QUESTION PRESENTED FOR REVIEW

Question I. Was Vance Entitled To Acquittal for Online Internet-based Aggravated Identity Theft where it was not shown this Internet transaction in Count 3 was done by Vance nor in relation to one of the enumerated offenses?

The appears to be a conflict between the Court of Appeals for the Ninth Circuit and the Court of Appeals for the Sixth Circuit as to the Sufficiency of Evidence in Online Internet Transactions to Establish the Identity of the Offender. See *United States v. Alexander,* 48 F. 3rd 1477 (CA 9 1995), contra *United States v. Adam Vance,* ___ F.3d. ___ (6th Cir. 2020).

Question II. Was Vance Entitled To Acquittal for Online Internet-based Access Device Fraud, Count 1, and Aggravated Identity Theft , Counts 2 and 3, 18 USC Sec. 1028 A As No Rational Trier Of Fact Could Find The Elements Of The Crime Beyond A Reasonable Doubt where it was not shown that Vance's conduct "affected interstate commerce" but it was only shown the banks involved had operations in other states and systems of interstate communication?

LIST OF ALL PARTIES TO THE PROCEEDING IN THE COURT
WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

Adam Vance, Appellant, Petitioner

United States of America, Appellee, Respondent

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OPINIONS AND ORDERS BELOW

The opinion below of the United States Court of Appeals for the Sixth Circuit was rendered in *United States v. Adam Vance*, ___ F.3d. ___ (6th Cir. 2020), Case number 19-5160; that opinion affirmed the judgment of the United States District Court for the Eastern District of Kentucky in case number #: 2:18-cr-00010-1 where the original sentence committed Vance to the custody of the Bureau of Prisons to a total term of 65 months imprisonment.

JURISDICTION

i. The opinion of the United States Court of Appeals for the Sixth Circuit was entered on April 17, 2020; pursuant to Rule 13.1 of the rules of this Court, the Petition is timely filed.

ii. A petition for a rehearing was not filed in this matter; no extension of time within which to file a petition for a writ of certiorari has been made.

iii. This is not a cross-Petition pursuant to Rule 12.5.

iv. The statutory provision conferring jurisdiction upon this Court to review upon a writ of certiorari the judgment or order in question is 28 U.S.C. §1254.

Constitutional Provisions And Other Authorities Involved In This Case

18 USC §1029 (a) (5) [whoever]… knowingly and with intent to defraud effects transactions, with 1 or more access devices issued to another person or persons, to receive payment or any other thing of value during any 1-year period the aggregate value of which is equal to or greater than $1,000;

18 USC § 1028A. Aggravated identity theft (a) Offenses.— (1) In general.— Whoever, during and in relation to any felony violation enumerated in subsection (c), knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 2 years.

STATEMENT OF THE CASE

Jurisdiction in the First Instance

Subject matter jurisdiction vested in the U.S. District Court for the Eastern District of Kentucky pursuant to 18 U.S.C. §3231; Vance was indicted for offenses against the laws of the United States and was convicted after trial within that district of Access Device Fraud, Count 1, 18 USC Sec. 1029 (a)(5) and Identity Theft , Counts 2 and 3, 18 USC Sec. 1028(a)(5).

Appellate jurisdiction vested in the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. §1291 and 28 U.S.C. §1294.

Presentation of Issues in the Courts Below and Facts

This matter was tried before the bench without a jury.

U.S. Secret Service Agent Benjamin Schild met with Charles Spriggs to review a potential identity theft and fraud case which involved a number of law enforcement agencies and banks; he identified Government's Exhibit 3 of seven surveillance photos as snapshots of Vance

at various US Bank branches and ATMS in the Northern Kentucky area that were admitted into evidence.

The first shows Vance inside a US Bank location on Thomas Moore Parkway on June 23, 2017 and 12:28:39 Eastern Daylight Time, the second shows Vance in that location on July 5, 2017 and 12:16:43 Eastern Daylight Time, the third shows the same individual at an ATM in Northern Kentucky at Remke's withdrawing money, the next shows the same individual, same location withdrawing money from an ATM on September 21, 2017, the next shows someone who has similar physical characteristics similar on September 24, 2017, a transaction at the US Bank on Turfway Road on September 30, 2017, and lastly a photo of Vance and a US Bank in Florence Kentucky on October 2, 2017.

David Bilkovic, a senior fraud analyst for Huntington National Bank, explained Government's Exhibit 5G as to an online loan application made for $10,200 by an applicant named Adam Vance with his date of birth the Social Security number ending in 8703, Selena Spriggs as his contact, and a contact email for Vance.

Bilkovic acknowledged that as to the online application he could not tell from what application it was made nor how many people were sitting in front of the computer when it was made.

Charles Spriggs noted his social security number, which ended in 8703, and that he did most of his banking at Heritage Bank in Erlanger, Kentucky but both he and his wife Selena had had accounts at US Bank; although his wife had put his name on her US bank account he considered that her money.

Charles Spriggs said that he never ordered a debit card nor used a debit card for the US Bank account ending in 3884 as that was primarily Selena's money; he never told his great-

grandson Adam that he could get a debit card in Charles Spriggs's name nor make purchases with the card nor that he could use Charles Spriggs's Social Security number to open up a checking account or apply for a loan at Huntington Bank.

Adam did help them out with things and he let Adam drive his car, and after Adam damaged the car Charles Spriggs gave him $3500 to buy another one. Charles Spriggs indicated he may have given Adam his social security number to set up an Internet account and did tell the bank that Adam could cash checks there.

Detective James Johnson with the Crestview Hills Lakeside Park Police Department met with Charles Spriggs at his office and Tammy Buck, who gave him a variety of documents of Charles Spriggs and Selena Spriggs from US Bank, including credit card from Capital One in the name of Charles Spriggs and tax forms of Charles Spriggs and Selena Spriggs and purchase documents for a 2004 Mercedes from Mike Castrucci Ford of Ohio with documentation from Heritage Bank under Charles Spriggs's name and address; copies of these documents, all of which were represented as being found in the vehicle, were admitted as Governments Exhibit 6C.

Matthew Shaffer of U.S. Bank detailed the checking account of Charles Spriggs and Selena Spriggs at US Bank, account number ending in 3430, noting it was opened in Selena Spriggs's name and updated to a joint account to add Charles Spriggs, and a reserve line of credit was opened in October, 2009 and closed in November, 2013, followed by the opening of a premier line of credit. His records, including the signature card of Selena Spriggs, were admitted as Government's Exhibit 7, and about a year's worth of monthly statements for that account were entered as Government's Exhibit 1.

Beginning in September 19, 2017 mobile banking advance monies of $9,980.00 were deposited in the Selena Spriggs account in addition to Social Security payments, followed by a similar deposit of $5,020.00 on October 4, 2017 via online transactions against the premier line of credit. Government Exhibit 4 was a summary spreadsheet of this activity.

Shafffer noted there were thousands of dollars of transactions using the debit card ending in 3884, well over $1000, and all processed by U.S. Bank via normal banking channels; U.S. Bank is headquartered in Minneapolis, Minnesota These included ATM transactions on September 14, 2017 at the U.S. Bank in Florence for $200 and $300, which were accompanied by photographs from the ATM machines; date and times varied due to showing central time in Minneapolis and system dates Additional ATM transactions in Kentucky with digital video snapshots were noted, which for five transactions totaled $2,300; there were other point-of-sale transactions on that debit card, including one at Mike Castrucci Ford on September 26, 2017, McDonald's, Lyft, and transactions that occurred in Milford, Ohio.

But Shaffer admitted that except for the ATM transactions with the photographs, they did not know who was using the debit card for the other transactions

Vance moved for judgment of acquittal as there was no showing the debit card or account access was obtained and used by fraud, per *United States v. Nixon*; that was denied.

Vance's mother Tammy Buck described Vance's work for Charles Spriggs from boyhood. going to the bank, paying bills, taking them to doctors' appointments, and buying them food with Charles Spriggs credit card or Adam's money; Charles Spriggs gave Vance a note giving Vance permission to utilize these accounts, and whatever money Vance needed Charles Spriggs and Selena Spriggs would give him She saw Charles Spriggs give his credit card to Vance in August/September of 2017, and on other occasions on a regular basis.

Vance;s grandmother, a retired nurse and the current guardian of Selena Spriggs, described Selena Spriggs letting Vance write checks for child support and Charles Spriggs letting him write checks for bills, use his credit card to buy the Charles Spriggss' food and let Vance stay in a hotel.

At the close of evidence, a renewed motion for judgment

. of acquittal was renewed and denied/ Vance made a post-trial motion for judgment of acquittal and a new trial; this was denied.

Oral Findings of Fact in support of the judgment of guilt were made by the district court.

Final Judgment was entered adjudging Adam Vance guilty of sentenced on Counts 1, 2 and 3 and sentencing him to 65 months imprisonment

The Sixth Circuit found all assertions of error without merit, holding that, in pertinent part, that interstate jurisdiction and the identification of Vance as the online perpetrator were shown.

This Petition follows.

REASONS FOR GRANTING THE WRIT

Question I. Was Vance Entitled To Acquittal for Online Internet-based Access Device Fraud and Aggravated Identity Theft, it was not shown this Internet transaction in Count 3 was done by Vance nor in relation to one of the enumerated offenses?

The appears to be a conflict between the Court of Appeals for the Ninth Circuit and the Court of Appeals for the Sixth Circuit as to the Sufficiency of Evidence in Online Internet Transactions to Establish the Identity of the Offender. See *United States v. Alexander,* 48 F. 3rd 1477 (CA 9 1995), contra *United States v. Adam Vance,* ___ F.3d. ___ (6th Cir. 2020),

In this Internet-mediated Online Activity, A Rational Trier of Fact Could Not Have Found the Elements of the Crimes Beyond a Reasonable Doubt As to Identification of Vance as the Online Miscreant.

Count 1 charged a violation of 18 U.S.C. §1029(a)(5), access device fraud, knowing use of an access device with the intent to defraud and it affected interstate commerce from on or about January 1, 2017 through December 31,2017, in Boone and Kenton Counties, in the Eastern District of Kentucky. Count 2, Aggravated Identity Theft, was based on the use of another's identity item to commit this offense; Count 3, Aggravated Identity Theft, was based on the use of another's identity item to attempt to commit bank fraud via an online application.

Yet key elements were not established that Vance himself was the miscreant. The district court should have entered a judgment of acquittal on Count 3 Due to Failure of Evidence that Vance engaged in this Internet online activity.

Count 3 asserted Vance used as the means of identification of another person a social security number in Kenton County.

But there was no evidence to support that finding that Vance had used Charles Spriggss' Social Security number. It was all done in an anonymous fashion online with insufficient connection to Vance. There was little to nothing connecting Vance to the Huntington Bank application. There was no authentication of the information connecting the name on the application of "Vance" to the real Vance, as required by FRE 901.

The identification of the person having committed the offense is an essential element that the government must establish beyond a reasonable doubt. See *United States v. Alexander*, 48 F. 3rd 1477 (CA 9 1995) In situations where there is trace identification of a defendant or little direct evidence identifying the defendant as the culprit, the government must prove by sufficient probative facts as to infer culpability rather than accidental connection. See *United States v. Jordan,* 544 F.3d 656 (CA6 2008) ("…substantial evidence connecting Jordan both to the Suntrust lock-box account and to the fraudulent flyer directing Ameren customers to send payments to the Suntrust account. This evidence included several items found …on Jordan's person and in his car linking him to the Suntrust account and the flyer. These include the Suntrust debit card linked to the account, the receipt for the money order used to open the Suntrust account, the T-Mobile cell phone containing the fraudulent …message, and a gift card used to pay for the Skype telephone number on the fraudulent flyers. ") See, e.g., *Mikes v. Bork,* 947 F. 2nd 353 (CA 9 1991) (In a fingerprints-only case the government must show a further connection establishing guilt) In such circumstances the identification of the culprit may be proved by inferential and circumstantial evidence. See *United States v. Legett-Boyd,* 447 Fed Appx 684 (CA 6 2011) (unpublished); *United States v. Davis,* 531 Fed Appx 601 (CA6 2013) (unpublished) ; *United States v. Boyd*, 447 Fed Appx 684 (CA 6 2011) (unpublished)

In cases where a defendant was convicted on the basis of electronic evidence, there has

been more circumstantial evidence than that against Vance as to connect the defendant to the crime. See, e.g., *United States v. Jordan*, 544 Fed 3rd 656 (CA 6 2008); *United States v. Gonzalez*, 560 Fed Appx 554 (CA 6 2014); *United States v. Ray*, 189 Fed Appx 436 (CA 6 2006). For example, in *Ray* an email containing contraband was connected to the defendant by additional evidence within the email, such as pictures of his children, and testimony regarding his access and control of the relevant computer services. In *Gonzalez*, though similar to Vance's situation, there was much more extensive circumstantial evidence connecting the misconduct to Gonzalez.

Further, there was nothing to indicate that the misuse, without lawful authority, of a means of identification of another person was during and in relation to a felony violation enumerated in 18 U.S.C. § 1028A(c)

Aggravated identity theft, 18 USC §1028A(a)(1) requires that the identity theft be in relation to one of these relevant enumerated offenses:

> (c) DEFINITION.-For purposes of this section, the term "felony violation enumerated in subsection (c)" means any offense that is a felony violation of-
> (1) section 641 (relating to theft of public money, property, or rewards 1), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), or section 664 (relating to theft from employee benefit plans);
> …
> (4) any provision contained in this chapter (relating to fraud and false statements), other than this section or section 1028(a)(7);
> (5) any provision contained in chapter 63 (relating to mail, bank, and wire fraud);
> . …

But the district court did not find that Count 3 was a violation of one of these enumerated offenses, only that it was in relation to an "attempted bank fraud." But the enumerated item relating to bank fraud must be one in Chapter 63 of the US Code, being 18 USC 1341-1351 and applies to "financial institutions." The most pertinent statute would be 18 USC 1344, bank fraud, and 18 USC 1349, attempt and conspiracy, which apply to efforts to defraud or obtain falsely

assets from a financial institution, a jurisdictional element regarding the bank per 18 USC 20 which was not met here.

18 USC 20 defines the requisite "financial institution" to be:

> As used in this title, the term "financial institution" means—
> (1) an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);…
> **(7)**a Federal Reserve bank or a member bank of the Federal Reserve System;
> **…**

Here there was no evidence that Huntington Bank was a qualifying institution, including a "financial institution," the most common foundation for which is being an insured depository institution with the FDIC. As such, the judgment of acquittal should have been granted as to Count 3.

Vance's judgment be reversed and remanded with instructions to enter a judgment of acquittal on all counts.

Question II. Was Vance Entitled To Acquittal for Online Internet-based Access Device Fraud, Count 1, and Aggravated Identity Theft , Counts 2 and 3, 18 USC Sec. 1028 A As No Rational Trier Of Fact Could Find The Elements Of The Crime Beyond A Reasonable Doubt where it was not shown that Vance's conduct "affected interstate commerce" where it was only shown the banks involved had operations in other states and systems of interstate communication?

<u>In this Internet-mediated Online Activity, A Rational Trier of Fact Could Not Have Found the Elements of the Crimes Beyond a Reasonable Doubt As to an Interstate Commerce Nexus</u>

Count 1 charged a violation of 18 U.S.C. §1029(a)(5), access device fraud, knowing use of an access device with the intent to defraud and it affected interstate commerce from on or about January 1, 2017 through December 31,2017, in Boone and Kenton Counties, in the Eastern District of Kentucky. Count 2, Aggravated Identity Theft, was based on the use of another's

identity item to commit this offense; Count 3, Aggravated Identity Theft, was based on the use of another's identity item to attempt to commit bank fraud via an online application.

Yet key elements were not established that the offense "affected interstate commerce," an essential and jurisdictional element.

No bank witness, nor any other witness, said Vance's conduct "affected interstate commerce." They may have talked of where the home office of a bank was, that that home office was in another state, and that the bank used various interstate electronic channels generally, but there was no testimony or other evidence that these transactions involved interstate communications, transactions or commerce such that there was insufficient evidence that Vance affected interstate commerce and a judgment of acquittal should have been granted.

The judgment should be reversed and this matter remanded for entry of a judgment of acquittal.

CONCLUSION

The judgment and sentence were erroneous and this Petition for Writ of Certiorari should be granted and Mr. Vance given the relief he has argued for herein.

Respectfully submitted,

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Certification of Word Count and Petition Length

The undersigned certifies that this Petition for a Writ of Certiorari does not exceed 3600 words nor 18 pages in length, not counting the appendix materials, and is in compliance with the length rules of Supreme Court Rule 33.

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pursuant to the Criminal Justice Act

Certificate of Service

A copy of the foregoing Petition for a Writ of Certiorari has been served this day by U.S. Postal Mail or via a private expedited service on Noel Francisco, Solicitor General of the United States, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530-0001.

This 20th day of April, 2020

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United States v. Adam Vance,

Statutes Involved in this Petition

18 USC §1029 (a) (5) [whoever]… knowingly and with intent to defraud effects transactions, with 1 or more access devices issued to another person or persons, to receive payment or any other thing of value during any 1-year period the aggregate value of which is equal to or greater than $1,000;

18 USC § 1028A. Aggravated identity theft (a) Offenses.— (1) In general.— Whoever, during and in relation to any felony violation enumerated in subsection (c), knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 2 years.

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RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 20a0118p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ADAM C. VANCE,

Defendant-Appellant.

No. 19-5160

Appeal from the United States District Court for the Eastern District of Kentucky at Covington.
No. 2:18-cr-00010-1—David L. Bunning, District Judge.

Decided and Filed: April 17, 2020

Before: MOORE, KETHLEDGE, and BUSH, Circuit Judges.

COUNSEL

ON BRIEF: Michael M. Losavio, Louisville, Kentucky, for Appellant. Javier A. Sinha, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., Charles P. Wisdom, Jr., UNITED STATES ATTORNEY'S OFFICE, Lexington, Kentucky, Elaine K. Leonhard, UNITED STATES ATTORNEY'S OFFICE, Ft. Mitchell, Kentucky, for Appellee.

OPINION

JOHN K. BUSH, Circuit Judge. This is a case of an elderly couple sadly taken advantage of by their great-grandson, who defrauded them and stole his great-grandfather's identity through abuse of modern banking technology.

Adam C. Vance was convicted of one count of access-device fraud, in violation of 18 U.S.C. § 1029(a)(5), and two counts of aggravated identity theft, in violation of 18 U.S.C. § 1028A(a)(1). He was sentenced to 65 months' imprisonment and three years' supervised release. On appeal, Vance argues that the district court (1) failed to make adequate findings of fact after his bench trial under Fed. R. Crim P. 23(c); (2) improperly denied his motion for judgment of acquittal; and (3) failed to correctly calculate the loss amount connected to his charges, under Sentencing Guidelines § 2B1.1. We **AFFIRM**.

I.

A. Facts Underlying the Conviction

In 1990, Selena Spriggs opened a checking account at what is now U.S. Bank in Elsmere, Kentucky, to receive her social security checks. A few years later, Mrs. Spriggs added her husband, Charles Spriggs, to the account. However, Mr. Spriggs neither used the account nor opened any of the related monthly bank statements sent to his home.

On September 6, 2017, Vance filled out an application in Mr. Spriggs's name for a debit card that could draw on the U.S. Bank checking account. It is unclear why the application was made, given that Mr. Spriggs had never used a debit card, nor did he know how to use one. According to Mr. Spriggs, although he had previously given his great-grandson the limited authority to cash checks that Mr. Spriggs might write for him, at no point had he authorized Vance to use the bank account in any other way. In addition, during an interview with investigators, Mrs. Spriggs denied giving her great-grandson permission to make out a debit card application in her husband's name.[1]

Yet, despite lacking authorization from his great-grandparents, Vance used the card in his great-grandfather's name thereafter for his own expenses. In fact, at various times, bank cameras photographed him using the debit card to withdraw cash. *See* Trial, R. 77 (#578-83); Gov't Ex. 3; Gov't Ex. 4; Trial, R. 72 (#432-45) (explaining that the photos of Vance using the ATMs

[1]Because of her medical condition, Mrs. Spriggs was unable to testify at trial. However, Vance did not object to the introduction of her out-of-court statements; rather, Vance elicited such statements during his cross-examination of the investigator.

corresponded to the documented debit-card transactions). Vance also reportedly used the card to rent hotel rooms in his name, fund maintenance on his car, and pay for rides through the ride-sharing app, Lyft. In order to fund these purchases and ATM withdrawals, a total of $15,000 in cash advances were made to the Spriggses' U.S. Bank account from a credit line associated with the account.[2]

On October 3, 2017, an online loan application requesting $15,000 was submitted to U.S. Bank in Mr. Spriggs's name. As testified to by a U.S. Bank employee, the loan was approved. However, when the employee called the listed phone number on the application to inform Mr. Spriggs of the loan's approval, a young man—not a 90-year old, as Mr. Spriggs was—answered the phone. When the employee asked to speak to "Charles [Mr. Spriggs]," the young man requested that she wait a moment; however, according to the employee's testimony, when the alleged elderly "Charles" finally came to the phone, she recognized the voice as belonging to the same young man with whom she had just spoken. Trial, R. 72 (#455-57). Yet, when questioned about this on the phone by the employee, the young man continued insisting he was "Charles." The employee, feeling uncomfortable with the situation, then explained to "Charles" that the closing of the loan would be contingent on him physically coming to the branch with identification. Immediately upon hanging up, the employee told her coworker that "Charles" "[did] not sound like a 90-year-old man on the phone." *Id*. (#457). And incidentally, the "Charles" on the phone never came in person to the bank to close the loan.

Instead, on October 12, 2017, Vance entered a different bank—Huntington Bank, in Fort Mitchell, Kentucky—where he opened a checking account. Although this time Vance used his own name, address, phone number, and email address in the application, he listed Mr. Spriggs's social security number on the application as his own. Upon approval of the application, Vance deposited $1,000 into the account, but he withdrew the entire amount within one week.

[2]On September 19, 2017, a $9,980 cash advance was requested via mobile phone, and later deposited into the Spriggses' account. On October 4, 2017, a $5,020 cash advance was requested online and deposited into the account. The Government alleges that Vance's unauthorized uses of the debit card through these aforementioned activities are the bases for his access-device fraud charge (count 1) and aggravated identity theft charges (counts 2 and 3).

On October 16, 2017—prior to Vance withdrawing all of the money from the account at Huntington Bank—an online application was submitted to that financial institution for a $10,200 loan. This application was filed from an I.P. address belonging to Vance's mother. The online loan application was filled out with Vance's name, address, phone number, and email address; however, similar to the checking-account application he had earlier submitted to Huntington, this online application used Mr. Spriggs's social security number. Ultimately, however, because the social security number did not correspond with Vance's identity, Huntington denied the loan.[3]

Upon being notified by U.S. Bank and Huntington Bank about suspicious activities involving his identity, Mr. Spriggs filed a police report, claiming he was the victim of fraud and identity theft. On October 17, 2017, the police arrested Vance. Approximately one week later, when searching Vance's car, the police located a large stash of personal and financial documents belonging to the Spriggses, which included bank statements for the U.S. Bank account, tax-return forms, property-tax bills, and the title to Mr. Spriggs's car.

B. Proceedings Below

At the pretrial conference, Vance requested a bench trial, waived his right to a jury, and asserted his right to request specific findings of fact pursuant to Federal Rule of Criminal Procedure 23(c). Granting all three requests, the district court proceeded to conduct a two-day bench trial.

During trial, the government presented evidence of the facts set forth above related to Vance's access-device fraud charge and aggravated identity theft charge. The proof included the testimony of several witnesses, including Mr. Spriggs, a Secret Service agent who interviewed Mrs. Spriggs, and several employees from Huntington Bank and U.S. Bank.[4]

The defense called two witnesses—Vance's mother, Tammy Buck, and Vance's grandmother, Jennifer Spriggs. Buck stated that she was currently seeking guardianship over

[3]The government alleges that Vance's uses of Mr. Spriggs's social security number for both the checking account application and the loan application form the bases for Vance's aggravated identity theft charge (count 3).

[4]Relating to the "interstate commerce" element of 18 U.S.C. § 1029, an employee of U.S. Bank employee testified that this bank is headquartered in Minneapolis, Minnesota, and that all of the U.S. Bank debit-card transactions at issue are processed through normal banking channels.

Mr. Spriggs. On the subject of Vance's relationship with his great-grandparents, Buck testified to the following: (1) Mr. and Mrs. Spriggs frequently gave Vance money; (2) Vance was authorized by Mr. Spriggs to handle the latter's money, including the U.S. Bank account; and (3) the Spriggses had allowed Vance to use their credit card on various occasions in the past. Jennifer Spriggs, who was Mrs. Spriggs's guardian, admitted that Mr. Spriggs had recently decided to write her out of his will. On the subject of Vance's relationship to his great-grandparents, Jennifer Spriggs testified to the fact that (1) Mr. and Mrs. Spriggs would allow Vance to write checks and use their credit card to pay his bills; and (2) Mr. Spriggs had asked Vance to assist him with his finances.

Upon the closing of proof, the court found Vance guilty of one count of access-device fraud, in violation of § 1029(a)(5), and two counts of aggravated identity theft, in violation of § 1028A(a)(1). Verdict, R. 73. The court orally stated its findings, concluding that the elements of all charges had been proven by the government beyond a reasonable doubt. The court rejected Vance's pre-trial claims that his great-grandfather suffered from dementia, and therefore, lacked credibility as a witness. Instead, the court determined that Mr. Spriggs was credible and competent based on an assessment of his medical records. According to the court, it "didn't find anything in the records at all that would even hint that [Mr. Spriggs] had some memory loss or inability to testify credibly at trial." Verdict, R. 73 (#518).

As for Tammy Buck and Jennifer Spriggs, the district court found neither to be credible. Specifically, according to the court, Buck had "a motive to lie," given that she was "trying to obtain a guardianship over" Mr. Spriggs, and Jennifer Spriggs had "a motive to lie" considering the fact that Mr. Spriggs had recently "written [her] out of his will." *Id.* (#519).

Following the entry of judgment on the conviction, Vance filed a timely appeal.

II.

Vance advances two challenges to his access-device fraud and aggravated identity theft convictions. First, he argues that the district court failed to make adequate factual findings as required after a bench trial pursuant to Federal Rule of Criminal Procedure 23(c). Second, he

argues that the government failed to present sufficient evidence to support all of the elements of the charges beyond a reasonable doubt.

We address these arguments below.

A. Standard of Review for Adequacy of Factual Findings

This court reviews the adequacy of the district court's findings in a criminal bench trial under the same standards it uses to judge the adequacy of factual findings in jury-waived civil trials under Federal Rule of Civil Procedure 52. *See United States v. Fruehauf Corp.*, 577 F.2d 1038, 1072 (6th Cir. 1978) (holding that the findings of fact made by the district judge fully complied with the requirements of Fed. R. Crim. P. 23(c) (citing *B. F. Goodrich Co. v. Rubber Latex Products, Inc.*, 400 F.2d 401, 402 (6th Cir. 1968); *Deal v. Cincinnati Board of Education*, 369 F.2d 55, 63-64 (6th Cir. 1966), *cert. denied*, 387 U.S. 847 (1967)); *see also United States v. Hogue*, 132 F.3d 1087, 1090 (5th Cir. 1998) ("Certain of the standards for determining whether a trial court's findings of fact are adequate are the same in civil and criminal cases.").

Therefore, we review a district court's factual findings to determine if they "support the ultimate legal conclusions reached." *Zack v. Comm'r*, 291 F.3d 407, 412 (6th Cir. 2002). However, "[w]e do not insist that trial courts make factual findings directly addressing each issue that a litigant raises." *Id.* (citing *In re Fordu*, 201 F.3d 693, 710 (6th Cir. 1999) ("We have not interpreted [Rule] 52 to require trial courts to explicitly treat each issue raised.")); *see also Grover Hill Grain Co. v. Baughman–Oster, Inc.*, 728 F.2d 784, 792 (6th Cir.1984) ("It is not necessary for the District Court Judge to prepare elaborate findings on every possible issue raised at trial."). Instead, we adhere to "a liberal standard for reviewing the adequacy of the [trial court's] findings." *Zack*, 291 F. 3d at 412 (citing *Grover Hill Grain Co.*, 728 F.2d at 792)). Under this standard, "findings are to be liberally construed in support of a judgment, even if the findings are not as explicit or detailed as might be desired." *In re Fordu*, 201 F.3d at 710.

Still, even with this court's liberal approach, "the trial court's findings must support the ultimate legal conclusions reached." *Zack*, 291 F.3d at 412 (quoting *Grover Hill Grain Co.*, 728 F.2d at 792) (explaining that "there must be findings, in such detail and exactness as the nature of the case permits, of subsidiary facts on which an ultimate conclusion can rationally be

predicated")). Such findings are essential to "reveal the logic behind the trial court's decision," and they must "enable an appellate court to conduct a meaningful review of the trial court's order." *Id.* (citing *Grover Hill Grain Co.*, 728 F.2d at 792–93) ("The findings should be explicit so as to give the appellate court a clear understanding of the basis of the trial court's decision, and to enable it to determine the grounds on which the trial court reached its decision."). Ultimately, however, this court operates under the principle that "[i]f, from the facts found, other facts may be inferred which will support the judgment, such inferences should be deemed to have been drawn by the District Court." *Grover Hill Grain Co.*, 728 F.2d at 793.

B. Standard of Review for Evidentiary Sufficiency

In our review of evidentiary sufficiency, we assess a district court's specific factual findings following a bench trial for clear error. *United States v. Jabara*, 644 F.2d 574, 577 (6th Cir. 1981); *United States v. Caseer*, 399 F.3d 828, 840 (6th Cir. 2005). A district court's factual determination is "clearly erroneous when 'although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction' that the district court made a mistake." *United States v. Ellis*, 938 F.3d 757, 761 (6th Cir. 2019) (quoting *United States v. Vasquez*, 352 F.3d 1067, 1070 (6th Cir. 2003)). "[A] district judge's finding of fact is not clearly erroneous simply because there is evidence in the record that might support a different finding." *Fruehauf Corp.*, 577 F.2d at 1041 n.3.

Similarly, in reviewing the district court's ultimate finding of a defendant's guilt, we assess "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Wright*, 774 F.3d 1085, 1088 (6th Cir. 2014) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This court "neither independently weighs the evidence, nor judges the credibility of witnesses who testified at trial." *United States v. Howard*, 621 F.3d 433, 460 (6th Cir. 2010) (quoting *United States v. Talley*, 164 F.3d 989, 996 (6th Cir. 1999)). And, because the district court, as the finder of fact, is best placed to determine witness credibility, *see United States v. Bingham*, 81 F.3d 617, 635 (6th Cir. 1996), this court will "defer to the district court's credibility determinations absent reason to believe that they are clearly erroneous." *United States v. Wright*, 747 F.3d 399, 409 (6th Cir. 2014).

C. Analysis

Guided by these standards of review, we evaluate first whether the district court's findings "support the ultimate legal conclusions reached" of Vance's guilt under 18 U.S.C. § 1029(a)(5) and 18 U.S.C. § 1028A. *Zack*, 291 F.3d at 412. We then address "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Wright*, 774 F.3d at 1085. Both inquiries are addressed below as to the charges underlying the conviction.

1. Access-Device Fraud Charge (Count 1)

Count 1, which charged Vance with access-device fraud under § 1029(a)(5), requires that the government prove Vance (1) knowingly used an access device issued to another person; (2) possessed an intent to defraud; (3) obtained any thing having an aggregate value of $1,000 or more over the course of one year by using the access device; and (4) affected interstate or foreign commerce by using the access device. According to 18 U.S.C. 1029(e)(1), an "access device" is "any card . . . or other means of account access that can be used . . . to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds." Vance does not dispute that he knowingly used an access device issued to another person and that he obtained more than $1,000 over the course of 41 days by using the access device. He does dispute, however, whether there was sufficient proof and adequate findings that he possessed an intent to defraud and that he affected interstate or foreign commerce by using the access device. We consider these latter elements below.

a. "Affects Interstate Commerce"

To satisfy the interstate-commerce element of the access-device fraud statute, § 1029(a), Vance's offense must have "affect[ed] interstate or foreign commerce." *See United States v. Scartz*, 838 F.2d 876, 879 (6th Cir. 1988) (stating that § 1029(a)(1) requires proof that use of the access device "in some way affected interstate commerce"). The interstate-commerce element can be satisfied in many ways, including when an out-of-state bank's "banking channels [are] used for gaining authorization approval of the charges on the cards." *Scartz*, 838 F.2d at 879. The government introduced sufficient evidence for the district court to find that this standard was

satisfied beyond a reasonable doubt, and the court made adequate factual findings related to this element.

Indeed, with little contestation, the district court found that the government proved beyond a reasonable doubt that Vance's access-device fraud affected interstate commerce. The court underscored its conclusion by even noting that "[t]here was never any issue regarding [whether Vance's access-device fraud] affected interstate commerce." Verdict, R. 73 (#516). The court then referenced the government's witness from U.S. Bank, who testified that (1) Vance's debit-card transactions associated with the U.S. Bank account were processed, as all debit-card transactions are customarily processed, through the bank's normal banking channels; and (2) the debit card obtained by Vance was issued in Kentucky, a different state from where U.S. Bank is headquartered in Minnesota.[5] This proof related to interstate commerce was sufficient to support the conviction, *see Scartz*, 838 F.2d at 879; *see also United States v. Drummond*, 255 F. App'x 60, 64-65 (6th Cir. 2007) (unpublished) (concluding that defendant's possession of credit card numbers issued by foreign and interstate banks was sufficient evidence to support the interstate-commerce element of § 1029), and the court's findings more than satisfied this court's "liberal standard for reviewing the adequacy of the [trial court's] findings" related to the interstate element. *Zack*, 291 F.3d at 412 (citation omitted; alteration in original).

b. "Intent to Defraud"

An individual violates the access-device fraud statute when he or she "knowingly and with intent to defraud effects transactions, with 1 or more access devices issued to another person." 18 U.S.C. § 1029(a)(5). However, given the general nature of fraud crimes, "direct evidence of a defendant's fraudulent intent is typically not available"; therefore, this court allows "specific intent to defraud [to] be established by circumstantial evidence and by inferences drawn from examining the scheme itself which demonstrate that the scheme was reasonably calculated [by the defendant] to deceive persons of ordinary prudence and comprehension."

[5]Offering additional commentary on this element, the district court referenced the bank witness's testimony to validate its conclusion that "[the interstate commerce element] wasn't a contested issue at the bench trial." Trial, R. 72 (#516-517).

United States v. Winkle, 477 F.3d 407, 413 (6th Cir. 2007) (quoting *United States v. Yoon*, 128 F.3d 515, 523-24 (7th Cir. 1997)).

According to the district court, there was "more than ample circumstantial evidence" to support its finding that Vance had the intent to defraud. Verdict, R. 73 (#518). This circumstantial evidence, as the court outlined, included the following:

- testimony of Mr. Spriggs, who stated that he never authorized Vance (1) to obtain a debit card in Mr. Spriggs's name; (2) to withdraw money from the U.S. Bank account with that debit card; (3) to make purchases with that debit card; or (4) to draw on a line of credit associated with the U.S. Bank account;
- testimony of the U.S. Bank representative who spoke with Vance over the phone, coupled with additional documentary evidence, showing that Vance pretended to be Mr. Spriggs during the course of the fraud;
- evidence submitted from the government's investigation of Vance, following his arrest, which included a trove of documents with Mr. Spriggs's name, personal identifiers, and financial information in Vance's car;
- documentary evidence showing that after obtaining the debit card from U.S. Bank, Vance spent the entire line of credit quickly—in a matter of one week; and,
- related documentary evidence showing that after he obtained the debit card, Vance drained the U.S. Bank account in a matter of one week.

Notwithstanding this evidence presented by the government and outlined by the court, Vance contends that the factual findings related to the requisite "intent to defraud" element are inadequate and the evidence was insufficient. In support of both claims, he offers three arguments: (1) the court erred in its analysis by focusing on whether Vance lacked "authorization" from the Spriggses to use the debit card, as opposed to Vance possessing an "indicia of fraud," Br. at 39; (2) under *U.S. v. Nixon*, 694 F.3d 623 (6th Cir. 2012), the district court was required to find that Vance possessed an intent to defraud both at the time he obtained the debit card from U.S. Bank, and then also when he used the debit card; and (3) the district court erred in relying on Mr. Spriggs's testimony (which the government offered for the specific purpose of showing Vance's intent to defraud) because the court erred in its initial determination that Mr. Spriggs was a "credible" witness, unaffected by trouble with memory recall. We find all of these arguments misplaced.

When making its factual finding that Vance did demonstrate a necessary intent to defraud, the court cited statements made in Mr. Spriggs's testimony and Mrs. Spriggs's interview, which supported its conclusion that Vance demonstrated an intent to defraud. The court did not err in emphasizing Vance's lack of "authorization" to use the debit card, as testified to by Mr. Spriggs, and supported by Mrs. Spriggs's interview (which was also in evidence). The court's findings were adequate to "reveal the logic behind [its] decision," to "enable [us] to conduct a meaningful appellate review." *Zack*, 291 F.3d at 412 (citing *Grover Hill Grain Co.*, 728 F.2d at 792–93); *see United States v. Gustafson*, 30 F.3d 134 (Tbl.), 1994 WL 276883, at *3 (6th Cir. June 21, 1994).

Based upon such a review, we conclude the evidence was sufficient to support the district court's finding of Vance's intent to defraud. In *United States v. Warshak*, this court determined that a defendant's lack of authorization from the proper owners of credit cards, constituted valid circumstantial evidence of his intent to defraud those customers. 631 F.3d 266, 316 (6th Cir. 2010) (finding the government had proven defendant's specific intent to defraud under § 1029(a)(5) when it referenced the defendant's own testimony that he "deliberately charged customers' credit cards without permission"); *see also United States v. Farkas*, 935 F.2d 962, 966 (8th Cir. 1991) ("All the witnesses testified that their credit cards had been used without their authorization. Thus, the evidence, viewed most favorably to the government, clearly permits the inference that these credit card numbers were 'obtained with intent to defraud.'"). Similar circumstantial evidence was presented by the government here.

Such evidence included: (1) Vance's attempted impersonation of Mr. Spriggs, both on the phone with the bank representative and in paper and online-bank applications; (2) Vance's deliberate decision to conduct the majority of his transactions online or on a cellular phone (likely a tactic to maintain his anonymity); and (3) the haste in which Vance depleted the money from both the U.S. Bank account and the associated line of credit he established after having obtained the debit card in Mr. Spriggs's name attached to the account.

Collectively, this proof supports the district court's inference that Vance was operating with the speed and level of anonymity of someone who lacked the authorization to use his great-

grandparents' debit card for his personal purchases. Therefore, the district court did not commit clear error in determining that the government had shown Vance's intent to defraud.

Vance argues on appeal that his great-grandmother *may have* actually authorized his use of the U.S. Bank account, but there is sufficient evidence in the record for the district court's finding otherwise. Given her existing illness, Mrs. Spriggs did not testify in court. However, her statements made to third-party investigators were properly admitted by the government into the record. In these statements, she indicated the following: (1) that she did not remember having the U.S. Bank account; and (2) that she never authorized Vance to obtain or use a debit card attached to that account. Furthermore, as referenced above, Vance's numerous actions— including his impersonation of Mr. Spriggs; the haste with which he drained the U.S. Bank account and the attached line of credit; and the fact he conducted the majority of his transactions online or over the phone—seem inconsistent with his having received Mrs. Spriggs's authorization. Although Vance references the testimony of his defense witnesses that his great-grandparents *occasionally* allowed him to use their credit card to buy them food in the past, the district court reasonably could have found that these prior authorized uses are not relevant to the debit-card transactions associated with the U.S. Bank account. Moreover, the district court was entitled to determine, as it did, that the defense witnesses were not credible based on their stated motives, meaning their testimony was not credited at all in the process of the court reaching its verdict.

Vance cites *United States v. Nixon* for the proposition that under 18 U.S.C. § 1029(a)(2), the government must show that a defendant possesses an intent to defraud "both when the 'access device' is *obtained* and when it is later *used*." 694 F.3d 623 (6th Cir. 2012) (citation omitted). Though a creative argument, the reference is irrelevant to the facts at hand, given that *Nixon* involved subsection (a)(2) of 18 U.S.C. § 1029 (prohibiting the use of an "*unauthorized* access device," as defined as "any access device that is lost, stolen, expired, revoked, canceled, or obtained with intent to defraud," § 1029(e)(3))—not § 1029(a)(5) (prohibiting the use of access devices that include "any card . . . or other means of account access that can be used to obtain any thing of value, 1029(e)(1)."). This court applies different legal frameworks to analyze the use of these two types of access devices. Under § 1029(a)(5), this court does not require the

government to show that the defendant obtained the access device with an intent to defraud; the government must only show that the defendant possessed an intent to defraud at the time the device was used. *See* 18 U.S.C. § 1029(a)(5) (declaring it unlawful if a person "knowingly and with intent to defraud effects transactions, with 1 or more access devices issued to another person").

The district court did not commit clear error when it relied on Mr. Spriggs's testimony. This court "defer[s] to the district court's credibility determinations absent reason to believe that they are clearly erroneous." *Wright*, 747 F.3d at 409. We see no reason to disturb the district court's credibility determination.

Despite Vance's claims to the contrary, Mr. Spriggs's medical records do not state that he was diagnosed with dementia. *See generally* App. at 196-245. Although one medical report indicates that Mr. Spriggs has "mild cognitive impairment," *id*. at 244, the reports otherwise describe him as being "alert," *e.g., id*. at 204, 207, 213, 216, 227, 240, 243, "oriented to person, time, and place," *e.g., id*. at 206, 207, 240, 243, "negative for confusion, [and] decreased concentration," *e.g., id.* at 204, 232, 242, and as having normal "mood," "affect," "behavior," "judgment," and "thought content," *e.g., id*. at 204, 207, 240. These findings provide an ample basis for the district court's conclusion that the medical records fail to suggest Mr. Spriggs's "inability to testify credibly at trial." Verdict, R. 73 (#517-18).

Additional support for this conclusion is offered simply by the fact that the district court is best placed to observe the credibility of a witness, with this case being no exception. Here, the court was able to judge in person Mr. Spriggs's "behavior . . . upon the witness stand," which included his "manner of testifying" and the "accuracy of [his] memory." *Dunn Appraisal Co. v. Honeywell Info. Sys. Inc.*, 687 F.2d 877, 881-82 (6th Cir. 1982) (citation omitted).

Therefore, in our deferential review of the district court's findings here, we deem that the court's credibility determination was not clearly erroneous.

2. Aggravated Identity Theft Charges (Counts 2 and 3): Factual Findings & Evidentiary Sufficiency

Counts 2 and 3, which charged Vance with aggravated identity theft under § 1028A, require that the government show Vance (1) knowingly used, without lawful authority, a means of identification of another person; and (2) used that means of identification during and in relation to an enumerated predicate felony. 18 U.S.C. § 1028A. Predicate felonies under § 1028A(c)(5) include "any provision contained in chapter 63 (relating to mail, bank, and wire fraud)." Relevant to this case, chapter 63 includes the bank-fraud statute, 18 U.S.C. § 1344.

a. Vance's Use of Mr. Spriggs's Identity

The central basis relied upon by the government to show Vance's aggravated-identity-theft conviction under count 3 was his use of his great-grandfather's social security number at Huntington Bank to open a checking account and then apply for a loan. The district court appropriately recognized the value of this evidence, and ultimately agreed that "sufficient circumstantial evidence" demonstrated that "it was [Vance] . . . who submitted [the Huntington Bank] loan application by using Mr. Spriggs' Social Security number" in the application. Verdict, R. 73 (#521).

Despite Vance's claims to the contrary, the district court's finding as to the "identity" element was not inadequate. Rather, the district court accurately referenced the circumstantial evidence provided by the government to support this conclusion. This evidence included: (1) that the I.P. address used to request the loan was registered to Vance's mother; and (2) that Vance had recently opened a checking account at Huntington Bank by way of a paper application, in which he used Mr. Spriggs's social security number. Collectively, these findings are sufficient for our court to engage in "meaningful appellate review." *Zack*, 291 F.3d at 412 (citing *Grover Hill Grain Co.*, 728 F.2d at 792–93).

Our review finds sufficient evidence to support the court's determination that it was Vance—and not someone "in Hong Kong," Trial, R. 77 (#640)—who applied for the Huntington Bank loan online in his great-grandfather's name. Foremost to the government's case, was the fact that the loan application shared several significant consistencies with the application Vance

had submitted to Huntington Bank in person a few days earlier. Namely, both applications listed Vance's name as the applicant, along with his address, email address, phone number and date of birth; yet, both applications listed Mr. Spriggs's social security number in the relevant social security number boxes. Gov't Ex. 5g; Trial, R. 77 (#634-37); Verdict, R. 73 (#521-22); *compare* Gov't Ex. 5a (account application), with 5g (loan application).

The documented evidence that Vance had previously submitted an online loan application at U.S. Bank also supports the likelihood that he submitted the subsequent Huntington Bank application. In fact, it is very unlikely that Mr. Spriggs took out this loan, given that, as he testified at trial, he did not like to take out loans, nor did he like to owe people money. It seems equally unlikely that this 91-year-old man or his 86-year-old wife would be applying for loans via the internet. Thus, we turn to Vance, who not only knew Mr. Spriggs's social security number, but had an established history of conducting online transactions using his great-grandfather's personal information (including a history of attempting to obtain loans in Mr. Spriggs's name, using the latter's personal information). In addition, Vance was found with a collection of documents belonging to his great-grandparents in his car (some of which had Mr. Spriggs's social security number listed). Collectively, this evidence supports the district court's finding that it was Vance who applied for the Huntington Bank loan.

The last piece of evidence supporting the district court's finding that Vance submitted the loan application is the fact that the I.P. address used in connection with the online loan application belonged to his mother. Vance does not dispute that this I.P. address was hers, and he does not argue that his mother applied for the loan. The I.P. address thus points to Vance as the one who submitted the application. Nonetheless, he continues to insist that it was an identity thief "in Hong Kong" who may have made the submission. Trial, R. 77 (#640). The district court had sufficient basis to reject Vance's story. As the district court noted, "it would have been very odd for someone else [other than Vance]" to apply for the Huntington loan via the online application form. Verdict, R. 73 (#521-22).

Vance also asserts in passing that the government's evidence in relation to the identity element is insufficient because it failed to be authenticated under Federal Rule of Evidence 901. However, this argument is waived, given that Vance neither objected to the evidence at trial, nor

does he even properly raise an evidentiary claim on appeal. *See United States v. Brown*, 819 F.3d 800, 829 (6th Cir. 2016) (stating that arguments on appeal that are "unaccompanied by any legal support or developed argumentation" are deemed waived).

b. "During and in Relation to a Predicate Attempted Bank Fraud"

In declaring its verdict and factual findings as to count 3, the district court explained that Vance had committed aggravated identity theft "during and in relation to a bank fraud violation, the bank fraud being the attempted bank fraud involving the Huntington Bank." Verdict, R. 73 (#520). The court also found "that [Vance] did attempt to commit bank fraud and that he used the means of identification of another person during and in relation to that attempted bank fraud." *Id*. (#522). Vance advances two arguments to challenge the adequacy of these findings, neither of which is persuasive.

First, Vance challenges the adequacy of the findings based on the district court's statement that Vance's conduct occurred in relation to "attempted bank fraud," as opposed to the court's explicitly citing the bank-fraud statute on which it was relying. Br. at 46. This argument is misplaced. Subsection (c)(5) of 1028A refers to only *one* bank-fraud violation in chapter 63 as a predicate offense (defining the predicate felonies as including "any provision contained in chapter 63 (relating to mail, bank, and wire fraud)"). That enumerated bank-fraud violation is 18 U.S.C. § 1344. Therefore, it is sufficiently clear the bank-fraud violation to which the district court referred when it wrote "attempted bank fraud" *See* Verdict, R. 73 (#520).

Second, Vance argues that the government presented no proof that Huntington Bank constitutes a requisite "financial institution," under the bank-fraud statute, § 1344. Again, his argument is misplaced. Under 18 U.S.C. § 20(1), a "financial institution" is defined as "an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act"). In turn, section 3(c)(2) of the Federal Deposit Insurance Act provides that "[t]he term 'insured depository institution' means any bank or savings association the deposits of which are insured by the [FDIC] pursuant to this chapter." 12 U.S.C. § 1813(c)(2). Therefore, because the government submitted undisputed documentary evidence showing that Huntington Bank was insured by the Federal Deposit Insurance Corporation (FDIC), *see* Gov't Ex. 5c at 1

("Huntington National Bank is a Member FDIC."), there was sufficient proof for the district court to find that Huntington Bank constitutes a "financial institution" under § 1344.

III.

Vance also challenges the procedural reasonableness of the 65-month imprisonment sentence handed down by the district court. He argues that the district court failed to correctly calculate the loss amount accrued by his great-grandparents under Sentencing Guidelines § 2B1.1, the Guidelines' "loss provision."

This court reviews the factual findings made by the district court at sentencing for clear error. *United States v. Collins*, 799 F.3d 554, 592 (6th Cir. 2015). Such findings subject to clear-error review include the district court's determination of the amount of loss attributable to a defendant. *Warshak*, 631 F.3d at 328-29 (citing *United States v. Jordan*, 544 F.3d 656, 671 (6th Cir. 2008)).

When a loss amount is in dispute, "either the government must prove the loss amount by a preponderance of the evidence, or the district court may conduct judicial factfinding to determine the loss amount." *United States v. Poulsen*, 655 F.3d 492, 513 (6th Cir. 2011). Nonetheless, the district court need not "establish the value of the loss with precision"; rather, the court is required only to "publish the resolution of contested factual matters that formed the basis of the calculation." *United States v. Nelson*, 356 F.3d 719, 723 (6th Cir. 2004)).

The Sentencing Guidelines establish an automatic base offense level of six for access-device fraud. U.S.S.G. § 2B1.1(a)(2). In turn, the loss provision, U.S.S.G. § 2B1.1(b)(1), directs a sentencing court to increase the offense level based on the amount of "loss" accrued in connection with the defendant's conduct. If the loss amounts to a sum greater than $40,000 but less than $95,000, then the Guidelines impose a six-level increase on the offense level. *Id.* § 2B1.1(b)(1)(D).

Loss under subsection (b)(1) is defined as "the greater of actual loss or intended loss." *Id.* cmt. n.3(A). "Actual loss" "means the reasonably foreseeable pecuniary harm that resulted from the offense," *id.* cmt. n.3(A)(ii), whereas an "intended loss" includes "both the amount the

victim actually lost and any additional amount that the perpetrator intended the victim to lose." *United States v. Mickens*, 453 F.3d 668, 672-73 (6th Cir. 2006) (quoting *United States v. Carboni*, 204 F.3d 39, 47 (2d Cir. 2000)).

"In calculating the Guidelines loss under U.S.S.G. § 2B1.1(b)(1), district courts include losses sustained from relevant conduct under U.S.S.G. § 1B1.3." *United States v. Catchings*, 708 F.3d 710, 720 (6th Cir. 2013). "Relevant conduct" generally includes a defendant's conduct that occurred during or in preparation for the underlying offense. U.S.S.G. § 1B1.3(a)(1)(A).

Yet, even with the various guideposts offered by the Guidelines, a sentencing court "need only make a reasonable estimate of the loss . . . based on available information." U.S.S.G. § 2B1.1 cmt. n.3(C). Because a "sentencing judge is in a unique position to assess the evidence and estimate the loss based upon that evidence," its "loss determination is entitled to appropriate deference." *Id*.

The initial presentence investigation report (PSR) prepared by the Probation Office stipulated that the loss caused by Vance was less than $40,000. However, the government objected to the PSR's findings, arguing that Vance's conduct had an "intended loss" of over $40,000. According to the government, a portion of the "intended losses" related to Vance's relevant conduct of forging checks, totaling approximately $3,450, in Mrs. Spriggs's name. Sentencing, R. 74 (#532-33); Gov't Ex. 1a-n. Agreeing with the government, the Probation Office recalculated the loss amount and ultimately determined that Vance had caused an intended loss of $40,366.95.

During sentencing, the district court overruled Vance's objection to the second finding of the PSR, concluding that a preponderance of the evidence demonstrated that Vance had caused an "intended loss" of over $40,000. Sentencing, R. 74 (#528, 533). The district court reached this total based on its amassing of the following "actual" and "intended" amounts connected to Vance's fraudulent activities:

- **$14,237.25** in *actual losses* accrued by U.S. Bank, based on the money Vance spent after taking cash advances from the checking account's line of credit he fraudulently obtained. *Id.* (#532-33).
- **$15,000** in *intended losses* potentially faced by U.S. Bank, based on Vance's attempted fraudulent loan from U.S. Bank. *Id.* (#532).
- **$10,200** in *intended losses* potentially faced by Huntington Bank, based on Vance's attempted fraudulent loan from Huntington Bank. *Id.* (#531).
- **$3,450** in *actual losses* accrued by the Spriggses for Vance's relevant conduct of forging checks in Mrs. Spriggs's name. *Id.* (#532-33).
- **$929.70** in *actual losses* accrued by Mr. Spriggs for Vance's relevant conduct of using Mr. Spriggs's credit card to make Home Shopping Network purchases for himself. *Id.* (#533).

Accordingly, the district court's final loss determination resulted in a six-level enhancement. PSR, R. 61 (#209 ¶ 29).

With the six-level loss enhancement calculated, the district court then proceeded to calculate Vance's final sentence by way of the following steps:

- First, the court took account of Vance's criminal history category of V. *Id.* (#214 ¶ 52).
- Second, in consideration of the fact that Vance's scheme affected vulnerable victims, the court imposed a two-level increase, meaning that Vance's advisory Guidelines range was 33 to 41 months' imprisonment for the Count 1 access-device fraud. Sentencing, R. 74 (#542); *see* PSR, R. 61 (#219 ¶ 85).
- Third, the court noted that both of Vance's aggravated-identity-theft counts (Counts 2 and 3) had a statutorily required mandatory sentence of 24 months' imprisonment. Sentencing, R. 74 (#535)

Based on these considerations, the district court sentenced Vance to a total of 65 months' imprisonment; this total includes two concurrent 24-month sentences for his aggravated-identity-theft counts, which will run consecutive to a 41-month sentence for the access-device fraud count, followed by three years of supervised release.

Vance challenges the district court's sentence, claiming that the final loss amount calculation was too high.[6] He makes two specific arguments: (1) that the district court clearly

[6]Vance claims that he is raising both procedural- and substantive-unreasonableness claims to challenge the district court's sentence. However, because his sentencing argument challenges only the district court's loss-amount

erred in relying upon the assumption that Vance was not authorized to sign checks in Mrs. Spriggs's name, because, according to Vance, her testimony at trial was required to prove that she had not provided authorization to Vance; and (2) the district court clearly erred because the government failed to present sufficient evidence linking Vance's identity to many of the debit-card transactions at issue.

However, for reasons presented in the analysis of Vance's factual findings and evidentiary sufficiency claims, we conclude that the district court did not commit clear error in calculating that the loss amount attributed to Vance's conduct was over $40,000.

According to Vance, the district court erred in its determination that Mrs. Spriggs had not authorized Vance to use the U.S. Bank account or write checks in her name, given that Mrs. Spriggs did not testify at trial. We find this argument tenuous. First, although Mrs. Spriggs could not testify at trial because of her failing health, the absence of her testimony is immaterial because she provided verified statements to government investigators, which were submitted into evidence for trial. Notably, in those statements, Mrs. Spriggs indicated that she never gave Vance permission to use or obtain a debit card for her bank account; and in fact, she did not even remember having an account at U.S. Bank. The district court credited this evidence at sentencing, stating: "Selena [Mrs. Spriggs] told the case agent—while she didn't testify—that she did not authorize [Vance's] use of her account or any payment of checks." Sentencing, R. 74 (#534). In addition, during Mr. Spriggs's trial testimony—which the district court also deemed credible—he stated that he had never given Vance authorization for these activities either. The district court referenced these statements during sentencing as well, explaining that Mr. Spriggs was "clearly not happy with what had transpired," and concluding that "ultimately, [Mr. Spriggs] did not authorize any of these transactions." Sentencing, R. 74 (#534).

The testimony of the defense witnesses, Tammy Buck and Jennifer Spriggs, did not undermine the conclusions made by the court at sentencing. Both women stated that *sometimes* Mr. and Mrs. Spriggs would allow Vance to use their credit card to buy them food. However, aside from the district court's determination that neither of the defense witnesses was credible,

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calculation—which relates to procedural unreasonableness, not substantive unreasonableness, *see United States v. Jones*, 641 F.3d 706, 712 (6th Cir. 2011)—this court addresses only the procedural reasonableness question.

their statements were irrelevant, as they spoke about a past credit card owned by Mr. and Mrs. Spriggs—not the debit card and forged checks at issue here, both of which drew upon the U.S. Bank account. The district court's loss-determination calculation only related to losses connected to this account. Sentencing, R. 74 (#534-35) ("[A]lthough there was some testimony that [Vance] used this credit card of [Mr. Spriggs] for a few purchases on occasion, the amount listed . . . was a total amount of unauthorized transactions from [the U.S. Bank account] debit card.").[7]

Finally, we find unpersuasive Vance's argument that the district court clearly erred in its calculations because it relied upon an erroneous assumption that his identity was linked to many of the fraudulent debit-card transactions. As outlined in the factual findings and evidentiary sufficiency analysis, the government offered sufficient evidence showing it was Vance—not an unknown individual—who used the Spriggses' debit card. This evidence included photos of Vance using the card, Trial, R. 77 (#578-83); Gov't Ex. 3, as well as receipts documenting that purchases made with the card were under Vance's name, Gov't. Ex. 2. The district court underscored the importance of this evidence for its sentencing determinations, explaining "[t]he evidence submitted during the bench trial was credible and more than sufficient for the Court to conclude, by a preponderance of the evidence, that [Vance] himself was the individual who tried to defraud both U.S. Bank and Huntington Bank." Sentencing, R. 74 (#533). And, because the district court held that the government presented sufficient evidence to prove the requisite identity element of Vance's access-device fraud and aggravated identity-theft convictions (meaning, that the court concluded that Vance's identity was linked to the fraudulent debit card purchases), then it would not be clear error for the court to conclude that the government had shown Vance's identity was linked to the fraudulent charges by a preponderance of the evidence at sentencing.

[7]Furthermore, the district court explained that even if it had failed to include in its calculations some of the disputed forged checks (which Vance still claims were authorized for the benefit of his great-grandparents), the loss connected to Vance's conduct would still amount to a total over $40,000. Sentencing, R. 74 (#534-35).

In light of the above, we conclude that the district court did not commit clear error in calculating the loss attributed to Vance's conduct under the Guidelines. Therefore, Vance's sentence was procedurally reasonable.

IV.

We conclude that (1) the district court made adequate factual findings as to Vance's guilt related to the access-device fraud charge under 18 U.S.C. § 1029 and the aggravated identity theft charge under 18 U.S.C. § 1028A; (2) there was sufficient evidence to support the court's findings of guilt related to both charges; and (3) the court properly calculated the loss amount under the Guidelines, and therefore, Vance's sentence was procedurally reasonable. We therefore **AFFIRM**.

AO 2458 (Rev . 02/18) Judgment in a Criminal Case
Sheet I

UNITED STATES DISTRICT COURT

Eastern District of Kentucky- Northern Division at Covington

UNITED STATES OF AMERICA
v.
Adam C. Vance

JUDGMENT IN A CRIMINAL CASE

Case Number: 2: 18-CR-010-DLB-S-001

USM Number: 21975-032

Douolas S. Weiole
Defendant's Attorney

THE DEFENDANT:

D pleaded guilty to count(s)

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

IZI was found guilty on count(s) IS, 2S, 3S [DE# l4]
'lty
ft I f t
a er a p ea o no gm .

Eastern *District* of Kentucky

JAN 28 2018

ROBERT ~-**CARR**
CLERK U.S. DISTRICT COURT

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18: 1029(a)(5)	Access Device Fraud	September 9, 2017	1
18: l 028A(a)(I)	Aggravated Identity Theft	September 9, 2017	2
18:1028A(a)(l)	Aggravated Identity Theft	September 9, 2017	3

The defendant is sentenced as provided in pages 2 through __7__ of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

IX! Count(s) 4S, 5S [DE# l4] D 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.

Honorable David L. Bunning, U.S. District Judge
Name and Title of Judge

January 27 2019
Date

DEFENDANT: Adam C. Vance
CASE NUMBER: 2:18-CR-00010-DLB-CJS-001

IMPRISONMENT

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

SIXTY FIVE (65) MONTHS

(41 Months on Count 1; 24 Months on Counts 2 and 3, Concurrent with one another, but consecutive to Count 1)

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

It is recommended to the Bureau of Prisons that the defendant participate in a job skills and/or vocational training program.
It is recommended to the Bureau of Prisons that the defendant participate in a mental health program.
It is recommended to the Bureau of Prisons that the defendant participate in a substance abuse treatment program.
It is recommended that the defendant be designated to a facility closest to his home in the Cincinnati, Ohio area.

☒ 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.

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

☐ before 2 p.m. on .

☐ C. 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

at , with a certified copy of this judgment.

UNITED STATES MARSHAL

By DEPUTY UNITED STATES MARSHAL

DEFENDANT: Adam C. Vance
CASE NUMBER: 2:18-CR-00010-DLB-CJS-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

THREE (3) YEARS

3 years on Count 1, 1 year on Counts 2 and 3, Concurrent with one another, for a total of 3 years

MANDATORY CONDITIONS

B. You must not commit another federal, state or local crime.

You must not unlawfully possess a controlled substance.

C. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

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

4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(Check, if applicable.)*

D. ☐ You must cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*

E. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, of any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(Check, if applicable.)*

F. ☐ You must participate in an approved program for domestic violence. *(Check, if applicable.)*

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

DEFENDANT: Adam C. Vance
CASE NUMBER: 2:18-CR-00010-DLB-CJS-001

CRIMINAL MONETARY PENALTIES

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

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 300.00 ($100 per count)	$ N/A	$ Waived	$ $15,166.95

☐ 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
U.S. Bank	$14,237.25	$14,237.25	
Charles Spriggs	$929.70	$929.70	

TOTALS	$ 15,166.95	$ 15,166.95	

☐ Restitution amount ordered pursuant to plea agreement: $ _____

2. 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:

(3) Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** 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.

DEFENDANT: Adam C. Vance
CASE NUMBER: 2:18-CR-010-DLB-CJS-001

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 $ 15,466.95 due immediately, balance due

☐ b. not later than _____, or
☒ in accordance with ☐ 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:

Criminal monetary penalties are payable to:
Clerk, U. S. District Court, Eastern District of Kentucky
35 West 5th Street, Room 289, Covington, KY 41011-1401

INCLUDE CASE NUMBER WITH ALL CORRESPONDENCE

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of 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:

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) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

DEFENDANT: Adam C. Vance
CASE NUMBER: 2:18-CR-0010-DLB-S-001

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: Adam C. Vincent
CASE NUMBER: 2:18-CR-010-DLB-S-001

SPECIAL CONDITIONS OF SUPERVISION

1. You must provide the probation officer with access to any requested financial information.

2. You must not incur new credit charges or open additional lines of credit without the approval of the probation officer unless you are in compliance with the installment payment schedule.

3. Restitution in the amount of $15,166.95 is due immediately. Any outstanding balance owed upon commencement of incarceration must be paid in accordance with the Federal Bureau of Prisons' Inmate Financial Responsibility Program. Any outstanding balance owed upon commencement of supervision must be paid according to a schedule set by subsequent orders of the Court.

4. You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1), but including other devices excluded from this definition), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search will be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

5. You must participate in a substance abuse treatment program and must submit to periodic drug and alcohol testing at the direction and discretion of the probation officer during the term of supervision. Said program may include one or more cognitive behavioral approaches to address criminal thinking patterns and antisocial behaviors. You must pay for the cost of treatment services to the extent you are able as determined by the probation officer.

6. You must refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing or location monitoring which is (are) required as a condition(s) of release.

SPECIAL CONDITIONS OF SUPERVISION

c. You must provide the probation officer with access to any requested financial information.

d. You must not incur new credit charges or open additional lines of credit without the approval of the probation officer unless you are in compliance with the installment payment schedule.

e. Restitution in the amount of$15,166.95 is due immediately. Any outstanding balance owed upon commencement of incarceration must be paid in accordance with the Federal Bureau of Prisons' Inmate Financial Responsibility Program. Any outstanding balance owed upon commencement of supervision must be paid according to a schedule set by subsequent orders of the Court.

f. You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(l), but including other devices excluded from this definition), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search will be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

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