

NOT RECOMMENDED FOR PUBLICATION

No. 18-4197

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Feb 27, 2020
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)	
)	
Plaintiff-Appellee,)	
)	
v.)	ON APPEAL FROM THE UNITED
)	STATES DISTRICT COURT FOR
JANICE M. SHUFFORD,)	THE NORTHERN DISTRICT OF
)	OHIO
Defendant-Appellant.)	
)	
)	

ORDER

Before: GRIFFIN, KETHLEDGE, and STRANCH, Circuit Judges.

Janice M. Shufford, a federal prisoner, appeals her convictions for wire fraud and identity theft. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Shufford was sentenced to 81 months of imprisonment after being convicted by a jury of conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349; five counts of wire fraud, in violation of 18 U.S.C. § 1343; and five counts of aggravated identity theft, in violation of 18 U.S.C. § 1028A. Shufford and her co-defendants obtained personally identifying information from hundreds of people, fraudulently registered them as college students at Maricopa Community College, applied for federal financial aid in the individuals' names, and then spent the aid money after it was distributed on electronic debit cards that were mailed to Shufford's address. After the government presented its case-in-chief, Shufford moved for a judgment of acquittal on one of her

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convictions for wire fraud and one of her convictions for aggravated identity theft, which the district court denied.

On appeal, Shufford argues that the district court improperly limited the cross-examination of a government witness and erred in denying her motion for a judgment of acquittal.

We review district court limitations on the scope of cross-examination for an abuse of discretion. *United States v. Reid*, 625 F.3d 977, 986 (6th Cir. 2010). Shufford argues that the district court abused its discretion when it prevented her from cross-examining a co-defendant about drugs found in her home. Specifically, Shufford asserts that, because the co-defendant was not charged with drug possession, the co-defendant had an incentive to cooperate with the government. The government contends that its charging decision regarding the heroin was “entirely separate from the . . . plea agreement reached in this case.” Thus, according to the government, that Sommerville was not charged with a crime related to the heroin was not relevant to Sommerville’s incentives to cooperate.

The Federal Rules of Evidence provide that a party may attack a witness’s credibility on cross-examination through questioning on specific instances of conduct relevant to credibility. Fed. R. Evid. 608(b). Generally, “prior drug use is not relevant to a witness’s character for truthfulness.” *United States v. Holden*, 557 F.3d 698, 703 (6th Cir. 2009). In any event, on cross-examination, the co-defendant acknowledged that she had an incentive to cooperate with the government by testifying that she pleaded guilty to her role in the conspiracy, that she was testifying pursuant to a cooperation agreement with the government, and that the government could recommend that she receive a reduced sentence. The court, moreover, reasoned that even if it allowed cross-examination on the issue, Sommerville could exercise her Fifth Amendment right to avoid self-incrimination to avoid discussing the matter. Accordingly, under these circumstances, the district court did not abuse its discretion in limiting the cross-examination of the co-defendant.

“We review de novo whether there was a variance between the indictment and the proof offered at trial.” *United States v. Bearden*, 274 F.3d 1031, 1039 (6th Cir. 2001). Because variances are not per se prejudicial, a conviction will be reversed only if “(1) a variance occurred and (2) the

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variance affected the defendant's substantial rights.” *United States v. Pritchett*, 749 F.3d 417, 428 (6th Cir. 2014). “The substantial rights of the defendant ‘are affected only when the defendant shows prejudice to his ability to defend himself at trial, to the general fairness of the trial, or to the indictment’s sufficiency to bar subsequent prosecutions.’” *United States v. Napier*, 787 F.3d 333, 350 (6th Cir. 2015) (quoting *United States v. Hynes*, 467 F.3d 951, 962 (6th Cir. 2006)).

Although the indictment charged Shufford with committing wire fraud and aggravated identity theft on December 19, 2013, and the government’s evidence showed that the offenses occurred on February 12, 2014, Shufford is unable to show that her ability to defend herself was impaired because the indictment explicitly identified the offenses and the specific conduct at issue. *See id.* Moreover, “proof of the exact date of [the] offense [was] not required” because the indictment provided that Shufford committed wire fraud on or about February 17, 2011, through December 2015, February 2014 is within the charged range and is reasonably near the date named in the indictment. *See United States v. Ferguson*, 681 F.3d 826, 831 (6th Cir. 2012). Although the aggravated identity theft charge did not repeat the “on or about” language, Shufford was on notice that she needed to defend herself against this charge because the predicate offense for the aggravated identity theft charge was the wire fraud charge that included the “on or about” language. *See* 18 U.S.C. § 1028A(c)(5).

As to the general fairness of the trial and the indictment’s sufficiency to bar subsequent prosecutions, a government witness described at trial how the date issue resulted from a clerical error. Specifically, the witness explained that the date in the indictment associated with the wire fraud and identity theft counts was incorrect because as part of his investigation into Shufford’s activity, he constructed a chart to show respective dates associated with various counts and he made a “cut and paste” error when he assisted in drafting the indictment. This testimony by a government witness nullifies any double jeopardy risks.

Accordingly, in this context, the district court did not err in denying the motion for a judgment of acquittal.

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Based upon the foregoing, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written above a horizontal line.

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA

v.

JANICE M. SHUFFORD§ **JUDGMENT IN A CRIMINAL CASE**

§

§

§ Case Number: **5:17-CR-00454-JRA(1)**§ USM Number: **65223-060**§ **Paul M. Flannery and Kevin Vogel**

§ Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input checked="" type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	1-6 and 13-17

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense

18:1349 Conspiracy To Commit Wire Fraud

18:1343 and 2 Wire Fraud

18:1028A(a)(1) and 1028A(b)(4) Aggravated Identity Theft

Offense Ended

12/31/2015

2/24/2014

2/24/2014

Count

1

2-6

13-17

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.

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

☐ Count(s) ☐ 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.

November 6, 2018

Date of Imposition of Judgment

s/John R. Adams

Signature of Judge

John R. Adams, U. S. District Judge

Name and Title of Judge

December 3, 2018

Date

DEFENDANT: JANICE M. SHUFFORD
CASE NUMBER: 5:17-CR-00454-JRA(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:
57 months as to counts 1-6 concurrent; 24 months as to Counts 13-17 concurrent with each other and consecutive to Counts 1-6.

X The court makes the following recommendations to the Bureau of Prisons:
The Court recommends placement FPC Alderson. Further, the Court recommends the Bureau of Prisons monitor Defendant's computer use.

- ☐ The defendant is remanded to the custody of the United States Marshal.
☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

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

- ☒ before 2 p.m. as designated.
☐ 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: JANICE M. SHUFFORD
CASE NUMBER: 5:17-CR-00454-JRA(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **three (3) years as to Counts 1-6; 1 year as to Counts 13-17 all concurrent.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. 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.
☒ 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)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ 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, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ 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: JANICE M. SHUFFORD
CASE NUMBER: 5:17-CR-00454-JRA(1)

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. If not in compliance with the condition of supervision requiring full-time occupation, you may be directed to perform up to 20 hours of community service per week until employed, as approved or directed by the pretrial services and probation officer.
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. As directed by the probation officer, you shall notify third parties who may be impacted by the nature of the conduct underlying your current or prior offense(s) of conviction and/or shall permit the probation officer to make such notifications, and/or confirm your compliance with this requirement.
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. I understand additional information regarding these conditions is available at the www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: JANICE M. SHUFFORD
CASE NUMBER: 5:17-CR-00454-JRA(1)

SPECIAL CONDITIONS OF SUPERVISION

You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office.

You must not incur new credit charges or open additional lines of credit without the approval of the probation officer.

You must fully cooperate with the Internal Revenue Service by filing all delinquent or amended returns within six months of sentence date and timely file all future returns that come due during the period of supervision. You must properly report all correct taxable income and claim only allowable expenses on those returns. You must provide all appropriate documentation in support of said returns. Upon request, you must furnish the Internal Revenue Service with information pertaining to all assets and liabilities, and you must fully cooperate by paying all taxes, interest, and penalties due, and otherwise comply with the tax laws of the United States.

You must apply all monies received from income tax refunds, lottery winnings, judgments, and/or any other anticipated or unexpected financial gains to the outstanding court-ordered financial obligation.

The defendant shall consent to the U.S. Pretrial Services & Probation Office conducting periodic unannounced examinations of his/her computer system(s), which may include retrieval and copying of all memory from hardware/software and/or removal of such system(s) for the purpose of conducting a more thorough inspection and will consent to having installed on his/her computer(s), at his/her expense, any hardware/software to monitor his/her computer use or prevent access to particular materials. The defendant hereby consents to periodic inspection of any such installed hardware/software to ensure it is functioning properly.

The defendant shall provide the U.S. Pretrial Services & Probation Office with accurate information about his/her entire computer system (hardware/software); all passwords used by her; and her Internet Service Provider(s); and will abide by all rules of the Computer Restriction and Monitoring Program.

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CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$1,100.00		\$.00	\$1,200,000.00

- ☐ The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
- ☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

U.S. Department of Education
550 12th St. SW
Room PCP-6001
Washington D.C. 20202

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- ☐ Restitution amount ordered pursuant to plea agreement \$
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- | | | |
|--------------------------------------------------------------------------------|-------------------------------|--------------------------------------------------------------|
| <input checked="" type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input checked="" type="checkbox"/> restitution |
| <input type="checkbox"/> the interest requirement for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution is modified as follows: |

* 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.

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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 payments of \$ _____ due immediately, balance due
☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D** ☒ If restitution is not paid in full, Defendant shall pay 25% of Defendant's gross income per month while incarcerated through the Federal Bureau of Prisons Inmate Responsibility.
- E** ☒ If a restitution balance remains upon release from imprisonment, payment is to commence no later than 60 days following release from imprisonment to a term of supervised release in equal monthly payments, or at least a minimum of 10% of Defendant's gross monthly income during the term of supervised release and thereafter.
- F** ☒ Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$1,100.00 for Counts 1, 2, 3, 4, 5, 6, 13, 14, 15, 16 and 17, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

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

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

- ☐ Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- ☐ Defendant shall receive credit on her restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- ☐ 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) JVT Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.