

NO.  
SUPREME COURT OF THE UNITED STATES

KENNETH MOBLEY	)
	)
Petitioner	)
	)
- VS. -	)
	)
UNITED STATES OF AMERICA	)
	)
Respondent.	)

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

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## **QUESTION PRESENTED FOR REVIEW**

**Question I Presented is: Was Mr. Mobley's sentence procedurally and substantively unreasonable as it was calculated on an excessive amount of loss unjustified by the facts of the case due to**

**Overcounting of the Loss Calculation,**

**Failure to Credit Monies and Collateral Received as to Reduce the Loss and Calculation, and Overcounting of Losses for Offenses not Cognizable in this Action?**

**Question II Presented is: Was The Restitution Order Supported By Facts in the Record as it was incorrect as to the amounts and individuals awarded restitution and in excess of the District Court's jurisdiction?**

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

Kenneth Mobley, 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. Kenneth Mobley*, Case No. 22-5096 as File No 23a0026n.0. That opinion affirmed the judgment of the United States District Court for the Eastern District of Kentucky in case number 5:21-cr-00012-KKC-MAS-1-1 where the original sentence committed Mobley to the custody of the Bureau of Prisons to a total term of 76 months imprisonment.

## **JURISDICTION**

- i. The opinion of the United States Court of Appeals for the Sixth Circuit was entered on 12 January 2023; pursuant to Rule 13.1 of the rules of this Court, the Petition is timely filed.
- ii. A petition for a rehearing en banc 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**

United States Sentencing Guidelines

## **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; Mobley was indicted for offenses against the laws of the United States and was convicted upon a plea of guilty within that district; he was sentenced to an aggregate term of imprisonment of 76 months.

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**

Kenneth Mobley was indicted for, *inter alia*, 18 U.S.C. § 1343 Wire Fraud, and 18 U.S.C. §1028A , Aggravated Identity Theft. Mobley entered his plea to guilty to those offenses, Counts 2 & 3 of that Indictment.

Kenneth Mobley was indicted for, *inter alia*, wire fraud and aggravated identity theft as follows:

#### **The Scheme**

10. Beginning on or about a date unknown, but no later than on or about February 20, 2020, and continuing through on or about September 3, 2020,

#### **KENNETH MOBLEY**

devised and intended to devise a scheme to defraud Car Dealerships A through E, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises.

#### **Manner and Means**

11. It was part of the scheme that the Defendant used stolen identities and personal identifying information to create false identification documents with his photograph and the identifying information of Victims A, B, and C.

12. The Defendant searched and applied to purchase vehicles using online car shopping

forums.

13. The Defendant presented false identification documents to car dealerships in the Eastern District of Kentucky, and elsewhere, to fraudulently purchase vehicles using the personal identifying information of Victims A, B, and C

14. On or about February 20, 2020, in Fayette County, in the Eastern District of Kentucky, and elsewhere,

**KENNETH MOBLEY**

for the purpose of executing the scheme described above, caused to be transmitted a writing, signal, or sound by means of a wire, radio, or television communication in interstate commerce, namely an electronic application to purchase a 2006 blue BMW 6 Series VIN: WBAEK13456CN75610 from Car Dealership A, using the identity of Victim A, that was transmitted in interstate commerce.

15. In furtherance of the scheme, on or about May 21, 2020, the Defendant fraudulently purchased a 2012 grey Maserati VIN: ZAM45KLA8C0062099 from Car Dealership B, using the identity of Victim B.

16. In furtherance of the scheme, on or about May 22, 2020, the Defendant fraudulently purchased a 2016 silver Maserati VIN: ZAM45MMA5G0 170633 from Car Dealership C, using the identity of Victim B.

17. In furtherance of the scheme, on or about August 13, 2020, the Defendant fraudulently purchased a 2016 white Dodge Charger Hellcat VIN: 2C3DXL97GH338834 from Car Dealership D, using the identity of Victim C.

18. In furtherance of the scheme, on or about August 14, 2020, the Defendant fraudulently purchased a yellow 2017 Dodge Charger Hellcat VIN: 2C3CDXL91HH522815 from Car Dealership E, using the identity of Victim C.

All in violation of Title 18, United States Code, Section 1343.

**COUNT3  
18 U.S.C. § 1028A(a)(l)**

19. On or about February 20, 2020, in Fayette County, in the Eastern District of Kentucky,

**KENNETH MOBLEY**

did knowingly use, without lawful authority, a means of identification of another person, that is, the name, social security, and date of birth of Victim A, during and in relation to a felony violation enumerated in 18 U.S.C. § 1028A, specifically, wire fraud, knowing that the means of identification belonged to another actual person, all in violation of Title 18, United States Code, Section 1028A(a)(l).

Subsequently Mr. Mobley entered a plea of guilty pursuant to a Plea Agreement to Wire Fraud and Aggravated Identity Theft. The Plea Agreement included a partial Waiver of Appeal that permitted Mobley to appeal his sentence. At his plea colloquy Mr. Mobley pled guilty, agreeing to the statement of facts as outlined in his Plea Agreement.

Mr. Mobley objected to an over-attribution of loss as to increase his sentencing level, noting that as to his understanding the auto dealership lots never lost rights in the vehicles.

The United States disagreed, arguing sale price rather than actual cost controlled. Mr. Mobley's counsel raised this issue again at sentencing, arguing that at least a 2-level reduction in the sentencing level was warranted.

The District Court noted this was an interesting question but opined that, despite the Application Note commentary, the loss was broader as Mr. Mobley could not have done this without financing and overruled the objection.

Final Judgment was entered on January 25, 2022 adjudging Mobley guilty of Counts 2 and 3 and sentencing him to the imprisonment for a total term of 52 months on Count Two and 24 months on Count Three to be served consecutively for a total aggregate term of imprisonment of 76 months and restitution of \$55,178.87.

The Court of Appeals for the Sixth Circuit affirmed the District Court on all issues, finding

- 1) “The district court did not clearly err in calculating the loss amount as the total amount financed—an amount that accurately reflects Mobley’s culpability.” and
- 2) “The insurance company is arguably a victim as defined by the statute, as it stood in the place of one of the harmed car dealerships and was directly and proximately

harmed by Mobley's offense. As for the apartment complex, rental company, and home furnishing company, Mobley explicitly agreed to pay restitution at the ordered amount in his plea agreement and confirmed that he understood the provision at his rearraignment hearing. Including each of these companies in the restitution order was permitted under the statute, and the district court did not plainly err in including them in its restitution order."

This Petition follows.

## **REASONS FOR GRANTING THE WRIT**

**Question I Was Mr. Mobley's sentence procedurally and substantively unreasonable as it was calculated on an excessive amount of loss unjustified by the facts of the case due to**

**Overcounting of the Loss Calculation,**

**Failure to Credit Monies and Collateral Received as to Reduce the Loss and Calculation, and Overcounting of Losses for Offenses not Cognizable in this Action?**

How could Mr. Mobley's sentence be procedurally reasonable where the District Court used an erroneous calculation of his sentencing level based on a significant error in the amount of loss attributed to Mobley ? The effect was to wrongly inflated loss, failed to give required credit for monies received that reduced the loss, and added losses for non-cognizable conduct.

The loss for punishment sentencing level calculations must be the real loss as shown by the government and must be reduced overall by the amounts the purported victims recovered. The government only submitted transaction sheets of sales price with no attention to the actual value or cost of the vehicles at issue, any principle balances, amounts paid nor the amounts recovered as to make the dealerships whole. This was insufficient as to make an actual loss calculation impossible such that the calculation used was outside the universe of acceptable computation as it failed to provide the data needed for an acceptable computation.

The only information on actual loss was as to restitution, which showed a far smaller losses to the dealerships than that upon which Mobley's inflated sentencing level was set.

And the loss calculation included vehicles that were not obtained by wire fraud such that those loss values should not have been used to increase Mobley's sentencing level.

The amount of loss under U.S.S.G. §2B1.1 in this case requires

- 1) Calculation of the greater of the actual loss or the intended loss and

2) ***Reduction of the loss by the amount/collateral recovered.*** (emphasis added)

The Guidelines provision relevant in this case is U.S.S.G. §2B1.1 See *United States v. Wendlandt*, 714 F.3d 388, 393-394 (6<sup>th</sup> Cir. 2013) ; *United States v. Woods*, 554 F.3dd 611 (6<sup>th</sup> Cir. 2019); *United States v. Chichy*, 1 F.3d 1501 (6<sup>th</sup> Cir. 1993)

Loss is most often going to be “the greater of actual loss or intended loss.” U.S.S.G. § 2B1.1 cmt. n.3(A). The District Court was required to use either actual or intended loss where such loss could reasonably be determined. U.S.S.G. § 2B1.1 cmt. n.3(B). “Actual loss” is “the reasonably foreseeable pecuniary harm that resulted from the offense.” *Id.*

Application Note 3 to U.S.S.G. §2B1.1 excludes from the loss calculation “(i) Interest of any kind, finance charges, late fees, penalties, amounts based on an agreed-upon return or rate of return, or other similar costs.”

And that calculation includes as credits against loss as to reduce it total loss:

- (i) The money returned, and the fair market value of the property returned and the services rendered, by the defendant or other persons acting jointly with the defendant, to the victim before the offense was detected. ...
- (ii) In a case involving collateral pledged or otherwise provided by the defendant, the amount the victim has recovered at the time of sentencing from disposition of the collateral, or if the collateral has not been disposed of by that time, the fair market value of the collateral at the time of sentencing.
- (iii) Notwithstanding clause (ii), in the case of a fraud involving a mortgage loan, if the collateral has not been disposed of by the time of sentencing, use the fair market value of the collateral as of the date on which the guilt of the defendant has been established, ...

These factors are all used to build the advisory sentencing range under the Sentencing Guidelines.

Mr. Mobley objected to an over-attribution of loss as to increase his sentencing level, noting that as to his understanding the auto dealership lots never lost rights in the vehicles.

*The Loss Attributed to Mobley in Increasing His Offense Level was Clearly Erroneous*

*and in Excess of a Correct Amount Based on the Documents Showing the Cost of the Vehicles as to Be Outside the Universe of Acceptable Computation*

Mobley pled to a wire fraud count for offenses that occurred between February 20, 2020 – September 3, 2020 based on a single email. (PSR, PageID 265-266

The base level of Mobley's offense was a 7 but was increased +12 points due to an asserted loss amount of more than \$250,000 but less than \$550,000 Mobley objected to this. The United States supported it, arguing sale price rather than actual cost controlled.

But examination of the tendered documents regarding the actual loss from the vehicles began with an erroneous calculation of the loss put forth by the government. Examination of the documents tendered with and included as part of the Presentence Report, and its narrative, show the *actual cost* of the vehicles involved:

<b>Vehicle Cost</b>	<b>Vehicle</b>
57,260	2017 yellow Dodge Charger Hellcat
40,388	2016 white Dodge Charger Hellcat
59,974	2016 silver Maserati
59,974	2012 grey Maserati
12,900	2006 BMW convertible (documentation was not included for this vehicle)
<b>\$230,496 – total of vehicles cost (but not loss)</b>	

This actual loss of \$230,496 warranted a sentencing level enhancement of only +10 , not the +12 used in Mobley's sentencing calculation, and would have reduced Mobley's sentencing range to 37 to 46 months from 42 to 57 months under which he was sentenced. U.S.S.G. §2B1.1(F); U.S.S.G. §5A, Sentencing Table. This prejudice to Mobley requires his sentence be vacated and remanded to a lesser sentence based on this reduction in his sentencing level. These documents also included various impermissible amounts and fees that could not be counted per Application Note 3 to U.S.S.G. §2B1.1. At most, Mobley should have only been given a +10

point increase rather than +12, and increasing his sentence was procedurally unreasonable.

The District Court disagreed, noting:

And that was central to the scheme. The cost was the amount financed. That's the amount of the loss. Certain things were rolled into that, admittedly, that we wouldn't normally take into consideration, but that's what the defendant had to get in order to get the car. He never intended to pay that amount, the amount he financed.

This was incorrect, not supported by facts and Mobley's sentencing must be vacated and this matter remanded for a new, reduced sentence.

Further, this cost is not the only reduction in loss calculation as to Mobley as that true loss under the Guidelines is the cost *less* the amounts paid or recovered.

*The Loss Attributed to Mobley in Increasing His Offense Level was Clearly Erroneous as There Was No Attempt to Calculate the True Loss Resulting from Payments or Returned or Recovered Collateral*

Application Note 3 to U.S.S.G. §2B1.1 makes it clear that in calculating the loss there must be a reduction for loss due to credits for monies paid, collateral, and other items that reduce the true loss to the victim.

Yet there was no effort to introduce those amounts or calculations in Mobley's case, making any acceptable computation impossible.

The Judgment in this case demonstrates that the actual losses were *far less* than that claimed from the vehicle costs. The Mandatory Restitution order contained therein lists restitution of only \$55,178.87 (emphasis added) as detailed therein:

Name of Payee	Total Loss***	Restitution Ordered
Fitzgerald Motors, Inc.	\$2,760.00	\$2,760.00
Federated Insurance, Loss #574499-1	\$31, 946.01	\$31, 946.01
Brothers Auto	\$1,490.00	\$1,490.00
Park Lane Apartments	\$7,508.77	\$7,508.77

<b>TOTALS</b>	<b>\$55,178.87</b>	<b>\$55,178.87</b>
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The loss calculation should have included credits for the amounts paid by Mobley, collateral recovery and other cost recovery that reduced the \$230,496.00 purported loss down to a restitution order of only \$55,178.87. While restitution and amount of loss for the purposes of U.S.S.G. § 2B1.1 are not the same, the Guidelines require a credit in the loss calculation and the government must show the amount of loss, and thus the restitution amount establishes this.

It was clear that the actual final true loss to the victims was far less than that calculated in the Presentence Report and on what the District Court based its sentence for Mobley. Mobley's sentence of Fifty-Two (52) months was erroneous as his offense level should only have been, at most, a 13 instead of the 16 given him. such that his sentencing range would have been, at most, 33 to 41 months. U.S.S.G. §2B1.1 (b)(1)(D), Table Of Specific Offense Characteristics.

This was incorrect, and Mobley's sentencing must be vacated and this matter remanded for a new, reduced sentence.

Further, examination of the Government's Exhibits to its Sentencing Memorandum matched to the Restitution Order shows only a Sale Contract to Fitzgerald Countryside Automall; it only listed the vehicles at issue and their value,, rather than loss to any victims:

The United States tenders the attached supporting documentation reflecting the purchase price of the five automobiles, as reflected in the PSR ¶¶ 9-10:

### **Car Value Exhibit**

2017 yellow Dodge Charger Hellcat  
VIN: 2C3CDXL91HH522815  
\$ 67,750.17 Exhibit 1

2016 white Dodge Charger Hellcat  
VIN: 2C3DXL97GH338834  
\$ 64,885.26 Exhibits 2 & 3

2016 silver Maserati  
VIN: ZAM45MMA5G0170633  
\$ 64,684.34 Exhibits 4 & 5

2012 grey Maserati  
VIN: WBAEK13456CN75610  
\$ 43,075.10 Exhibits 6 & 7

2006 BMW convertible  
VIN: WBAEK13456CN75610  
\$ 12,900.00 Exhibit 8

Yet only the Fitzgerald vehicle is listed in the Mandatory Restitution Order for \$2,760.00 in restitution. This indicates that the only proper loss detailed in the Mandatory Restitution Order was \$2,760.00 and, therefore, Mobley's sentencing level should only be a 7 per U.S.S.G. §2B1.1 (a) (1) and U.S.S.G. §2B1.1 (b)(1)(A), Table Of Specific Offense Characteristics.

That reduces Mobley's sentencing range to a much reduced 15 to 21 months imprisonment, at most; his sentence should be vacated and this matter remanded for resentencing to this much lower sentence.

*The Loss Attributed to Mobley in Increasing His Offense Level was Clearly Erroneous as Only One Vehicle Was the Subject of Wire Fraud.*

Mobley was indicted for one act of wire fraud. But as detailed in the Indictment and in the Presentence Report, that one act of wire fraud related to only one purchase of one vehicle.

On or about February 20, 2020, in Fayette County, in Eastern District of Kentucky, the defendant fraudulently purchased a 2006 blue BMW 6 Series VIN: WBAEK13456CN75610 (valued at \$12,900) from a car dealership in Lexington, Kentucky. In purchasing the 2006 blue BMW, the defendant submitted an electronic application using the identity of A.G., which constituted an interstate wire communication. The defendant used the name, social security, and date of birth of A.G. without lawful authority, and knowing it belonged to another person. (emphasis added)

An essential element of a wire fraud offense is the use of a wire communication in interstate commerce. The other vehicles activity did not involve wire fraud in any way:

10. In furtherance of the scheme, on or about May 21, 2020, the defendant fraudulently purchased a 2012 grey Maserati VIN: ZAM45KLA8C0062099 (valued at \$43,075.10) from a car dealership in New Port Richey, Florida, using the identity of Victim A.J.

In furtherance of the scheme, on or about May 22, 2020, the defendant fraudulently purchased a 2016 silver Maserati VIN: ZAM45MMA5G0170633 (valued at \$64,684.34) from a car dealership in Orlando, Florida, using the identity of Victim A.J.

In furtherance of the scheme, on August 13, 2020, the defendant fraudulently purchased a 2016 white Dodge Charger Hellcat VIN 2C3DXL97GH338834 (valued at \$64,885.26) from a car dealership Punta Gorda, Florida, using the identity of Victim T.M.

In furtherance of the scheme, on or about August 14, 2020, the defendant fraudulently purchased a yellow 2017 Dodge Charger Hellcat VIN: 2C3CDXL91HH522815 (valued at \$67,750.17) from a car dealership in Clearwater, Florida, using the identity of Victim T.M. The total value of the fraudulently purchased vehicles is \$253,294.87.

It is the use of wire communications to further a fraud that is the crime, not fraudulent acts themselves. Although added to the Indictment, none of the other vehicle frauds listed in the Indictment and used to radically increase Mobley's sentencing level were part of the crime to which he pled guilty.

The only wire fraud was the fraudulent purchase of the 2006 blue BMW 6 Series.

Under U.S.S.G. §2B1.1 (b)(1)(B) table of specific offense characteristics, the actual sentencing level for Mobley would be a 9 instead of the 16 given him. This would have radically reduced his sentence range to 21 to 27 months from the much longer punishment he was given.

This was incorrect, and Mobley's sentencing must be vacated and this matter remanded for a new, reduced sentence.

To the extent some of these errors were not objected to before the District Court, they are errors that are plain and evident on the record, they prejudiced Mr. Mobley in his substantial rights as they significantly increased his Sentencing Range as advise excessive imprisonment,

and it is appropriate for this Court to exercise its judicial discretion to review this matter, despite the procedural default, as it is just to correct these errors as to that excessive punishment.

In the alternative, the record here is insufficient to permit an appellate court to exercise its appellate review powers to decide these issues. As such, this matter should be remanded to the District Court for further fact finding as to precisely what losses, what credits and which actions warrant a calculation under the Sentencing Guidelines to advise the District Court on the proper sentence for Mr. Mobley.

**Issue II Was The Restitution Order Supported By Facts in the Record as it was incorrect as to the amounts and individuals awarded restitution and in excess of the District Court's jurisdiction.**

Both 18 USC §3663 and 18 USC §3663 A <sup>1</sup> address the award of restitution to a victim of an offense, who is defined as person directly and proximately harmed as a result of the commission of an offense

18 USC §3663 provides that the district court may order, if agreed to by the parties in a pleas agreement, restitution to persons other than the victim of the offense. 18 USC §3663 (A) (1) (a) .)

Here there was no showing that most of the people for whom restitution had been ordered were victims as so defined of the offenses of which Mobley was found guilty. The ordered amounts and payees simply appeared in a notice filed by the United States and in the Plea Agreement without context showing any relation to Mobley's case.

The United States attempted to find the losses subject to restitution but was unable to do so, stating "Despite diligent efforts to obtain restitution amounts from the remaining car dealership victims, the United States has been unable to quantify the restitution owed and is not seeking any restitution for the other identified car dealership victims."

The Mandatory Restitution order pursuant to 18 USC § 3663A set restitution of only \$55,178.87 (emphasis added) (R. 62, Judgment, p. 6, PageID 246) :

Name of Payee	Total Loss***	Restitution Ordered
Fitzgerald Motors, Inc.	\$2,760.00	\$2,760.00
Federated Insurance, Loss	\$31, 946.01	\$31, 946.01

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<sup>1</sup> 18 USC 3663A (c) (2) notes that "In the case of a plea agreement that does not result in a conviction for an offense described in paragraph (1), this section shall apply only if the plea specifically states that an offense listed under such paragraph gave rise to the plea agreement." But that is inapplicable here.

#574499-1		
Brothers Auto	\$1,490.00	\$1,490.00
Park Lane Apartments	\$7,508.77	\$7,508.77
<b>TOTALS</b>	<b>\$55,178.87</b>	<b>\$55,178.87</b>

Additional Restitution Payees were:

Rent A Center, restitution ordered=\$4720.10  
 Buddy's Home Furnishings, restitution ordered=\$6735.99

But the vehicles at issue here listed in the Indictment and in the United States Sentencing

Memorandum, with exhibits documenting sales, were:

**Car Value Exhibit**

2017 yellow Dodge Charger Hellcat  
 VIN: 2C3CDXL91HH522815  
 \$ 67,750.17 Exhibit 1

2016 white Dodge Charger Hellcat  
 VIN: 2C3DXL97GH338834  
 \$ 64,885.26 Exhibits 2 & 3

2016 silver Maserati  
 VIN: ZAM45MMA5G0170633  
 \$ 64,684.34 Exhibits 4 & 5

2012 grey Maserati  
 VIN: WBAEK13456CN75610  
 \$ 43,075.10 Exhibits 6 & 7

2006 BMW convertible  
 VIN: WBAEK13456CN75610  
 \$ 12,900.00 Exhibit 8

The Indictment lists these vehicles and anonymous victims but makes no mention of Federated Insurance, Brothers Auto, Park Lane Apartments, Rent A Center nor Buddy's Home Furnishings.

The Plea Agreement does address these payees:

10. The Defendant agrees to the imposition of a money judgment in the amount of restitution as determined by the Court at sentencing. The Defendant agrees the restitution

amount should include the losses incurred by the victims in *Florida vs. Kenneth I'Tobley*, Case No. 01-2020-CF-002697-A, pending in the Eight Judicial Circuit in Gainesville, Florida, in particular: \$7,508.77 to Park Lane Apartments, \$4,720.10 to Rent-A-Center, and \$6,735.99 to Buddy's.

This was address at the Plea Colloquy/Rearraignment whereby Mr. Mobley agreed to such restitution to these parties. (It was also listed in the Notice of Restitution Amounts.

But there were no grounds to order this and in excess of jurisdiction to order payments to people and businesses unrelated to the instant prosecution nor shown to be related to a federal crime per 18 USC § 3663 and 18 U.S.C. §3231.

This was error to award some of the restitution amounts as set out in the Judgment as the people to whom they are awarded were not victims of the crimes to which Mobley was charged and pled guilty.

The Order of Restitution in the Judgment is illegal, in part; restitution requires an order relating to the correct victim in a specific amount, measurable amount.

18 USC § 3663 sets out that the amount of restitution must be set upon consideration of I) the amount of loss to the victim and II) the financial resources and needs of the defendant and his dependents. 18 USC § 3663 (a)(1)(B). It further sets out that the amount is calculated by the amount of loss of property, amount of needed medical or therapeutic services needed by the victim or the amount of lost income of the victim. 18 USC § 3663 (b)(1) & (2). The restitution ordered must be the actual loss to the victim. See *United States v. Finkley*, 324 F.3d 401 (6th Cir. 2003) It would be improper to calculate restitution on a defendant's gains in place of the victim's actual loss. See *United States v. Zangari*, 677 F.3d 86 (2nd Cir. 2002); *United States v. Fair*, 699 F.3d 508 (App DC 2012) Where a loss is not proven, restitution should not be ordered. See *United States v. Griffith*, 584 F.3d 1004 (10th Cir. 2009) It is improper to set a restitution

amount without full consideration of the facts where a defendant contests the loss was caused by the offense conduct. See *United States v. Andrews*, 600 F.3d 1167 (9th Cir 2010)

A "victim" is one who is directly or proximately harmed as a result of the commission of the offense.

18 USC § 3664 requires the district order the provision of information about the restitution and victim loss sufficient for the exercise of the court's discretion in setting the restitution order. 18 USC § 3664(a) The Presentence Report asserted that restitution was mandatory in this case per 18 USC § 3663A. The requirements for a judgment establishing restitution are set out in 18 USC § 3612.

Restitution may be agreed to in a plea agreement. But while Mr. Mobley agreed to make restitution, to extraneous individuals, that was an impermissible demand to make of him. There was no showing of any connection between Mobley's offense of conviction and these restitution orders, nor any showing of any proximate causal link between Mobley's conduct and the conduct relating to the restitution orders, nor that the District Court even had jurisdiction to entertain such orders.

Therefore, given that the restitution order is partially invalid and erroneous, that portion of the restitution of the judgment should be vacated and stricken. These errors are plain and such as should be reviewed by this Court. See, e.g., *United States v. Smith*, 919 F.2d 123 (10<sup>th</sup> Cir. 1990) These errors are plain as they were mistakes directly in conflict with statutory direction.

They affected Mr. Mobley's substantial rights by putting him at risk of an order to pay parties not involved in the federal case in which he is a defendant.

They are appropriate for the exercise of the judicial discretion of this Court as such clear error affecting substantial rights undermines the appearance of justice and fairness of the courts

though such error. Such error gives the appearance of arbitrary justice disconnected from the law, the crime charged, the plea agreement or the plea of guilty itself.

It is respectfully submitted that the sentence be vacated in this matter and this case remanded to the district court for resentencing with a corrected order of restitution in accordance with the ruling of this Court.

### **CONCLUSION**

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

Respectfully submitted,

/s Michael Losavio  
Michael M. Losavio  
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(502) 417-4970  
Counsel of Record for  
Petitioner Kenneth Mobley

Certification of Word Count and Petition Length

The undersigned certifies that this Petition for a Writ of Certiorari does not exceed 9000 words nor 45 pages, not counting the appendix materials, and is in compliance with the length rules of Supreme Court Rule 33.

/s Michael Losavio  
Michael Losavio  
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Counsel of Record for Petitioner  
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 Hon. Elizabeth B. Prelogar, Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D. C. 20530-0001

This 15<sup>th</sup> day of January 2023

/s Michael Losavio  
Michael Losavio  
1642 Jaeger Avenue  
Louisville, Kentucky 40205  
losavio@losavio.win.net  
(502) 417-4970  
Counsel of Record for Petitioner  
pursuant to the Criminal Justice Act

**A**

**P**

**P**

**E**

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**I**

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**Statutes Involved in this Petition**

United States Sentencing Guidelines

18 USC §3553



NOT RECOMMENDED FOR PUBLICATION  
File Name: 23a0026n.06

No. 22-5096

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	ON APPEAL FROM THE UNITED
v.	)	STATES DISTRICT COURT FOR
	)	THE EASTERN DISTRICT OF
KENNETH MOBLEY,	)	KENTUCKY
Defendant-Appellant.	)	
	)	OPINION

Before: BATCHELDER, STRANCH, and DAVIS, Circuit Judges.

**JANE B. STRANCH, Circuit Judge.** Kenneth Mobley appeals his sentence totaling 76 months' imprisonment for wire fraud and aggravated identity theft based on his fraudulent procurement of luxury cars. The district court used the total sales price, including various service and finance charges, in the total loss amount to calculate his Guidelines range. Mobley appeals, arguing that his sentence is unreasonable, and that the restitution order is not supported by facts in the record. Because the district court did not clearly err in calculating the loss amount and did not plainly err in ordering restitution, we **AFFIRM** the district court's judgment.

**1. BACKGROUND**

Over the course of six months in 2020, Mobley defrauded car dealerships to obtain luxury cars. Using stolen identifying information purchased on the "dark web," Mobley created false identifications and presented them to car dealerships to purchase cars on credit. All told, Mobley

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obtained five cars, the value of which increased with each fraudulent purchase. The first fraudulent purchase occurred in Lexington, Kentucky, while the other four occurred in Florida.

A grand jury returned a three-count indictment charging Mobley in the Eastern District of Kentucky with felon in possession of a firearm, wire fraud, and aggravated identity theft. Mobley pled guilty to wire fraud and aggravated identity theft, and the Government agreed it would move to dismiss the firearm count at sentencing. In the plea agreement, Mobley agreed to the imposition of restitution, including losses incurred by victims in a pending state court case in Florida. At his rearraignment hearing, Mobley confirmed that he read and understood the plea agreement, including the provision regarding restitution.

The parties disputed the loss amount attributable to the wire fraud count. The Presentence Investigation Report (PSR) calculated a total offense level of 16, including a 12-level enhancement pursuant to USSG § 2B1.1.(b)(1) based on a loss amount of \$253,294.87. That amount represents the total of the amount financed to fraudulently obtain the five cars.

Mobley objected to the loss amount specified in the PSR. He argued that charges for “processing fees and [gap] insurance coverage” and “substantial finance charges”—totaling approximately \$45,000—should not be included in the loss amount according to the commentary to § 2B1.1. Excluding any of those charges, Mobley contends that his loss amount would fall below the threshold of \$250,000 for a 12-level enhancement, entitling him to a two-level reduction in his total offense level and a lower Guidelines range. The Government disagreed, arguing that the amount considered in the PSR accurately reflected the intended loss for the crime because the miscellaneous expenses were “part and parcel of the fraud,” not improper “after-the-fact” expenses.

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At sentencing, the district court adopted the Government's position and overruled Mobley's objection. It reasoned that the "object [of the scheme] was to get the cars, and in order to get the cars, [Mobley] had to finance [them]" and the expenses were not accrued after the purchase. With the 12-level enhancement, Mobley's Guidelines range on the wire fraud count was 46 to 57 months with an additional 24-month consecutive term on the aggravated identity theft count. Ultimately, the court imposed a Guidelines sentence of 52 months on the wire fraud count to be followed by the 24-month consecutive term on the aggravated identity theft count for a total term of 76 months' imprisonment. The judgment also provided for restitution in the amount of \$55,178.87 payable to two car dealerships, an apartment complex, an insurance company, a rental company, and a home furnishing company.

#### § ANALYSIS

On appeal, Mobley raises two issues regarding his sentence: (1) it was unreasonable because the loss amount was overstated, which resulted in a higher Guidelines range, and (2) the restitution order was erroneous. "We review a district court's calculation of the 'amount of loss' for clear error, but consider the methodology behind it *de novo*." *United States v. White*, 846 F.3d 170, 179 (6th Cir. 2017) (quoting *United States v. Meda*, 812 F.3d 502, 519 (6th Cir. 2015)). To demonstrate clear error, the defendant "must show the calculation 'was not only inexact but outside the universe of acceptable computations.'" *Id.* (quoting *United States v. Healy*, 553 F. App'x 560, 564 (6th Cir. 2014)). Arguments not preserved in the district court at sentencing are reviewed

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under the plain error standard.<sup>1</sup> *United States v. Vonner*, 516 F.3d 382, 385 (6th Cir. 2008) (en banc).

### **S. The District Court’s Loss Amount Finding**

Under the Guidelines commentary, the loss caused by fraud is the “greater of actual loss or intended loss,” with intended loss defined as “the pecuniary harm that the defendant purposely sought to inflict.” USSG § 2B1.1, comment. (n.3(A)(i)-(ii)).<sup>2</sup> But “[i]nterest of any kind, finance charges, late fees, penalties, amounts based on an agreed-upon return or rate of return, [and] other similar costs,” should be excluded from the loss calculation. *Id.*, comment. (n.3(D)(i)). Similarly, the loss amount should be reduced by the fair market value of any property returned to the victim “before the offense was detected” and amounts recovered by the victim “in [cases] involving collateral pledged or otherwise provided by the defendant.” *Id.*, comment. (n.3(E)(i)-(ii)).

At sentencing, the Government bears the burden of proving the loss amount by a preponderance of evidence, and “the district court ‘need only make a reasonable estimate’ of the amount.” *United States v. Jones*, 641 F.3d 706, 712 (6th Cir. 2011) (quoting USSG § 2B1.1, comment. (n.3(C))). In this case, the court found that Mobley intended to inflict over \$250,000 of pecuniary harm to the victims as supported by the Government’s exhibits detailing the total amount Mobley financed to obtain the five cars, which exceeded their cash price. As he did at sentencing, Mobley contends that the loss amount was overstated by impermissibly including extraneous charges that he argues should have been excluded according to the Guidelines commentary.

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<sup>1</sup> The plain error standard requires a challenger to show error that was obvious or clear, affected substantial rights, and affected the fairness, integrity, or public reputation of the judicial proceedings. *United States v. Vonner*, 516 U.S. 382, (6th Cir. 2008) (en banc).

Mobley does not challenge the validity of the Guidelines commentary defining loss. We have previously held that the commentary defining loss should be afforded deference under *Stinson v. United States*, 508 U.S. 36, (1993), because it merely interprets the undefined phrase “loss” in the Guidelines rather than adding to it. *See United States v. Murphy*, 815 F. App’x 918, 924 (6th Cir. 2020) (distinguishing *United States v. Havis*, 927 F.3d 382 (6th Cir. 2019) (en banc)).

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Additionally, for the first time on appeal, he argues that the loss amount should have been reduced by “amounts paid by Mobley, collateral recovery and other cost recovery” and should only reflect the value of one vehicle because the other four were not procured by wire fraud. These unpreserved arguments will be reviewed under the plain error standard. *Vonner*, 516 F.3d at 385.

Intended loss has “long been defined as ‘the loss the defendant subjectively intended to inflict on the victim, e.g., the amount the defendant intended not to repay.’” *United States v. Montgomery*, 592 F. App’x 411, 418 (6th Cir. 2014) (quoting *United States v. Moored*, 38 F.3d 1419, 1427 (6th Cir. 1994)). In this context, it is not clear error to find that the total amount necessary to finance a luxury car is the harm Mobley intended to inflict. Mobley’s entire scheme was predicated on using stolen personal identifying information to obtain cars *using those victims’ credit*. To be sure, the Guidelines commentary contemplates excluding “[i]nterest of any kind, finance charges, late fees, penalties, amounts based on an agreed-upon return or rate of return, [and] other similar costs” from the loss amount. USSG 2B1.1, comment. (n.3(D)(i)). But Mobley does not explain how things like insurance coverage, processing fees, and predelivery service fees fall under that commentary as “other similar costs.” Further, courts have found that the purpose of the exclusion-from-loss commentary is to ensure that “the offense level for a financial crime is not increased if the prosecution is delayed, even though the delay increases the cost of the crime.” *United States v. Peel*, 595 F.3d 763, 772 (7th Cir. 2010). The finance charges necessary for Mobley to fraudulently obtain the cars appear to be fixed charges included at the time of sale, not amounts that would increase over time.<sup>3</sup> Cf. *United States v. Pouparina*, 577 F. App’x 939, 941 (11th Cir. 2014) (holding closing costs should not be excluded because they were “a fixed amount that was incurred only when the loan was originally taken out”); *United States v. Longwell*, 410 F.

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<sup>1.</sup> Indeed, Mobley admits in reply that the “strong majority of car purchases . . . are financed.”

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App’x 684, 691 (4th Cir. 2011) (holding that “interest or penalties” defendant sought to discharge through bankruptcy should not be excluded from loss amount). The district court did not clearly err in calculating the loss amount as the total amount financed—an amount that accurately reflects Mobley’s culpability.

Mobley’s other, unpreserved arguments can be addressed quickly. His argument relying on cars that were recovered is not relevant because the cars were not recovered “before the offense was detected,” and this is not “a case involving collateral pledged or otherwise provided by [Mobley].” *See* USSG 2B1.1, comment. (n.3(E)(i)-(ii)). His argument that only one car was procured by wire fraud is belied by the record, and, even if it were not, it does not change the result. The wire fraud statute, 18 U.S.C. § 1343, requires a fraudulent scheme to cause a wire communication, but that communication ““need not be an essential element of the scheme,”” only ““incident to an essential part of the scheme,’ or ‘a step in [the] plot.”” *United States v. Shanshan Du*, 570 F. App’x 490, 505 (6th Cir. 2014) (quoting *Schmuck v. United States*, 489 U.S. 705, 710-11 (1989)).

The district court did not clearly or plainly err in calculating the loss amount attributable to Mobley’s fraudulent scheme to procure luxury vehicles.

### **1. The District Court’s Restitution Order**

For the first time on appeal, Mobley takes issue with the district court’s restitution order payable to two car dealerships, an apartment complex, an insurance company, a rental company, and a home furnishing company. He challenges the inclusion of restitution to the insurance company in the amount of \$31,946.01, the apartment complex in the amount of \$7,508.77, the rental company in the amount of \$4720.10, and the home furnishing company in the amount of

No. 22-5096, *United States v. Mobley*

\$6,735.99. We review this unpreserved argument as to restitution under the plain error standard.

*Vonner*, 516 F.3d at 385.

The district court may order that a defendant make restitution to any victim of a fraud crime or, “if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.” 18 U.S.C. § 3663(a)(1)(A). The statute defines “victim” as a “person directly and proximately harmed” because of the offense. *Id.* § 3663(a)(2). The district court may “also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement.” *Id.* § 3663(a)(3). The insurance company is arguably a victim as defined by the statute, as it stood in the place of one of the harmed car dealerships and was directly and proximately harmed by Mobley’s offense. As for the apartment complex, rental company, and home furnishing company, Mobley explicitly agreed to pay restitution at the ordered amount in his plea agreement and confirmed that he understood the provision at his rearraignment hearing. Including each of these companies in the restitution order was permitted under the statute, and the district court did not plainly err in including them in its restitution order. *See United States v. Winans*, 748 F.3d 268, 272-73 (6th Cir. 2014) (affirming restitution order that included “persons other than the victim of the [wire fraud] offense” pursuant to plea agreement).

#### 14. CONCLUSION

Because we find that the district court did not clearly err in calculating the loss amount and did not plainly err in ordering restitution, we **AFFIRM** the district court’s judgment.

**UNITED STATES DISTRICT COURT**  
**Eastern District of Kentucky - Central Division at Lexington**

UNITED STATES OF AMERICA

v.

Kenneth Mobley

) **AMENDED JUDGMENT IN A CRIMINAL CASE**

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) Case Number:

5:21-CR-012-KKC-01

) USM Number:

32493-509

) George Scott Hayworth  
Defendant's Attorney

**Date of Original Judgment:** January 25, 2022

*(Or Date of Last Amended Judgment)*

**THE DEFENDANT:**

I Sipleded guilty to count(s) --'2'---&"----'3---[""D--'E'---#-'--'l"""]

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

D was found guilty on count(s) -----  
a ft er a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<b>Title &amp; Section</b>	<b>Nature of Offense</b>	<b>Offense Ended</b>	<b>Count</b>
18:1343	Wire Fraud	September 3, 2020	2
18:1028A	Aggravated Identity Theft	February 20, 2020	3

The defendant is sentenced as provided in pages 2 through  
Sentencing Refonn Act of 1984.

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

8 of this judgment. The sentence is imposed pursuant to the

---

ISi Count(s) I [DE #1] ISi isD 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 Karen K. Caldwell, U.S. District Judge

Name and Title of Judge

,

Date

DEFENDANT: Kenneth Mobley  
CASE NUMBER: 5:21-CR-0 12-KKC-01

## IMPRISONMENT

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

**Fifty-Two (52) Months on Count 2 and Twenty-Four (24) Months on Count 3, to run consecutively to Count 2, for a total term of SEVENTY-SIX (76) MONTHS**

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

That the defendant participate in any kind of drug and alcohol treatment, to include the 500-Hour RDAP Program.  
That the defendant participate in a job skills and/or vocational training program.  
That the defendant participate in a financial management training program.  
That the defendant participate in a mental/physical health evaluation program and follow any necessary treatment as recommended.  
That the defendant be designated to the facility nearest his home for which he qualifies, preferably FMC-Lexington.

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

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

D at \_\_\_\_\_ D a.m. • p.m. on \_\_\_\_\_

D as notified by the United States Marshal.

1. The defendant shall self-Tender for service of sentence at the institution designated by the Bureau of Prisons: D before 2 p.m. on

D as notified by the United States Marshal.

D as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on

to

with a certified copy of this judgment.

at

UNITED STATES MARSHAL

By

DEPUTY UNITED STATES MARSHAL

DEFENDANT: Kenneth Mobley  
CASE NUMBER: 5:21-CR-012-K.KC-01

## SUPERVISED RELEASE

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

**Three (3) Years on Count 2 and One (1) Year on Count 3, to run concurrently to Count 2, for a total term of  
THREE (3) YEARS**

## 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.  
 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.  IIZ 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.  IIZ You must cooperate in the collection of DNA as directed by the probation officer. (Check, *if applicable.*)
6.  D 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 the location where you reside, work, are a student, or were convicted of a qualifying offense. (Check, *if applicable.*)
7.  D 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: Kenneth Mobley  
CASE NUMBER: 5:21-CR-0 12-KKC-01

## 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 lasers).
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](http://www.uscourts.gov).**

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

DEFENDANT: Kenneth Mobley  
CASE NUMBER: 5:21-CR-0 12-KKC-0 I

## SPECIAL CONDITIONS OF SUPERVISION

- I. You must abstain from the use of alcohol.
2. You must submit to periodic drug and alcohol testing and must participate in a substance abuse treatment program at the direction and discretion of the probation officer until you are released from supervision.
3. You must refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing which is required as a condition of release.
4. 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.
5. You must not purchase, possess, use, distribute or administer any controlled substance or paraphernalia related to controlled substances, except as prescribed by a physician, and must not frequent places where controlled substances are illegally sold, used, distributed or administered. If prescribed medication, you must use the medication as directed by your physician.
6. You must provide the probation officer with access to any requested financial information.
7. 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.

DEFENDANT: Kenneth Mobley  
CASE NUMBER: 5:21-CR-012-KKC-01

## CRIMINAL MONETARY PENALTIES

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

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
<b>TOTALS</b>	\$ 200.00 (\$JOO/Count)	\$ 55,178.87	\$ Waived	\$ N/A	\$ N/A

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

IIZI 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.

<b>Name of Payee</b>	Total Loss***	Restitution Ordered	Priority or Percentage
Fitzgerald Motors, Inc. 27365 U.S. 19 North Clearwater, Florida 33761	\$2,760.00	*\$2,760.00	
Federated Insurance, Loss #574499-1 P.O. Box 486 Owatonna, Minnesota 55060	*\$31,964.01	*\$31,964.01	
Brothers Auto 285 East New Circle Road Lexington, Kentucky 40505	\$1,490.00	\$1,490.00	
Park Lane Apartments 5900 SW 76 <sup>th</sup> Court Gainesville, Florida 32608	\$7,508.77	\$7,508.77	

## **TOTALS**

D Restitution amount ordered pursuant to plea agreement \$

D 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(!). 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).

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

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

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

\* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

\*\* 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, I 10, II0A, and I 13A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

Judgment-Page 7~ of8DEFENDANT: Kenneth Mobley  
CASE NUMBER: 5:21-CR-0 12-KKC-01**ADDITIONAL RESTITUTION PAYEES**

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
Rent A Center 3226 SW 35 <sup>th</sup> Blvd, #302 Gainesville, Florida 32608	\$4,720.10	\$4,720.10	
Buddy's Home Furnishings 2706 SW 34 <sup>th</sup> Street Gainesville, Florida 32608	\$6,735.99	\$6,735.99	

\* 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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DEFENDANT: Kenneth Mobley  
CASE NUMBER: 5:21-CR-012-KKC-01

### 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 55,378.87 due immediately, balance due not later than \_\_\_\_\_, or in accordance with D C,D , or D E, ISi F below; or Payment to begin D F below);
- B** D immediately (may be combined with • C, DD, or or
- C** 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 the date of this judgment; or
- D** 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** D Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 day,) 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** ISi Special instructions regarding the payment of criminal monetary penalties:

Criminal monetary penalties are payable to:  
Clerk, U.S. District Comt, Eastern District of Kentucky  
101 Ba!T Street, Room 206, Lexington KY 40507

### 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.

Restitution in an amount to be determined 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.

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

## D Joint and Several

Case Number Defendant and CoDefendant Names <i>(including defendant number)</i> Payee, if appropriate	Total Amount	Joint and Several Amount	Corresponding
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- The defendant shall pay the cost of prosecution.

## D The defendant shall pay the following comt cost(s):

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

Money Judgment in the amount of restitution.

Payments shall be applied in the following order: ( 1) assessment, (2) restitution principal, (3) restitution interest, (4) AV AA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.