

APPENDIX

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BRIDGETTE LENET JACKSON
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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION
12

13 UNITED STATES OF AMERICA,
14 Plaintiff,
15 v.
16 BRIDGETTE LENET JACKSON,
17 Defendant.
18

Case No. ED CR 15-326-R

EX PARTE APPLICATION FOR
HEARING RE: APPOINTED
COUNSEL; DECLARATION OF
COUNSEL
[PROPOSED] ORDER

19 Defendant Bridgette Lenet Jackson, through her attorney of record, Young J.
20 Kim, hereby applies *ex parte* for a hearing on appointed counsel. Ms. Jackson seeks to
21 change her counsel from Young J. Kim to counsel from the Indigent Defense Panel.
22 Ms. Jackson requests that this matter be set for a hearing on November 9, 2015, at 1:30
23 p.m., or as soon thereafter as counsel may be heard.

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1 The application for hearing regarding appointed counsel is based upon the
2 attached declaration of counsel, and the files and records of this case and any further
3 evidence that may be presented in relation to this application.

4 Respectfully submitted,

5 HILARYPOTASHNER
6 Federal Public Defender

7 DATED: November 6, 2015

By /S/ Young J. Kim
8 YOUNG J. KIM
9 Deputy Federal Public Defender
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DECLARATION OF YOUNG J. KIM

I, Young J. Kim, hereby state and declare as follows:

1. I am a Deputy Federal Public Defender in the Central District of California who is appointed to represent Bridgette Lenet Jackson in the above-entitled action.

2. Ms. Jackson is currently on pretrial release.

3. Recently, Ms. Jackson has expressed dissatisfaction with appointed counsel. She requested that I submit to the Court this request for a hearing to determine whether counsel from the Indigent Defense Panel should be appointed to represent her in all future proceedings.

4. On November 6, 2015, I contacted Assistant United States Attorney Amanda J. Klopff notifying her of my intent to file Defendant's Ex Parte Application for Hearing Re Appointed Counsel. Ms. Klopff does not oppose Defendant's request.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: November 6, 2015

/s/ Young J. Kim
YOUNG J. KIM
Deputy Federal Public Defender

HILARYPOTASHNER (Bar No. 167060)
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*Proposed counsel
is competent.*
[Signature]
11-10-2015.

Attorneys for Defendant
BRIDGETTE LENET JACKSON

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIDGETTE LENET JACKSON,

Defendant.

Case No. ED CR 15-326-R
~~PROPOSED~~ ^{DENYING} ORDER FOR HEARING
RE: APPOINTED COUNSEL

IT IS HEREBY ORDERED that Defendant Bridgette Lenet Jackson's request
for a hearing regarding appointed counsel be heard on November 9, 2015, at 1:30 p.m.

IT IS SO ORDERED.

DATED: November 10, 2015

By DENIED
HONORABLE MANUEL L. REAL
United States District Judge

Presented by:

/s/ Young J. Kim
Deputy Federal Public Defender

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 5 2018

FOR THE NINTH CIRCUIT

**MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

No. 16-50111

Plaintiff-Appellee,

D.C. No. 2:15-cr-00326-R-1

v.

**BRIDGETTE LENET JACKSON, AKA
Bridgette Levet Jackson,**

MEMORANDUM*

Defendant-Appellant.

**Appeal from the United States District Court
For the Central District of California
Manuel L. Real, District Judge, Presiding**

**Argued and Submitted December 8, 2017
Pasadena, California**

Before: KELLY, CALLAHAN, and BEA, Circuit Judges.**

Defendant-Appellant Bridgette Jackson (“Jackson”) was convicted, after a jury trial, of conspiracy to possess and aiding and abetting in the possession of fifteen or more unauthorized access devices and aggravated identity theft. Jackson was sentenced to 60 months’ imprisonment. The

*** This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.**

**** The Honorable Paul J. Kelly, Jr., United States Circuit Judge for the U.S. Court of Appeals for the Tenth Circuit, sitting by designation.**

scheme involved the theft of nursing home patient records; this information was then used to file fraudulent tax returns and obtain refunds. Jackson now appeals from the district court's: (1) denial of her request to change counsel without affording her a hearing; (2) precluding her from questioning witnesses about the thoroughness of the underlying investigation; (3) loss calculation; and (4) denial of a two-level reduction for acceptance of responsibility. Exercising jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a), we affirm.

A. Request for New Counsel

We review the district court's denial of such a request for an abuse of discretion, and we find none. In *United States v. Smith*, 282 F.3d 758, 764 (9th Cir. 2002), we stated that “the failure to conduct a hearing is not *by itself* an abuse of discretion.” Jackson's request was not accompanied by any facts to suggest a conflict with her counsel. *See United States v. Cassel*, 408 F.3d 622, 637 (9th Cir. 2005) (noting this as a factor for evaluating improper denial of counsel). In fact, two days prior to making the request, Jackson filed a stipulation to continue the trial date, in which she stated that she had carefully discussed the stipulation with counsel and also that she wanted to ensure continuity of counsel. Moreover, no facts suggest that the attorney-client relationship resulted in a “constructive denial of counsel.”

See United States v. Rivera-Corona, 618 F.3d 976, 979 (9th Cir. 2010).

Jackson even continued to use the *same* counsel in a separate conspiracy case, without ever indicating her dissatisfaction with counsel. We therefore find no abuse of discretion in the district court's denial of Jackson's request for new counsel.

B. Police Investigation Defense

The district court did not violate Jackson's due process rights when it precluded certain testimony concerning the police investigation. Whether the district court violated a defendant's due process rights is reviewed de novo. *United States v. Waters*, 627 F.3d 345, 352 (9th Cir. 2010). In considering whether the exclusion of evidence violates a defendant's due process rights, "this court considers the 'probative value of the evidence on the central issue.'" *United States v. Cruz-Escoto*, 476 F.3d 1081, 1088 (9th Cir. 2007) (quoting *Miller v. Stagner*, 757 F.2d 988, 994 (9th Cir. 1985)). "[T]rial judges retain wide latitude to limit reasonably a criminal defendant's right to cross-examine a witness based on concerns about, among other things . . . interrogation that is . . . only marginally relevant." Holley v. Yarborough, 568 F.3d 1091, 1098 (9th Cir. 2009).

Defense counsel's line of questioning was not an attempt to reveal inconsistencies or biases by the agents. Instead, it was an attempt to raise

questions as to the charging decisions. The defense counsel's opening statement identified several co-conspirators, noting that the Government had not charged any of them. The Government had charged only Jackson. We find that counsel never explained to the trial judge *why* he wanted to call certain governmental agents other than to "present a complete defense." Accordingly, probing further into the police investigation was not relevant under Federal Rule of Evidence 403. *See Cruz-Escoto*, 476 F.3d at 1088.

C. The Loss Amount

The district court correctly adopted the probation office's loss calculation as to the unauthorized access devices, which we review for clear error. *See United States v. Del Toro-Barboza*, 673 F.3d 1136, 1154 (9th Cir. 2012). The \$500 per unauthorized device standard applies to debit cards or account numbers whose usability has not been proven. "An 'unauthorized access device' must be an 'access device,' which itself must be capable of obtaining 'money, goods, services, or any other thing of value.'" *United States v. Onyesoh*, 674 F.3d 1157, 1159 (9th Cir. 2012) (quoting 18 U.S.C. § 1029(e)(1), (e)(3)). *Onyesoh* makes clear that the device must be *capable* of obtaining value; it need not have obtained value or even have been used previously.

Moreover, the guidelines are not ambiguous and the rule of lenity does not apply. The plain language of the guidelines indicates there is a floor on each device: the greater of the loss resulting from the unauthorized charges *or* \$500. U.S.S.G. § 2B1.1 cmt. n.3(F)(i). Although it sets a floor, it does not limit losses to devices actually used.

Finally, a Social Security card is an access device. The plain language of the statute is clear. To be an access device, a device must be a “means of account access that can be used, alone or in conjunction with another access device” to obtain a thing of value. 18 U.S.C. § 1029(e)(1). Jackson used a means of account access (the social security numbers and cards) to obtain things of value (the fraudulent tax dollars). We therefore affirm the district court on the loss-calculation issue.

D. Two-Level Downward Adjustment

The district court was not required to grant Jackson a two-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1. We review for clear error. *United States v. Fleming*, 215 F.3d 930, 939 (9th Cir. 2000). “[A] defendant who puts the government to its proof may still be eligible for a downward adjustment if, and only if, he has ‘otherwise demonstrated sincere contrition.’” *United States v. Ramos-Medina*, 706 F.3d

932, 940 (9th Cir. 2013) (quoting *United States v. Cortes*, 299 F.3d 1030, 1038 (9th Cir. 2002)).

First, Jackson decided to go to trial, which weighs against accepting responsibility. *See id.* Second, although Jackson cooperated with authorities, she initially withheld certain information and minimized her own role in the scheme. Third, a few months following her final interview with authorities in April 2013, Jackson engaged in a completely separate fraudulent scheme. Finally, even during sentencing, Jackson equivocated in her acceptance of responsibility. *See United States v. Osinger*, 753 F.3d 939, 949 (9th Cir. 2014). Accordingly, the district court's decision to deny a two-level reduction for acceptance of responsibility was not clearly erroneous.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAR 15 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

BRIDGETTE LENET JACKSON, AKA
Bridgette Levet Jackson,

Defendant-Appellant.

No. 16-50111

D.C. No.

2:15-cr-00326-R-1

Central District of California,
Los Angeles

ORDER

Before: KELLY,* CALLAHAN, and BEA, Circuit Judges.

Appellant's petition for rehearing and petition for rehearing en banc is
denied.

* The Honorable Paul J. Kelly, Jr., United States Circuit Judge for the
U.S. Court of Appeals for the Tenth Circuit, sitting by designation.