

### **Fact Pattern for § 2B1.1 Training**

Fancy Fraudster and her sister Feisty Fraudster are charged as co-defendants for conspiracy to commit Wire Fraud, in violation of 18 U.S.C. § 1343.

According to the discovery materials, the Petty Police Department executed a search warrant on Feisty's apartment and found 15 credit cards that did not appear to belong to her. Fourteen of the credit cards were in the name of Carla Complainant and one was in the name of Vicky Victim. Each of the credit cards had a limit of \$15,000. Police also recovered a post-it note on which it was handwritten, "Carla's debit card number: 1234-5678-9101."

The police also found driver's licenses in Carla and Vicky's names, but bearing the photos of Fancy and Feisty.

Feisty waived her Miranda rights and agreed to speak with the Petty Police. She tearfully told them that unlike her sister Fancy, who worked at Greedy Co. Bank, she was unemployed and struggling for money.

Taking pity on her, and wanting to help her sister, Fancy accessed the driver's license photos of two of the customers at Greedy Co. Bank, and provided those to Feisty on a USB drive. She also wrote Carla's debit card number on a post-it and handed it to Feisty.

With the help of her boyfriend Savvy Steve, Feisty was able to swap out Carla's photo and insert her own and print out a realistic-looking driver's license. She then ordered 14 credit cards in Carla's name and waited outside Carla's home each morning before the mailman arrived, to grab the new credit cards out of her mailbox.

Fancy's birthday is coming up, and to thank her for her help, Feisty and Steve made another ID using Vicky's ID but swapping out Vicky's photo for Fancy's. Feisty ordered a credit card in Vicky's name and grabbed it from Vicky's mailbox. She told police that it was a surprise and Fancy had no idea that Feisty had ordered the credit card for her to use.

Feisty admitted to making the following purchases using the credit cards issued to Carla:

1. \$100 at Target;
2. \$50 at H&M;
3. \$10 at McDonalds;
4. \$80 at Walmart;
5. \$70 at Walgreen's;
6. \$50 at CVS;
7. \$400 at Macy's; and
8. \$5000 at Bucc-ee's Online Store.

A Bucc-ee's employee managing the online store found it very odd that someone had spent \$5000 on Bucc-ee's gear, and called the police. The purchase was not processed.

**Question 1:**

You've been appointed to represent Fancy. You're getting ready for your first meeting after reviewing the discovery and you are calculating her guidelines range. You want to avoid unpleasant surprises upon receiving the PSR and want to warn her about the worst-case scenario.

What is her base offense level?

**Question 2:**

From the first time you met Fancy, you got the sense that she wants to avoid jail if at all possible and she's willing to take a plea if it sufficiently reduces her sentencing exposure.

Is there another charge that she would be better off pleading to?

**Question 3:**

What is the actual loss?

What is the intended loss?

What enhancement, if any, should Fancy expect to receive under § 2B1.1(b)(1)?

How much restitution does she have to pay?

**Question 4:**

Are there any other sentencing enhancements that you should warn her about?

**Question 5:**

Let's imagine now that you represent Feisty. You learn that last year, she was convicted in Petty County for the attempted \$5000 Bucc-ee's purchase and sentenced to 61 days.

What effect does this new fact have on Feisty's loss amount?

What about her criminal history points?