

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-1117

United States of America,

Appellee,

v.

Gavan Leonard,

Appellant.

*

*

*

*

*

*

*

*

*

Appeal from the United States
District Court for the District
of Nebraska.

[UNPUBLISHED]

Submitted: October 17, 2001

Filed: October 24, 2001

Before McMILLIAN, FAGG, and BEAM, Circuit Judges.

PER CURIAM.

Gavan Leonard pleaded guilty to knowingly possessing about 6000 stolen unembossed credit cards with intent to defraud, in violation of 18 U.S.C. § 1029(a)(3) (1994). Based on undisputed testimony, the district court* found the cards were used to charge between \$1.3 and \$1.5 million, and it used this amount of actual loss to the victim bank to increase Leonard's base offense level by 11 levels under U.S.S.G. §

*The Honorable Joseph F. Bataillon, United States District Judge for the District of Nebraska.

2F1.1(b)(1)(L) (specific offense characteristics for crimes involving fraud). Leonard does not dispute the dollar amount charged on the stolen cards, but argues that the loss was not properly attributed to him because it was not reasonably foreseeable that his former girlfriend would emboss some of the cards and sell them. When determining the amount of loss under § 2F1.1(b)(1), however, the district court may use actual loss or intended loss, whichever is greater. United States v. Morris, 18 F.3d 562, 570 (8th Cir. 1994). The amount of loss in a case involving stolen credit cards includes “any unauthorized charges” made with those cards. U.S.S.G. § 2F1.1 n.17. Thus, the district court did not commit clear error in basing the amount of loss resulting from Leonard’s possession of the cards on the actual loss to the victim bank. See id. (standard of review). Having pleaded guilty to possessing the stolen cards, Leonard was properly held responsible for the amounts charged on them. We thus affirm Leonard’s sentence.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.