**15.12 Access Devices—Unlawfully Possessing Fifteen or More**

**(18 U.S.C. § 1029(a)(3))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with unlawful possession of access devices in violation of Section 1029(a)(1) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly possessed at least fifteen [counterfeit] [unauthorized] access devices at the same time;

Second, the defendant knew that the devices were [counterfeit] [unauthorized];

Third, the defendant acted with the intent to defraud; and

Fourth, the defendant’s conduct in some way affected commerce between one state and [an]other state[s], or between a state of the United States and a foreign country.

[An “unauthorized access device” is any access device that is lost, stolen, expired, revoked, canceled, or obtained with intent to defraud.]

[A “counterfeit access device” is any device that is counterfeit, fictitious, altered or forged, or an identifiable component of an access device or a counterfeit access device.]

A defendant acts with the intent to defraud if [he] [she] had the intent to deprive [*victim*] of money or property by deception.

**Comment**

Use this instruction in conjunction with Instruction 15.16 (Access Device—Defined).

*See* Comment to Instruction 15.10 (Counterfeit Access Devices—Producing, Using, or Trafficking) and Comment to Instruction 15.11 (Unauthorized Access Devices—Using or Trafficking).

18 U.S.C. § 10 defines interstate and foreign commerce.

18 U.S.C. § 1029(e) defines “access device,” “counterfeit access device,” and “unauthorized access device.”

“Intent to defraud” for purposes of § 1029(a)(3) requires the intent to “deceive *and* cheat,” which means “the government must prove that the defendant had the intent to deprive a victim of money or property by deception.” *United States v. Saini*, 23 F.4th 1155, 1160 (9th Cir. 2022).

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