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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

AMBER LATREASE MITCHELL,

Defendant - Appellant.

No. 05-10545

D.C. No. CR-04-00006-EJG

MEMORANDUM *

Appeal from the United States District Court
for the Eastern District of California
Edward J. Garcia, Senior District Judge, Presiding

Submitted September 24, 2007**

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges.

Amber Latrease Mitchell appeals from the 63-month sentence imposed following her jury-trial conviction for aiding and abetting, and the fraudulent use of access devices, in violation of 18 U.S.C. §§ 2 and 1029, respectively. We have

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction under 28 U.S.C. § 1291. We vacate and remand for further proceedings.

We agree with the district court that Mitchell's prolonged credit card fraud was sufficiently more complex than routine credit card fraud to warrant the 2-level upward adjustment for using a sophisticated means. *See* U.S.S.G. § 2B1.1(b)(9); *United States v. Aragbaye*, 234 F.3d 1101, 1108 (9th Cir. 2000). In light of the evidence presented at the sentencing hearing, the district court did not err when it applied this adjustment.

The Government concedes that Mitchell's criminal history score was improperly calculated insofar as it was based on relevant conduct, and that this miscalculation amounts to plain error. *See* U.S.S.G. § 4A1.2, cmt. note 1; *cf.* *United States v. Ladum*, 141 F.3d 1328, 1347-48 (9th Cir. 1998); *United States v. Martinez-Gonzalez*, 962 F.2d 874, 877-78 (9th Cir. 1992). We therefore vacate the sentence and remand for resentencing.

VACATED and REMANDED.