STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 14, 2011
v	No. 292626 Macomb Circuit Court
SELENA MICHELLE SHELTON, Defendant-Appellant.	LC No. 2008-005011-FH

Before: GLEICHER, P.J., and SAWYER and MARKEY, JJ.

PER CURIAM.

A jury convicted defendant Selena Michelle Shelton of three counts of uttering and publishing counterfeit bills, MCL 750.253. The trial court sentenced Shelton as a fourth habitual offender, MCL 769.12, to concurrent terms of 2-1/2 to 15 years in prison. Shelton appeals as of right, and we affirm.

I. UNDERLYING FACTS[1]

On September 2, 2008, Walker and codefendant Selena Shelton embarked on a shopping expedition in Chesterfield Township. They first visited Dick's Sporting Goods, where Walker paid for merchandise with three $100 bills. The duo then went to T. J. Maxx, where Walker again used three $100 bills to pay for items she and Shelton had selected. At the next stop, Bed Bath and Beyond, Walker handed cashier Michelle Swider three $100 bills as payment for cookware. Swider examined the bills and perceived that they "felt rough in texture" and "were visibly wrong." The bills passed muster when Swider applied a counterfeit-detection pen. Nevertheless, Swider contacted Nicole Gauthier, a store manager, to express concern about the bills' authenticity. Gauthier determined that one of the bills contained a security thread denoting a value of $5 rather than $100, and she refused to accept them. According to Swider, Walker asked to have the bills returned to her "so that she could take them back to the bank." After Swider handed back the bills to Walker, she observed Walker and Shelton driving away from the

[1] We reprint this statement of facts from the one we assembled in an appeal by Shelton's codefendant, Carol Walker. Docket No. 292521. Walker and Shelton were tried jointly.

store in "a dark red Range Rover." A Bed Bath and Beyond representative then called the Chesterfield Township police department and reported the event.

Meanwhile, Walker and Shelton continued shopping. They bought goods at several nearby stores, including Kmart, Lowe's, Target, Home Depot and Petco. At each location, Walker offered multiple $100 bills as payment for the items the pair presented for payment. None of the cashiers at the other stores harbored suspicions about the validity of the bills, despite that several examined them with a counterfeit-detection pen. Security camera video footage later obtained from some of the stores revealed that Walker, not Shelton, paid for the merchandise.

Within about 30 minutes of the events at Bed Bath and Beyond, Chesterfield Township Officer Chris Delor arrived at the store, interviewed Gauthier and Swider and viewed a surveillance tape depicting the attempted cookware purchase. Delor located Walker and Shelton leaving a Michael's store less than a mile away and called for backup. Through the Range Rover's window, Delor noticed abundant "merchandise, bags and boxes and things in the truck[.]"

Delor and Officer Duane Van Acker questioned Walker and Shelton in a parking lot outside Michael's. Walker produced two $100 bills from a hip bag, both of which proved to be counterfeit. Walker advised Delor that Shelton had used a credit card to pay for the pair's Home Depot acquisitions. However, Shelton told Delor that Walker had bought the Home Depot items with cash, and Shelton directed the officers to a receipt in the Range Rover. Van Acker found six store receipts in Shelton's purse, along with $409 in cash, later determined to be genuine, in the Range Rover. On the basis of information contained in the receipts, the police collected the $100 bills that Walker had presented at each shopping destination. Many of the bills shared the same serial number and all bore the watermark and security thread inserted into $5 bills. Walker does not dispute the counterfeit nature of the $100 bills she tendered in Chesterfield Township.

In February 2009 and March 2009, Walker and Shelton stood trial jointly. The prosecutor introduced evidence detailing the purchases made with the counterfeit money. Chesterfield Township Detective Scott Blackwell and United States Secret Service Agent Jay Donaldson testified concerning custodial statements made by both defendants. During the interviews, Shelton disclosed that someone nicknamed "Tweeny" "fronted" she and Walker the counterfeit $100 bills for "50 cents on the dollar." Walker maintained that her boyfriend, Derrick Walls, had given her $2500 in $100 bills in a Comerica Bank envelope and instructed her to "go shopping and take care of yourself." At trial, Walker testified that until her arrest, she had no idea that the bills were counterfeit and denied telling Swider that she had obtained the money from a bank. In response to the prosecutor's cross-examination inquiries, Walker could not supply any information about Walls apart from his name. The jury convicted both defendants as charged.

II. SUFFICIENCY OF THE EVIDENCE

Shelton first challenges the sufficiency of the evidence supporting her convictions of uttering and publishing counterfeit bills under an aiding and abetting theory. Shelton maintains that (1) she did not engage in any fraudulent activity, (2) she did not know of the counterfeit nature of the money Walker possessed and used for the September 2, 2008 purchases, and (3) she

had no knowledge of Walker's intent. We consider de novo a challenge to the sufficiency of the evidence. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). "The test for determining the sufficiency of evidence in a criminal case is whether the evidence, viewed in a light most favorable to the people, would warrant a reasonable juror in finding guilt beyond a reasonable doubt." *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000).

> [A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. The scope of review is the same whether the evidence is direct or circumstantial. Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime. [*Id*. at 400 (internal quotation omitted).]

The statute penalizing the uttering and publishing of counterfeit bills, MCL 750.253, states the following:

> Any person who shall utter or pass, or tender in payment as true, any such false, altered, forged or counterfeit note, certificate or bill of credit for any debt of this state, or any of its political subdivisions or municipalities, any bank bill or promissory note, payable to the bearer thereof, or to the order of any person, issued as aforesaid, knowing the same to be false, altered, forged or counterfeit, with intent to injure or defraud as aforesaid, shall be guilty of a felony, punishable by imprisonment of not more than 5 years or by fine of not more than 2,500 dollars.

"Uttering and publishing consists of three elements: (1) knowledge on the part of the defendant that the instrument was false; (2) an intent to defraud; and (3) presentation of the forged instrument for payment." *Hawkins*, 245 Mich App at 457 (internal quotation omitted). "[T]he forged instrument need not be accepted as good, but merely . . . [need be] offered as valid. Once the offer is made, the crime is complete." *People v Cassadime*, 258 Mich App 395, 400-401; 671 NW2d 559 (2003) (internal quotation omitted).

With respect to aiding and abetting, "Every person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense." MCL 767.39. "The phrase 'aiding and abetting' describes all forms of assistance rendered to the perpetrator of a crime. It includes all words or deeds that may support, encourage, or incite the commission of a crime." *People v Wilson*, 196 Mich App 604, 614; 493 NW2d 471 (1992). "[T]he three elements necessary for a conviction under an aiding and abetting theory" include:

> (1) the crime charged was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement that assisted the commission of the crime; and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that the defendant gave aid and encouragement. [*People v Robinson*, 475 Mich 1, 6; 715 NW2d 44 (2006) (internal quotation omitted).]

"[E]vidence of [a] defendant's specific intent to commit a crime or knowledge of the accomplice's intent constitutes sufficient mens rea to convict under our aiding and abetting statute." *Id*. at 6-7.

Turning to the first element of aiding and abetting, the evidence established that another person, Walker, committed the charged crimes of uttering and publishing counterfeit bills. First, Walker used $2,500 in counterfeit $100 bills to purchase, or attempt to purchase, merchandise from several stores on September 2, 2008, all located a short distance apart in the 23 Mile Road and Gratiot area: Bed Bath and Beyond, Target, Dick's Sporting Goods, T. J. Maxx, Kmart, Petco, Home Depot and Lowe's. In Walker's statements to the police and her testimony at trial, Walker insisted that she did not know the bills were counterfeit, and that she received the bills from her boyfriend, Derrick Walls. Walker claimed that she only learned of the bills' lack of authenticity when the police told her. However, when Walker spoke to the police on her arrest, she could not give any contact information for Walls. And Swider recounted at trial that when she informed Walker of the bills' inauthentic nature, Walker declared that she intended to return the bills to the bank where she had obtained them. Walker's conflicting explanations of how she came into possession of the counterfeit money entitled the jury to find Walker's changing story incredible. Furthermore, immediately after employees at Bed Bath and Beyond apprised Walker that they would not accept the bills because of their false nature, Walker bought merchandise with the $100 bills at Home Depot, Kmart, Lowe's, Petco and Target. In summary, ample evidence warranted the jury's finding that Walker committed three counts of knowingly passing counterfeit bills with the intent to defraud.

With respect to the second aiding and abetting element, the record contained evidence from which a rational jury could have found beyond a reasonable doubt that Shelton "performed acts or gave encouragement that assisted [Walker's] commission of the crime[s]." *Robinson*, 475 Mich at 6. First, Shelton admitted to the police that she drove Walker on the shopping trip. Second, on the basis of the trial testimony and videotape evidence, Shelton accompanied Walker into at least three of the stores, Bed Bath and Beyond, Target, and Petco. Target video security footage depicted Shelton actually placing merchandise on the counter for which Walker then paid with counterfeit money. Third, when the police intercepted Walker and Shelton in a parking lot on the afternoon of September 8, 2008, Shelton had maintained in an envelope in her purse receipts from all seven stores she and Walker had visited that day.

The third aiding and abetting element requires proof that Shelton "intended the commission of the crime or had knowledge that . . . [Walker] intended its commission at the time that the [Shelton] gave aid and encouragement." During Shelton's police interviews, she disclosed that on the advice of a relative, Shelton and "another subject," Walker, visited a Detroit resident nicknamed "Tweeny," who "fronted" Shelton's companion the counterfeit $100 bills for "50 cents on the dollar" on the morning of September 2, 2008. This testimony reasonably shows that when Shelton drove Walker to the various shopping destinations and accompanied Walker on the shopping expedition, Shelton specifically intended to commit the three charged uttering and publishing crimes, or at a minimum had knowledge of Walker's intent to commit the

charged crimes. *Robinson*, 475 Mich at 6-7. We conclude that the record substantiated the third aiding and abetting element with regard to Shelton beyond a reasonable doubt, and that the jury properly convicted Shelton of all three counts of uttering and publishing counterfeit bills.[2]

III. SEPARATE TRIALS

Shelton next avers that the trial court deprived her of a fair trial by neglecting to sua sponte order separate trials for Shelton and Walker. Shelton concedes that she did not move for a separate trial. We review unpreserved constitutional claims for plain error affecting the defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764, 774; 597 NW2d 130 (1999). Success under the plain-error rule demands that the defendant show prejudice, "meaning that the error must have affected the outcome of the lower court proceedings." *People v McLaughlin*, 258 Mich App 635, 645; 672 NW2d 860 (2003).

"There is a strong policy favoring joint trials in the interest of justice, judicial economy, and administration, and a defendant does not have an absolute right to a separate trial. The decision whether to hold separate trials is within the discretion of the trial court . . . ." *People v Etheridge*, 196 Mich App 43, 52-53; 492 NW2d 490 (1992). "Severance is mandated under MCR 6.121(C) only when a defendant provides the court with a supporting affidavit, or makes an offer of proof, that clearly, affirmatively, and fully demonstrates that his substantial rights will be prejudiced and that severance is the necessary means of rectifying the potential prejudice." *People v Hana*, 447 Mich 325, 346; 524 NW2d 682 (1994).

> Inconsistency of defenses is not enough to mandate severance; rather, the defenses must be "mutually exclusive" or "irreconcilable." Moreover, incidental spillover prejudice, which is almost inevitable in a multi-defendant trial, does not suffice. The tension between defenses must be so great that a jury would have to believe one defendant at the expense of the other. [*Id*. at 349 (internal quotation omitted).]

Shelton complains that the evidence in this case proved that Walker alone passed the counterfeit money, with no assistance from Shelton. Shelton also points out that while she elected not to testify, Walker testified on her own behalf and the jury found Walker not credible. Shelton reasons that Walker's testimony deprived Shelton of a fair trial. However, the defenses

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[2] In a related contention, Shelton asserts that the trial court erred in overruling defense counsel's objection to an aiding and abetting jury instruction. "An aiding and abetting instruction is proper where there is evidence that (1) more than one person was involved in the commission of a crime, and (2) the defendant's role in the crime may have been less than direct participation in the wrongdoing." *People v Head*, 211 Mich App 205, 211; 535 NW2d 563 (1995). Because the instant record established Shelton's guilt of uttering and publishing counterfeit notes as an aider and abettor, the trial court did not abuse its discretion when it found that the facts of record warranted an aiding and abetting instruction. *People v Waclawski*, 286 Mich App 634, 675; 780 NW2d 321 (2009).

of Shelton and Walker qualified as neither mutually exclusive nor irreconcilable. Walker consistently maintained, in both her statements to police and trial testimony, that she had gotten the shopping funds from her boyfriend and had no idea the money was counterfeit. Shelton admitted to the police that she had accompanied Walker to Detroit where they obtained the counterfeit $100 bills, although Shelton denied that she had ever passed the bad bills. The jury did not believe Walker's defense that she had no knowledge of the bills' counterfeit nature, but the jury's rejection of Walker's defense had no discernible impact on the jury's distinct finding that Shelton had assisted Walker in passing the bills, especially since Shelton admitted knowing the bills were counterfeit. We conclude that Shelton has not demonstrated her entitlement to a separate trial. *Hana*, 447 Mich at 349.

IV. EVIDENTIARY CHALLENGES

Shelton complains that the trial court should have prevented Detective Blackwell from improperly testifying "at length" about his beliefs concerning Shelton's and Walker's credibility and their guilt of the charges. The portions of Detective Blackwell's trial testimony that Shelton now criticizes as inappropriate occurred in the course of *cross-examination by Shelton's counsel*. For example:

> *Q*. . . . . Now you said when you first talked to Ms. Shelton *you didn't really believe a lot of her story, correct*?
>
> *A. That's correct*.
>
> *Q*. Okay. And then you talked to Ms. Walker and obviously you said that there's some major discrepancies between the two stories, correct?
>
> *A*. Yes.
>
> *Q*. And I believe *your statement in the report was that one of them had to be lying, correct*?
>
> *A*. I don't recall. If that's [in] my report, yeah. I don't recall specifically saying that, but—
>
> *Q*. *But that would make sense if the two stories didn't match that one of them would have to be lying*?
>
> *A*. Or *both of them could be lying*.
>
> *Q*. Or both of them, okay.
>
> So you didn't have much faith in neither [sic] one of these people telling you what was going on at that point, correct?
>
> *A*. *No, I did not*. [Emphasis added.]

Shelton's counsel then elicited that Detective Blackwell never checked with the party store where Shelton purportedly cashed a check on the morning of September 2, 2008 to see if Shelton was a regular customer, or whether a surveillance video of her visit existed. The cross-examination continued:

> *Q*. You don't think that's important on whether that part of the story is true or not?
>
> *A*. Well, Ms. Shelton admitted that she obtained $2,500 in counterfeit bills and—
>
> *Q*. No. At the initial point when she told you that she cashed her check at [the party store] *you said that you thought she was lying, correct*?
>
> *A*. *I never said I thought she was lying about cashing her check*. [Emphasis added.]

The remaining portion of Detective Blackwell's cross-examination that Shelton characterizes as improper includes the following:

> *Q*. Okay. Now, at several points during this interview process, in regards to Ms. Shelton, you said that *you were getting tired of what you thought were lies and you wanted to end the interview; is that correct*?
>
> *A*. *That's correct*.
>
> *Q*. . . . [*Y]our opinion* was that Ms. Shelton was still lying, correct?
>
> *A*. *She was lying or minimizing her role in this event, that's my opinion, yes*.
>
> *Q*. Okay . . . . *in your opinion* you don't know what is and what isn't true at this point, it all could be lies, none of it could be lies, bits and pieces could be lies, correct?
>
> *A*. Certainly her statement regarding obtaining $2,500 in counterfeit bills was consistent with the case I was investigating, so that at least seemed to be a lot more truthful than the other statement she was making regarding how she was minimizing her role in this entire thing. [Emphasis added.]

Shelton waived, thus extinguishing, any error with respect to the testimony of Detective Blackwell that defense counsel elicited. *People v Riley*, 465 Mich 442, 448-449; 636 NW2d 514 (2001); see also *People v Griffin*, 235 Mich App 27, 46; 597 NW2d 176 (1999) (holding that because the defendant himself volunteered during his direct examination the testimony he characterized as erroneous on appeal, and "error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence, [the] defendant has waived appellate review of this issue"), overruled on other grounds by *People v Thompson*, 477 Mich 146; 730 NW2d 708 (2007).

Moreover, Detective Blackwell's opinion regarding the truthfulness of Walker's and Shelton's statements during their interrogations rested "rationally . . . on the perception of the witness" and other trial evidence, MRE 701; he did not comment about defendants' credibility in general. And the record reveals that in the course of Shelton's interview, she expressed to Detective Blackwell that "she wanted to keep talking to me and . . . at that point she would tell me the truth." Shelton's own statements confirm her knowledge that her first story to Detective Blackwell was untrue, and when Shelton subsequently offered an alternate version of events Blackwell had a basis for skepticism of Shelton's first account. In summary, even assuming Shelton had not waived appellate review of Detective Blackwell's testimony, we detect no error requiring reversal. MCL 769.26; MRE 103(a).

V. SENTENCING ISSUES

Shelton further suggests her entitlement to resentencing on the grounds that the trial court misscored offense variables (OV's) 12 and 13. "[W]e review de novo as a question of law the interpretation of the statutory sentencing guidelines." *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006). An appellate court must affirm a sentence that falls "within the appropriate guidelines sentence range . . . absent an error in scoring the sentencing guidelines or reliance on inaccurate information in determining the sentence." *Id*., citing MCL 769.34(10). We review "a sentencing court's scoring decision to determine whether the trial court properly exercised its discretion and whether the record evidence adequately supports a particular score." *McLaughlin*, 258 Mich App at 671. "We review for clear error a court's finding of facts at sentencing." *People v Osantowski*, 481 Mich 103, 111; 748 NW2d 799 (2008).

Shelton's appellate contentions, that the trial court should have scored zero points for OV 12 and five points for OV 13, apparently are aimed at an initial copy of the sentencing information report (SIR) that the trial court altered at the sentencing hearing. The sentencing transcript and an amended SIR confirms that the trial court scored zero points for OV 12 and assigned five points under OV 13. Shelton does not dispute on appeal the trial court's scorings of OV's 9 and 14 at 10 points each, or the court's calculation of five points for OV 16. Defense counsel agreed at the sentencing hearing that Shelton's prior record variable (PRV) point total stood at 80, which placed Shelton at PRV level F for her class G convictions. MCL 777.68. The OV total of 30 put Shelton at OV level III. *Id*. The sentencing guidelines for a defendant with PRV level F and OV level III amount to seven to 23 months. *Id*. However, because Shelton qualified as a fourth habitual offender, MCL 769.12, the upper limit of the applicable minimum sentence range increased to 46 months. MCL 777.21(3)(c). The trial court correctly sentenced Shelton to concurrent minimum terms of 30 months, within the statutory guidelines range.

With regard to Shelton's final sentencing complaint that the trial court imposed on her a disproportionately severe sentence in comparison with the sentence the court gave Walker, "[u]nder MCL 769.34(10), this Court may not consider challenges to a sentence based exclusively on proportionality if the sentence falls within the guidelines." *People v Pratt*, 254 Mich App 425, 429-430; 656 NW2d 866 (2002). Because the trial court crafted a sentence within the statutory guidelines range, and "a sentence within the guidelines range is presumptively proportionate," *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008), Shelton's proportionality argument offers no basis for relief. Furthermore, Shelton inaccurately casts she and Walker as "similarly-situated defendants": Shelton received a 30-month minimum

term of imprisonment on the basis of her fourth habitual offender status, while the court sentenced Walker, who had no prior felony convictions, to a minimum term of one year.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ David H. Sawyer
/s/ Jane E. Markey