STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 13, 2011
v	No. 300036 Isabella Circuit Court
CANDIE LANE GALE, Defendant-Appellant.	LC No. 10-000372-FH

Before: SHAPIRO, P.J., and SAAD and BECKERING, JJ.

PER CURIAM.

Defendant was charged with two counts of forgery, MCL 750.248, two counts of uttering and publishing, MCL 750.249, larceny in a building, MCL 750.360, and two misdemeanor counts of larceny less than $200, MCL 750.356(5). Following a bench trial, defendant was convicted of all five felony counts, but acquitted of the two misdemeanors. Defendant was sentenced as a fourth-offense habitual offender, MCL 769.12, to concurrent terms of 3 to 14 years' imprisonment for the forgery and uttering and publishing counts, and two to four years' imprisonment for the larceny in a building count, with no credit because she was on parole at the time of the offenses. Defendant appeals as of right and we affirm.

Defendant's convictions stem from two forged checks that were presented to Charter Communication. The prosecution argued that defendant stole the checks from her mother and forged them to pay the cable and internet bills and, when her mother gave her $200 on two separate occasions to pay the bills, defendant pocketed the money instead. It was not until the checks bounced that her mother became aware of the crime. The defense argued that defendant's mother had written the checks herself, knowing that she did not have the funds to cover them, and that she blamed defendant to keep herself out of trouble.

Prior to trial, the prosecution had submitted copies of the two checks to the Michigan State Police for a handwriting analysis. Defendant moved for funds to hire her own expert. At the motion hearing, defendant's counsel indicated that he had spoken with the prosecution and that, "I guess what I would like is if once that report is back and it is negative toward [defendant], then I would like to be able to have that ready, I guess, the appropriated funds." The following discussion then took place:

Mr. Holmes [The Prosecutor]: Yeah, I guess the only thing I can imagine, Your Honor, is if it was made contingent upon, you know, the results of the upcoming order. If it comes out that it's inconclusive or whatever, it doesn't seem to be that we need to spend fifteen hundred bucks on it.

The Court: Yeah, are you going to ask for an expert if it comes back inconclusive because that would make no sense at all?

Mr. Moses [defendant's counsel]: Right. No, I don't think that would be part of—

The Court: Only if it comes back an opinion that the belief is that Ms. Gale wrote this?

Mr. Moses: Correct, Your Honor.

The trial court then approved the funds based on that contingency.

The handwriting report, dated June 18, 2010, came back inconclusive, noting that defendant could not be identified or eliminated as the signer of the checks, but that there were indicators that her mother "may not have signed the questioned maker's name on the disputed documents." The report indicated that the original checks, "or a good quality copy of each, will be necessary for a subsequent examination" and that, if those could be obtained, additional writing samples of both defendant and her mother "encompass[ing] the period of time during which the questioned documents were produced" would also be necessary.

On July 13, 2010, the trial court began defendant's trial. Defense counsel indicated that he had just received a copy of a check written by defendant in December 2009 and requested an adjournment to obtain the writing samples referenced in the report. The prosecution argued that the report also required the original or good quality copies of the disputed checks and that only the digitized copies from the bank that had already been provided were available because the originals had been destroyed by the bank. Thus, any additional examination with more writing samples would likely still be inconclusive because they could not provide the necessary quality copy of the original checks. The trial court denied the adjournment on three grounds: 1) that defendant had been sitting in jail "a long time" and the case needed to be resolved; 2) the original checks were gone; and 3) the writing sample obtained by defense counsel was from December 2009, which was not within the relevant time period and, therefore, was not of the type requested by the report.

On appeal, defendant alleges multiple errors related to the handwriting report. First, defendant argues that the denial of a handwriting expert denied her her right to present a defense. We disagree. Defendant's defense was that she did not write the checks, but that her mother wrote them and blamed defendant when they bounced. Defendant was allowed to, and did, present this defense. The denial of an expert did not prevent her from arguing this defense. Neither did the handwriting report preclude this defense—it was inconclusive as to whether defendant had signed the checks and was not definitive as to whether her mother had signed the checks, providing only that there were indicators that she may not have been the endorser. In

light of the report's inconclusive nature, and the fact that the expert indicated that the originals would be necessary to make any definitive determinations, we find no error in the trial court's denial of funds for a defense expert. Similarly, there is no error in the trial court's denial of an adjournment, where the evidence sought to be sent to the handwriting expert fell outside the requested time period, and the originals or good quality copies of the disputed checks were never going to be available. Defendant has failed to provide any evidence that having another handwriting expert would have rendered any benefit to her defense. Thus, neither the trial court's denial of the motion for an expert nor its denial of a continuance fell outside the range of reasonable and principled outcomes. *People v Carnicom*, 272 Mich App 614, 616-617; 727 NW2d 399 (2006).

Defendant's second allegation is that the trial court denied her her right to confront the witnesses against her because the handwriting expert did not testify. However, the record reveals that defendant waived any *Crawford*[1] objections at trial when defense counsel stated that he had no objections to the admission of the report. Accordingly, defendant has waived any error on this issue. *People v Kowalski*, 489 Mich 488, 503; ___ NW2d ___ (2011). Defendant acknowledges the waiver, but argues that her trial counsel's failure to object to the admission of the handwriting report constituted ineffective assistance of counsel.

To prevail on a claim of ineffective assistance of counsel, defendant must show that her counsel's performance fell below an objective standard of reasonableness and that there was a reasonable probability that the outcome of the trial would have been different but for counsel's deficiency. *People v Ackerman*, 257 Mich App 434, 455; 669 NW2d 818 (2003). Defendant has failed to make such a showing. Even assuming that counsel's failure to object to the admission of the report was unreasonable, there is no showing that it would have changed the outcome of trial. The trial court stated that it relied on the report only insofar as it held that there were indicators that defendant's mother did not sign the checks. The trial court also stated that it found the mother's testimony credible and the mother explicitly testified that she did not sign the checks. Furthermore, the trial court stated that the report itself "doesn't carry a lot of weight" and used it only as corroborative evidence. Consequently, defendant has not established a reasonable probability that, but for counsel's alleged error, the trial outcome would have been different. *Id.*

Defendant's final claim of error relates to some of the prosecution's cross-examination. She contends that the prosecutor elicited irrelevant and inflammatory testimony regarding defendant's "sexual interests and activities." Having reviewed the record, we do not agree with defendant's characterization. The entire exchange involving the disputed testimony was:

> *Q.* Do you have any internet businesses? Did you try to start up any internet businesses?
>
> *A.* No, sir, I did not.

[1] *Crawford v Wash*, 541 US 36, 68; 124 S Ct 1354; 158 L Ed 2d 177 (2004).

Q. All right. What is Sweet and Spicy?

A. It's my email.

Q. It's your email?

A. Uh-huh.

Q. Do you solicit or offer anything on this email?

A. No, sir, I do not.

Q. All right. So you're not conducting any kind of business with respect to Sweet and Spicy?

A. No, it's my email.

[*Defense Counsel*]: Your Honor, I would object. I don't see the relevancy of this.

[*The Prosecution*]: It goes to income, Your Honor. If she's drawing money or income.

The Court: I'll allow it. Go ahead.

Q. And you've got business cards for your website or for your—you said it's just an email account?

A. It's an email account.

Q. And you don't have a web page?

A. I have a web page. I have a Facebook page. I have a Yahoo.

Q. So is your email S-G-R-N-S-P-S at Yahoo dot com?

A. Yes, sir.

Q. And W-W-W swing lifestyle dot com—

A. No, there's nothing—

Q. S-W-T-N-S-P-C-Y?

A. That was something that some friends and I were just fooling around with at a website that we found.

Q. Okay. I just brought it up and it is still there. Is it functional?

A. It may be functional. Like I said, we were just fooling around with it and it—

Q. Who is we?

A. Some friends of mine and I were just doing it and it was all suppose to have been—it was suppose to have been disassembled.

Q. So when was the last time you had any contact with this website or email address?

A. Prior to me coming in here.

Q. Like how much prior?

A. I don't know. I can't remember. I've been in here since February. But it's not to solicit or earn money or anything off of.

Q. Okay. Is it a social network?

A. Yes.

The prosecution did not ask defendant about her sex life and did not insinuate anything. The prosecution cannot be blamed for the name of the web page created by defendant and was not precluded from asking questions about whether it produced income for defendant simply because its name may have been suggestive of something. The record is clear that the prosecution never attempted to exploit the website or email address names for their sexually suggestive nature and, after being informed that they were unrelated to income, he never referenced them again. In addition, contrary to defendant's assertion, there is no blanket prohibition to evidence related to a defendant's financial and employment status. Although evidence of poverty, unemployment, marginal employment, and dependence on public welfare is not admissible to show motive, "[o]ther evidence of financial condition may, however, be admissible in the circumstances of a particular case." *People v McLaughlin*, 258 Mich App 635, 665; 672 NW2d 860 (2003), quoting *People v Henderson*, 408 Mich 56, 66; 289 NW2d 376 (1980). Defendant has failed to explain how this questioning was prejudicial to her. Nevertheless, even if we found any error related to the questioning, there is no evidence that it denied defendant a fair trial where the questioning was brief, the subject unrepeated, and the fact finder was a judge rather than a jury.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Henry William Saad
/s/ Jane M. Beckering