STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 14, 2013
v	No. 309365 Wayne Circuit Court
NATALIE ERNESTINE FOSTER, Defendant-Appellant.	LC No. 10-011337-FH

Before: M. J. KELLY, P.J., and CAVANAGH and SHAPIRO, JJ.

PER CURIAM.

Defendant Natalie Ernestine Foster appeals of right her jury convictions of conducting or participating in an enterprise through a pattern of racketeering activity (racketeering), MCL 750.159i(1); conspiring to commit identity theft, MCL 750.157a, MCL 445.65(1); conspiring to deliver, circulate, or sell a financial transaction device which she illegally obtained, or to use or cause the use of a financial transaction device with knowledge that the device was illegally obtained (illegal use of a financial transaction device), MCL 750.157a, MCL 750.157q; four counts of larceny from a building, MCL 750.360, three counts of illegally using a financial transaction device, MCL 750.157q; and three counts of identity theft, MCL 445.65. The trial court sentenced Foster as a third habitual offender, MCL 769.11, to concurrently serve 15 to 30 years in prison for her conviction of racketeering, 1 to 7 years in prison for her conviction of conspiring to illegally use a financial transaction device, 1 to 6 years in prison for each of her convictions for larceny in a building and illegal use of a financial transaction device, and 2 to 7 years in prison for each of her convictions for identity theft. The trial court also sentenced Foster to serve 3 to 7 years in prison for her conviction of conspiracy to commit identity theft, which sentence was to be served consecutive to her sentence for racketeering. On appeal, Foster argues that her convictions must be vacated because there was insufficient evidence that she committed or aided and abetted the commission of the charged crimes. In the alternative, she argues that she did not receive a fair trial on a variety of grounds and, therefore, this Court must reverse her convictions and remand for a new trial. Because we conclude that there were no errors warranting relief, we affirm.

I. BASIC FACTS

Foster's convictions arise from her participation in a scheme to obtain identifying information and bank and credit cards from elderly persons and then use the information and cards to withdraw money and purchase goods. The prosecutor presented evidence that Foster directly participated or aided and abetted Devon Page in fraudulently gaining entry into the homes of four elderly women: Essie Hill, Bessie Motley, Dorothy Gatewood, and Georgia Green.[1] Foster and Page convinced the women to let them in by representing that they were from legitimate organizations that provide goods and services to the elderly. While in the homes, Page and Foster would trick the women into revealing personal identifying information and steal their bank or credit cards. Page and Foster would then use the cards and information to purchase goods and withdraw money from the women's bank accounts.

At trial, Foster's lawyer challenged the accuracy of the evidence that tended to connect Foster to the scheme. Specifically, he argued that the evidence that the elderly women had identified Foster was suspect given their ages and their inability to identify Foster in court and the other evidence was insufficient to connect her to the crimes. Finally, he argued that Foster was being prosecuted on the basis of some prior acts that, in his view, were not relevant to the charges at issue.

The jury determined that the prosecutor had not proven beyond a reasonable doubt that Foster illegally used or aided and abetted the illegal use of Green's financial transaction device or was involved in the theft of Green's identity; accordingly, it found her not guilty on those charges. However, it rejected Foster's lawyer's contention that the evidence was insufficient to establish her identity as one of the people who committed the remaining crimes and found her guilty as stated above.

Foster now appeals her convictions to this Court.

II. SUFFICIENCY OF THE EVIDENCE

A. STANDARD OF REVIEW

We shall first address Foster's argument that there was insufficient evidence that she "was actively involved in any of the activities for which she was charged and ultimately convicted." Although Foster appears to concede that someone stole the elderly women's credit cards and identifying information, she contends that the evidence did not support an inference that she had any role in those crimes; instead, she believes that the evidence showed only that Page and Page's accomplice, Viola West, committed the crimes. This Court reviews a challenge to the sufficiency of the evidence by reviewing "the record evidence de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that

[1] Page pleaded no contest to various charges arising from her role in the scheme. Although she stipulated to facts that included going to the homes of elderly persons with Foster and stealing credit cards, Page refused to testify against Foster even after being threatened with contempt.

the essential elements of the crime were proved beyond a reasonable doubt." *People v Roper*, 286 Mich App 77, 83; 777 NW2d 483 (2009).

B. IDENTITY

The prosecution had the burden to present evidence from which the jury could find that Foster either directly committed the charged crimes or aided and abetted someone else in the commission of the crimes. See *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008) (stating that identity is an element of every offense). However, the prosecutor did not have to establish Foster's identity through direct identification evidence; rather, she could meet her burden by presenting evidence that would permit a reasonable finder of fact to infer that Foster committed or aided and abetted the commission of the crimes. See *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (noting that circumstantial evidence and reasonable inferences arising from circumstantial evidence can be used to establish the elements of an offense). Here, the prosecutor presented direct and circumstantial evidence that Foster participated to varying degrees in a scheme to steal bank and credit cards as well as identifying information from the elderly and then used the stolen cards and information to illegally obtain money and goods. In addition, the prosecutor presented evidence that more specifically showed that Foster directly participated in the efforts involving the four women at issue in this case.

C. RACKETEERING

In order to prove the charge of racketeering, the prosecutor had to prove, in relevant part, that Foster was "associated" with an "enterprise" and that she "knowingly" participated "in the affairs of the enterprise directly or indirectly through a pattern of racketeering activity." MCL 750.159i(1); *People v Martin*, 271 Mich App 280, 320; 721 NW2d 815 (2006). A pattern of racketeering activity means "the commission of not less than two incidents of racketeering", which involve "'the same or a substantially similar purpose, result, participant, victim, or method of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated acts'", "'pose a threat of continued criminal activity'", and fall within certain time constraints that are not relevant here. See *Martin*, 271 Mich App at 289-290, quoting MCL 750.159f(c). The prosecutor also had to prove that Foster committed the underlying racketeering offenses for financial gain. *Id.* at 290, citing MCL 750.159g. The trial court instructed the jury that, in order to find Foster guilty of racketeering, it had to find that Foster committed or helped someone commit two of the underlying offenses of illegal use of a financial transaction device, larceny in a building, or identity theft as those offenses related to the four elderly women in this case.

Viola West—who also goes by the name April—agreed to testify against Foster as part of a plea deal.[2] West stated that she had known Page for about 14 years and that Page introduced her to Foster about two and one-half years ago. West described how she participated in a scheme to steal information and bank cards from elderly persons from 2008 to 2009.

[2] West testified that she pleaded guilty to crimes related to three different elderly persons: Margie Hunter, Elizabeth Williams, and Odessa Purdue.

West said that she did not know how Page did it but she would somehow set up appointments with elderly persons. West would then drive Page to the 'appointment'; she drove because Page did not have a driver's license. West said that sometimes she would go in with Page and on other occasions she would just drive and Page would go inside by herself.

West and Page would wear "nursing uniforms" to the appointments and Page would bring a bag, laptop, and "a folder with a lot of medical papers in it." After the elderly person let them in, Page would have her check the person's medications and write them down. She noted that Page brought medication charts and would go into another room with the person while West would check the elderly person's refrigerator to ensure that "they ain't running low" on food. During these activities, Page would take the elderly person's bank cards, "like they Visa card and the check, checkbook." West agreed that she did this with Page on the three occasions that underlay the charges against her, but also stated that she drove Page more times than that.

West testified that they would go to the elderly person's bank after the appointments. Page would have her park away from the ATM and Page would then go in and use the stolen cards to withdraw money. On one occasion, Page gave her $70 in cash and purchased $30 in gas for West's car.

West stated that before one or two appointments, Page called Foster and put her on speaker phone. Page asked Foster about the appointment—whether she had "set the appointment up"—and Foster told them they could go to the house: "The appointment is made." After another appointment, Page called Foster and had her meet them at a Target store. They then went into the store and purchased some items. At some point West began to talk with Foster and Foster asked her how much Page was giving her. West responded that Page gave her $40 to $50 in cash and "bought me like this stuff right here." Foster told West that Page was "cheating" her and said that she "should be getting paid more." They then left Target and went to a Macy's store. After Page went to purchase some items, Foster again told West that she thought it was "wrong" that Page was paying her so little. She said, "I'm going to get you something because I think you deserve more than what she's giving you." Foster then purchased some brown Coach boots for West. Later that day Foster told her: "Devon [Page] is not going to cheat me out of nothing."

West's testimony was sufficient to establish that she, Page, and Foster "associated in fact" as an enterprise. See MCL 750.159f(a) (defining an enterprise to include a "group of persons associated in fact although not a legal entity"); *Martin*, 271 Mich App at 322. Her testimony was also sufficient to establish that Foster knowingly participated in the enterprise—at the very least—by setting one or two "appointments" and meeting with West and Page after they successfully stole bank or credit cards, which they then used to illegally obtain goods. *Martin*, 271 Mich App at 323. The same testimony established that the offenses were part of a pattern of activity—the scheme involved similar victims (the elderly), similar goals (stealing credit or bank cards and identifying information), were interrelated (inducing multiple elderly persons to invite them in and disclose information under false pretenses), not isolated, and posed a continuing threat of criminal activity. See MCL 750.159f(c). Likewise, West's testimony that Foster told her that she was not being paid enough and that Page was "cheating" West was sufficient to permit an inference that Foster fully understood the nature, method, and goals of the enterprise in addition to the stake she had in its continued success; indeed, a reasonable jury could infer from

this testimony that Foster knew more than West about the nature and extent of the enterprise and West's share in it.

West plainly identified Foster as someone who was involved in an enterprise that exploited elderly persons in order to steal their bank or credit cards and identifying information for gain. While West's testimony was insufficient to establish the underlying predicate offenses, it was sufficient to establish the existence of the enterprise and Foster's association with it. *Martin*, 271 Mich App at 321. Her testimony also permitted an inference that, to the extent that there was evidence that Foster committed the underlying predicate offenses, she participated knowingly as part of a pattern of racketeering activity committed for financial gain. *Id.*

The prosecutor charged Foster with committing or aiding and abetting Page's commission of larceny from a building, illegal use of a financial transaction device, and identity theft for each of four elderly women: Bessie Motley, Georgia Green, Essie Hill, and Dorothy Gatewood. Although these charges were independent of the racketeering charge, the prosecutor also had to prove that Foster committed or aided and abetted the commission of at least two of the 12 charges as the predicate offenses underlying the racketeering charge. MCL 750.159f(c). As will be more fully explained below, there was sufficient evidence to support each of Foster's convictions for larceny from a building, illegal use of a financial transaction device, and identity theft. And when West's testimony is considered with the evidence tending to show that Foster committed or aided and abetted the commission of the underlying predicate felonies and did so in manner that was consistent with the scheme employed by Page and West, there was sufficient evidence to establish every element of the racketeering charge against Foster.

D. LARCENY FROM A BUILDING, ILLEGAL USE OF A FINANCIAL TRANSACTION DEVICE, AND IDENTITY THEFT

The prosecutor, in the context of this case, could establish that Foster committed larceny from a building by presenting evidence that she took a bank or credit card belonging to someone else, carried it away with the intent to steal it, did so without the owner's consent, and while in a building. See *People v Sykes*, 229 Mich App 254, 278; 582 NW2d 197 (1998) (listing the elements of larceny in a building). To prove that Foster illegally used a financial transaction device, the prosecutor had to present evidence that Foster used or caused to be used a financial transaction device that she knew had been stolen. MCL 750.157q; MCL 750.157n(1). Finally, the prosecutor could establish the elements of identity theft by presenting evidence that Foster used another person's personal identifying information—which in relevant part includes the person's name, address, telephone number, driver's license or state identification number, or an account number—to obtain credit, goods, services, money or property with the intent to defraud. MCL 445.63(k); MCL 445.63(q); MCL 445.65(1). And the prosecutor could establish that Foster had the requisite fraudulent intent by presenting evidence that she used the information without permission. See, e.g., *People v Susalla*, 392 Mich 387, 393; 220 NW2d 405 (1974) (stating that the act of signing a check without authority makes the check a false instrument and establishes that the signer acted with fraudulent intent). The prosecutor could also meet her burden of proof for each charge by presenting evidence from which the jury could find beyond a reasonable doubt that: (1) Page committed the offenses, (2) Foster performed acts or gave encouragement that assisted Page in the commission of the crimes, and (3) Foster intended for

Page to commit the crimes or knew that Page intended to commit them when she encouraged or assisted her. *Carines*, 460 Mich at 768.

1. BESSIE MOTLEY

Bessie Motley testified that she was born in 1933. She applied for help from Meals on Wheels, but was denied. In January 2009, two women came out to her home and stated that they were from Meals on Wheels. The taller and skinnier woman was doing the talking while the other woman, who was "kind of heavy set", was "just sitting there writing" notes. She remembered giving them her phone number. One of the women asked for her MasterCard: "She said give me the charge and I'll get it straightened out for you." Motley stated that she gave them the credit card and did not get it back: "I gave them my charge. They got my charge and they walked out." She did not give Foster or Page permission to use her credit card.

Motley testified that she identified the two women who came to her home in a photo line-up and she recognized her initials on one photo and a circle she made around another. Officer Jeffrey Williams testified that he conducted two photo line-ups with Motley. He identified the pictures that he used in the line-ups and stated that Motley picked out Foster from the first line-up, and picked out Page from the second line-up. Motley admitted that she did not see either woman in the court room and no longer remembered what they looked like; however, she remembered them at the time of the photo line-up.

Haife Semon testified that she owns a women's apparel boutique and that at 3:33 p.m. on the same day that the two women visited Motley, she sold a mink coat and hat to a woman that she described as "elderly" for $10,864.97. Semon ran the charge offline and the credit card company approved it after speaking with the woman on the phone. She said the woman who purchased the items had a driver's license that matched her appearance. Semon took down the woman's information and the woman signed "B. Motley" for the purchase.

John Shuler testified that he was an investigator for the Target Corporation. He stated that Target employees will run credit card purchases offline when the store's lines are not working in order to avoid losing a sale. However, he noted that the practice can be abused: "There are some merchants who will intentionally take their computers offline in order to approve the transaction." These retailers may do this if they thought that the credit card sale was a "fraudulent transaction in order to get reimbursed later."

Motley denied that she used her credit card to purchase a $10,000 mink coat or a $1,000 mink hat later on the same day that the two women visited her home. When showed a receipt for the purchase of the coat and hat, Motley recognized her name, address, and phone number, but stated that she did not make the purchase.

Officer Williams testified that police officers seized a mink hat from Foster's home. He also stated that the license number that the store owner wrote on the receipt was not a real driver's license number. Williams visited Semon's store and characterized it as a warehouse with "clothes everywhere" and no aisles; he further did not see any $10,000 mink coats and no $1,000 mink hats.

This testimony and evidence was minimally sufficient to establish that Foster went to Motley's home with Page and that together they fraudulently induced Motley to reveal personal identifying information and let them handle her credit card. The evidence that Foster and Page did not return Motley's credit card and that it was used to purchase a mink coat and hat later that same day permits an inference that Foster either directly stole the credit card from Motley's home or aided and abetted Page in stealing the credit card. Thus, there was sufficient evidence from which a jury could find that Foster committed or aided and abetted the commission of a larceny from a building with regard to Motley's credit card. *Sykes*, 229 Mich App at 278.

In addition, a reasonable jury could infer from this testimony and evidence that Foster used Motley's credit card at Semon's store. There was evidence that Foster and Page took Motley's credit card and identifying information and that later that same day someone used Motley's credit card and identifying information to purchase more than $10,000 in apparel. Because the purchase occurred within hours after Motley's credit card was stolen, a reasonable jury could infer that the only persons who would have had access to the card and the requisite identifying information would be the persons who stole the credit card and fraudulently induced Motley to reveal the identifying information. Further, the fact that a mink hat was seized from Foster's home permits an inference that Foster purchased that hat on the day at issue. Because the jury could reasonably infer that Foster purchased the coat and hat using Motley's stolen credit card and personal identifying information, there was adequate evidence to support the charge that Foster illegally used Motley's credit card and stole her identity. See MCL 750.157q; MCL 445.63(q); MCL 445.65.

2. GEORGIA GREEN

Georgia Green testified that she was 78 at the time of trial. In September 2009, she received a telephone call at her apartment for seniors. The caller stated that "there was some kind of, a new food program for seniors" that would add about $45 onto what she was already receiving for food. The caller asked if they could come over.

The next day, two women came over. They were wearing uniforms—"smocks that the ladies wear when they're medical attendants or something like that." They were dressed neatly and had "papers, like briefcase like papers. And everything was in order. They looked legitimate . . . ." The women talked to her about how she should be receiving more services and told her that "they was going to see to it that I got more service and the food part . . . ." Green stated that the women asked her for her credentials and medical cards and she left the room to get her "medical card" and when she returned she did not notice that anything was missing. They also asked her to give them her personal identification number (PIN) for her Comerica bank card and told her that if she refused she would "be eliminated from the records that we're trying to establish to see who's going to be in the program." She gave them the PIN because "they looked so legitimate" and she thought "they were trying to help me."

Later that same evening, Green realized that her Comerica bank card was missing. She called the bank and discovered that someone had purportedly deposited $950 into her account and then withdrew $900. Green said that she did not have that kind of money in her account and did not give anyone permission to use her card.

Carol Cooper testified that she worked as a fraud investigator for Comerica Bank and pulled surveillance for fraudulent transactions that occurred with Green's card. She stated that someone made an "$950 empty envelope" deposit on the same day that the two women visited Green's apartment and then withdrew $900. She explained that an empty envelope drop is a deposit where the person inserts an empty deposit envelope, but keys in a deposit amount to inflate the available balance. Cooper stated that the surveillance taken from the branch location showed a woman in a "greenish blue scrub, like something a medical worker would wear." She was also "wearing a sweater, a hat and sunglasses." Officer Williams testified that he recognized Page in the photos from the ATM transactions involving Green's bank card. He also noted that Page had jewelry in her chin at that time.

Green picked out two women from a photo line-up that a police officer later showed her. She stated that she picked the photos because the women resembled the women who came to her apartment. She also identified Foster in court and stated that she resembled one of the women who came to her apartment. On cross-examination Green stated that she did not pick the woman out in the photos because she had seen them in a courtroom; instead, she picked them out because she remembered them: "I was remembering from what I saw in my apartment."

Glenda Fisher testified that she was an investigator with the Detroit Police Department. She conducted a photo line-up with Green and Green identified Page's photo. Fisher recognized her handwriting on the photo line-up and stated that she wrote "Immediate ID." She also wrote: "this is the lady that came to my apartment and scammed me." Sergeant Michael Griffin testified that Green also identified Foster's photo from a second photo line-up.

This testimony and evidence was sufficient to permit a reasonable jury to find that Foster went to Green's apartment with Page and either took Green's bank card from Green's apartment or aided and abetted Page in taking the card. Consequently, there was sufficient evidence from which a jury could find that Foster committed or aided and abetted the commission of a larceny from a building with regard to Green's bank card. See *Sykes*, 229 Mich App at 278. And, as already noted above, the jury determined that the evidence did not establish beyond a reasonable doubt that Foster made or aided and abetted the empty envelope drop and withdrawal involving Green's card. For that reason, the jury found her not guilty of illegal use of a financial transaction device and identity theft with regard to Green.

3. DOROTHY GATEWOOD

Dorothy Gatewood testified that she was 75 at the time of the trial. In December 2009, she got a call from a lady stating that she would be "getting a box from Focus Hope." The lady told her that "they would come out and I [could] fill out the paper and I'd have a box coming at five o'clock." Two women arrived that afternoon and had "papers and all" and were asking whether she wanted the box. They began to talk about kids and grandkids and she told them her birthdate as well as the birthdates for her kids and grandkids. Her granddaughter's birthdate was the PIN for her Comerica Bank card. The bank card was in her purse when the women arrived. Gatewood said she went to get her purse and put her identification on the table. After the women left, she looked for her bank card and realized it was missing.

Gatewood testified that she identified one of the women who came to the apartment from photos that an officer showed her. Officer Williams testified that he conducted a photo line-up with Gatewood and she picked Foster's photo. Gatewood also identified Foster at trial and stated that she "looks like the woman that was in my apartment."

Cooper testified that she pulled Comerica's photos from a transaction involving Gatewood's bank card that took place at 1:09 p.m. on the same day that the women visited Gatewood's apartment. The person in the photo deposited an empty envelope and keyed in $1,900 to inflate the balance. The person then withdrew $900. In the photo it appeared that the person had a piercing below her lower lip.

From this evidence, a reasonable jury could find that Foster went with Page to Gatewood's apartment and fraudulently induced Gatewood to reveal the PIN for her Comerica Bank card and then stole the bank card. Thus, there was sufficient evidence from which a jury could find that Foster committed or aided and abetted the commission of a larceny from a building with regard to the theft of Gatewood's bank card. *Sykes*, 229 Mich App at 278. Similarly, when the evidence that Page could not drive and yet shortly after the visit deposited an empty envelope and withdrew $900 from Gatewood's account using Gatewood's bank card is considered in light of West's testimony, a reasonable jury could infer that Foster accompanied Page to the bank after the visit to Gatewood's home and did so to aid and abet Page's illegal use of the financial transaction device and identity theft. Consequently, there was sufficient evidence to support those charges. See MCL 750.157q; MCL 445.63(q); MCL 445.65.

4. ESSIE HILL

Essie Hill testified that she would soon be 87. In January 2010, someone called and told her that she was from Meals on Wheels. A young lady then came to her apartment in a senior's building and said she was from Meals on Wheels. Hill said the woman looked like a nice lady and so she let her in. The woman asked her if she got a basket for Christmas and Hill told her that she did not. The woman also told her that she was supposed to get some food stamps. The woman then asked her about a number that would be easy to remember and she gave the woman her deceased daughter's birth year, which was the number she used as a PIN for her bank card. The woman was "sitting up there writing" while they spoke. The woman even asked her to lie down and rubbed her back. Her bank card and her Macy's card were in her purse, which was hung from her nearby scooter.

Hill did not notice that her bank card and Macy's card were gone until about a day later. She called her bank and Macy's and learned that someone had been using her cards at various stores: "And they bought, it looked like they was buying stuff to sell to somebody because they were spending two hundred and three hundred dollars at all these stores." She also noted that the stores were not around her neighborhood—"And all these stores that they went to was way out." Hill stated that she did not give anyone permission to use her cards.

Hill stated that the woman who came to her apartment had a piercing in her lip. Hill also testified that the woman had told her that she lost a lot of weight: "And she said—I pulled up my arm and I was shaking my meat and she said, I've lost a lot of weight, too. And she had a whole lot of meat shaking." There was testimony and evidence that Page had lost a lot of weight during the relevant time.

Cooper testified that she also pulled photos for an ATM transaction involving Hill's bank card. She stated that the person in the photos deposited an empty envelope, but keyed in that the envelope had $800. The person then withdrew $500. The person in the photo was wearing a "large, it looks like a down-filled coat or a puffy, quilted, winter coat." Cooper agreed that the photo showed that the person's coat had some writing on it—something "on the lefthand side like above the chest." Officer Williams testified that he seized a "black Phat Farm down coat" from Foster's residence; the coat had cursive writing on the left shoulder. West further identified Foster as the woman in the photo from the ATM transaction involving Hill's bank card.

John Shuler testified that he was an investigator with the Target Corporation. He investigated the use of Essie Hill's bank card at a Target in January 2010. A video, which was shown to the jury, showed two women purchasing goods from the Target. The first woman, who was wearing a white—possibly fur—coat and hat, used the card to pay for her items and then used the same card to pay for the second woman's items. The second woman was wearing a dark, possibly black, coat. The two women left the store and got into a silver Jeep with a luggage rack and a sunroof. Because one of the women purchased a videogame that could only be purchased by an adult, the woman had to use her driver's license to establish her birthday. The register recorded February 12, 1968, as her birthday.

Officer Williams testified that when they arrested Page she was with Foster and Foster was driving a Jeep with a luggage rack and sunroof. Williams stated that he seized a bag with receipts from Foster's Jeep. There were receipts for the items purchased from Target using Hill's credit card. He stated that Page's birthdate was February 12, 1968, which appeared on a Target receipt. He also seized a blood-pressure cuff from Page and cell phones. Officer Dion Peoples testified that he interviewed Foster after Page's arrest and Foster told him that she had not gone shopping with Page since 2007.

Julie Bachleda testified that in January 2010 she worked for Nordstrom's. She said that a shorter African-American woman came into the store during the evening and purchased two pairs of jeans for $487.60 using Hill's credit card. The woman was wearing a white fur coat and hat; she was not elderly. A few days later, a woman returned one pair of the jeans. She believed that the woman was not the same woman that purchased the jeans. The woman was wearing a long black fur coat and hat and sunglasses. Because she wanted cash, the woman had to give identification. The woman presented the driver's license for Natalie Foster. Thereafter, Bachleda gave the woman $261.50 in cash.

The evidence that the woman who came to Hill's home had lost significant weight and had a piercing—when considered in light of all the other circumstantial evidence—was sufficient to permit the jury to find that Page was that woman. Because the evidence showed that Hill's cards went missing after Page's visit and were used to make illegal purchases, a reasonable jury could find that Page stole Hill's credit and bank cards during that visit. Considering the timing

of the fraudulent transactions involving Hill's cards and the evidence that Page did not drive herself to her 'appointments', a reasonable jury could find that the person who drove Page to the appointment with Hill was likely the same person who was involved in the subsequent fraudulent transactions. When the image evidence from the Target purchases are considered in light of the other evidence and testimony, a reasonable jury could find that Foster and Page were the women who made the purchases with Hill's card. A reasonable jury could also find that Foster was the woman in the images who made the empty envelope deposit and cash withdrawal from the ATM using Hill's bank card and returned the jeans that were purchased using Hill's card. From these inferences, the jury could further infer that Foster aided and abetted Page's theft by driving her to the appointment and then used the stolen cards to purchase goods and obtain cash with Page's help and encouragement. See *People v Hardiman*, 466 Mich 417, 424-428; 646 NW2d 158 (2002) (stating that a reviewing court must consider all the inferences that can be drawn from the evidence, including inferences that arise from inferences, when reviewing the sufficiency of the evidence). Accordingly, there was evidence from which the jury could conclude that Foster aided and abetted Page's commission of larceny from a building with regard to the theft of Hill's bank and credit cards. *Sykes*, 229 Mich App at 278. Likewise, the evidence that Foster either directly used Hill's cards to make fraudulent purchases and withdrawals or aided and abetted Page in doing so was sufficient to establish the elements of identity theft and the illegal use of a financial transaction device. See MCL 750.157q; MCL 445.63(q); MCL 445.65.

5. PREDICATE OFFENSES

When the evidence is considered in the light most favorable to the prosecution, there was sufficient evidence from which the jury could find that Foster either directly committed or aided and abetted Page in the commission of each charge of larceny from a building, illegal use of a financial transaction device, and identity theft.

E. CONSPIRACY

The evidence that Foster and Page repeatedly worked together to fraudulently obtain identifying information and access to bank and credit cards, which they then stole and used to illegally withdraw funds and purchase goods, was also sufficient to establish that Foster and Page had previously agreed to work together with the intent to commit those crimes. See *People v Justice (After Remand)*, 454 Mich 334, 345-347; 562 NW2d 652 (1997) (stating that the prosecutor must prove that two or more people agreed to commit the underlying offense in order to establish a conspiracy and holding that the conspiracy may be proved through evidence of the parties' conduct). As such, there was sufficient evidence to establish that Page and Foster conspired to commit identity theft and to illegally use a financial transaction device. MCL 750.157a; MCL 750.157q; MCL 445.63(q); MCL 445.65.

F. WEIGHT AND CREDIBILITY

In arguing that there was insufficient evidence to support her convictions, Foster concedes that the elderly women—to some degree—identified her as someone who had a role in the theft of their cards and information. She nevertheless argues that this identification evidence was insufficient to establish that she "stole credit and debit cards from the victim's or used them for her own pecuniary gain" because the identifications were not "concrete." In a similar vein,

she notes that West's testimony was insufficient to establish her participation in any scheme with Page because West testified as part of a plea deal. Each of these claims addresses the weight and credibility to be afforded to the identification testimony and not the sufficiency of the actual evidence. The jury had the opportunity to see and hear the witnesses testify in person and it was for the jury alone to assess their credibility and the weight to be afforded their testimony. See *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992). And we will not substitute our judgment for that of the jury on matters of weight and credibility. *Hardiman*, 466 Mich at 430-431 (stating that once the appellate court determines that the jury could reasonably draw the inferences that it did and that those inferences were sufficient to establish guilt, the appellate court's review is complete).

There was sufficient evidence to support all of Foster's convictions.

III. INEFFECTIVE ASSISTANCE

A. STANDARD OF REVIEW

Foster also argues that her trial lawyer provided ineffective assistance by failing to move to quash her bindover on the charges against her. Because the trial court did not hold an evidentiary hearing on this claim, our review is limited to mistakes that are apparent on the record. *People v Gioglio (On Remand)*, 296 Mich App 12, 20; 815 NW2d 589 (2012), remanded for resentencing 493 Mich 864. This Court reviews de novo whether a trial lawyer's acts or omissions fell below an objective standard of reasonableness under prevailing professional norms and prejudiced the defendant. *Id.* at 19-20.

B. ANALYSIS

In order to establish a claim of ineffective assistance of counsel, Foster must show that her lawyer's decision to pursue the course of action that he did fell below an objective standard of reasonableness under prevailing professional norms—that is, she must show that his decision fell outside the wide range of professionally competent assistance in light of all the circumstances surrounding her case. *Id.* at 22. However, when reviewing an ineffective assistance claim, this Court must indulge a strong presumption that the defendant's lawyer's conduct fell within the range of reasonable professional assistance. *Id.* Indeed, this Court must conclude that the defendant's trial lawyer's conduct "fell within the range of reasonable professional conduct if, after affirmatively entertaining the range of possible reasons for the act or omission under the facts known to the reviewing court, there might have been a legitimate strategic reason for the act or omission." *Id.* at 22-23.

Here, there are a variety of legitimate reasons that Foster's lawyer might have had for proceeding without moving to quash the bindover. Even if he believed that the bindover was infirm, Foster's lawyer might reasonably have concluded that the motion was not likely to prevail or that the prosecutor would be able to rectify any infirmities at a later examination. See MCR 6.110(F) (stating that, if probable cause does not exist to bind the defendant over, the court must discharge the defendant "without prejudice to the prosecutor initiating a subsequent prosecution for the same offense"); *People v Robbins*, 223 Mich App 355, 358-363; 566 NW2d 49 (1997). Because an improper bindover involves only a statutory right, Foster's lawyer might

have felt that Foster had a better chance of prevailing by proceeding to trial on the infirm evidence and then moving for a directed verdict. See *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006) (stating that, after a fair trial, an appellate court's review of the bind-over is limited to determining whether the trial court should have granted a motion for directed verdict); *People v Hall*, 435 Mich 599, 603, 613; 460 NW2d 520 (1990) (noting that the preliminary examination is a statutory right that is subject to harmless error review). He might also reasonably have believed that it was in Foster's best interests to proceed because she was more likely to get an acquittal on the evidence as it stood after the preliminary examination. Accordingly, Foster has not established that her lawyer's decision to proceed without moving to quash her bindover fell below an objective standard of reasonableness under prevailing professional norms. *Gioglio*, 296 Mich App at 22-23.

IV. CHARACTER EVIDENCE

A. STANDARDS OF REVIEW

Foster next argues that the trial court erred when it permitted the prosecutor to present evidence and testimony that she illegally used credit cards to purchase goods from a Target store in 2007 and obtained furniture using personal identifying information from an elderly man in 2008. She argues that this evidence was improperly admitted in violation of MRE 404(b). In a related argument, Foster contends that the trial court erred when it denied her trial lawyer's two motions for a mistrial premised on the prosecutor's use of this evidence. This Court reviews a trial court's decision to permit the introduction of evidence for an abuse of discretion. *Roper*, 286 Mich App at 90. This Court also reviews a trial court's decision on a motion for a mistrial for an abuse of discretion. *People v Dennis*, 464 Mich 567, 572; 628 NW2d 502 (2001). A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *People v Young*, 276 Mich App 446, 448; 740 NW2d 347 (2007).

B. OTHER ACTS EVIDENCE

The rules of evidence "strictly limit both the circumstances under which character evidence may be admitted and the types of character evidence that may be admitted." *Roper*, 286 Mich App at 91. The rules limit such evidence because of the danger that the jury will give it undue weight. *Id.*, citing *People v VanderVliet*, 444 Mich 52, 62 n 11; 508 NW2d 114 (1993). Accordingly, the prosecutor may not introduce "[e]vidence of other crimes, wrongs, or acts" in order to prove that the defendant has bad character and acted "in conformity therewith." MRE 404(b). "If the proponent's only theory of relevance is that the other act shows defendant's inclination to wrongdoing in general to prove that the defendant committed the conduct in question, the evidence is not admissible." *VanderVliet*, 444 Mich at 63. Evidence of other acts may, "however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident . . . ." MRE 404(b). MRE 404(b) is not a rule of exclusion; if the other acts evidence is logically relevant and does not involve "the intermediate inference of character, Rule 404(b) is not implicated." *VanderVliet*, 444 Mich at 64. Stated another way, MRE 404(b) only precludes the admission of evidence concerning other acts "solely to show the criminal propensity of an individual to establish that he acted in conformity therewith." *Id.* at 65.

In this case, the prosecutor called several witnesses and introduced documentary evidence to show that Foster had on prior occasions used stolen credit cards and proffered someone else's identifying information without authorization in order to obtain goods. The evidence and testimony clearly implicated Foster's propensity to commit crimes such as the illegal use of a financial transaction device and identity theft. The prosecutor argued that the testimony and evidence was nevertheless not barred because it was relevant to prove Foster's scheme, plan, or system in doing an act. MRE 404(b). Foster's trial lawyer countered that the proposed testimony and evidence did not implicate a common scheme, plan, or system, but was really offered to prove that Foster had a propensity to commit these types of crimes and must have acted in conformity with her bad character. He also argued that the evidence was unfairly prejudicial. See MRE 403. The trial court determined that the proposed testimony and evidence was sufficiently similar to the events at issue that it would be relevant to prove Foster's scheme, plan, or system. For that reason, it allowed the prosecution to admit the testimony and evidence.

C. COMMON SCHEME, PLAN, OR SYSTEM IN DOING AN ACT

Other acts evidence may be relevant and admissible as evidence of the defendant's common scheme, plan, or system for doing a particular act or acts: "evidence of similar misconduct is logically relevant to show that the charged act occurred where the uncharged misconduct and the charged offense are sufficiently similar to support an inference that they are manifestations of a common plan, scheme, or system." *People v Sabin (After Remand)*, 463 Mich 43, 63; 614 NW2d 888 (2000). The logical relevance is not limited to those circumstances where the charged and uncharged acts are part of a "single continuing conception or plot." *Id.* at 64. There must, however, be more than general similarity; the evidence must permit an inference that the defendant had a preexisting design, system, plan, or scheme—that is, there must be sufficiently common features between the charged and uncharged acts that the common features are naturally to be explained as caused by a general plan. *Id.* at 64-65.

1. TARGET 2007

Mary Hill testified that she was 84. Back in May 2007, a young lady came to her door to "do some kind of work", but she could not remember what; she let the woman in. Mary Hill said her purse was on the couch next to where the woman sat down. After the woman left, she realized that her wallet was missing along with her credit card. She did not give Foster, Page, or Foster's sister permission to use the credit card.

Girtha Koger testified that in May 2007 a lady came to her house selling cosmetics. After the woman left her house, she noticed that something was missing. Koger testified that she did not give anyone permission to use her credit card. On cross-examination, Koger stated that she did not remember telling an officer that Foster should not go to jail because she was not the person who came into her home; "Because she was the person that came into my home."

Dennis Dixon testified that in May 2007 he was the team leader for asset protection at the Troy Target store. At 2:24 p.m. Foster's sister tried to purchase a videogame system and a television with a credit card that had been issued to Koger. At 3:30 p.m. on the same day, Foster tried to purchase a videogame system and a digital camera with the same credit card. When the purchase was denied, Foster tried to use a credit card issued to Mary Hill. Dixon said he called

Koger's credit card company and verified that the attempted purchase was fraudulent, but Foster had left the store. He called the Troy police department.

Peter Minton testified that he was an officer with the Troy Police Department. In May 2007 he responded to a call at Target. He pulled over a silver Jeep that was identified as a suspect vehicle. Foster was driving the Jeep and Page and Foster's sister were in the Jeep with her. Minton stated that Page was dressed in nurse scrubs. He and another officer searched the Jeep and recovered two credit cards: one issued to Mary Hill and another issued to Koger. Minton determined who the cards belonged to and discovered that Mary Hill was born in 1930 and Koger was born in 1927.

2. AARON SALES & LEASING 2008

Rosetta Hayward testified that she works for Aaron Sales & Leasing. In January 2008, she was the regional manager at the Ferndale location. Foster came into the store and executed a lease agreement for a refrigerator and television; the total value of the leased items was over $8,000. Foster signed as the primary person on the lease and David Teague was the secondary person. Foster listed Teague as her father. The lease included Teague's name, social security number, driver's license number, date of birth, and signature. The address used on the lease was 3222 Gladstone. Foster listed her employment as a CNA with Tyler Care Center, which was on 38 West Grand.

Hayward stated that the items were delivered to the Gladstone address, but no payments were made. She tried Teague's contact information and a man answered; he sounded elderly. Teague never paid Aaron Sales & Leasing.

Mary Smith testified that Teague was her brother-in-law and that she had known him since 1959. Teague had prostate cancer and died in November 2008. Before he died, she served as his caregiver; she "cooked for him and, you know, did things around the house for him and took care of the bills and what have you." Teague lived in a house on Flemming since 1964 and never lived on Gladstone. He also did not have any children.

While Teague was in the hospital she would go to his home and care for it; at some point a person from Aaron Sales & leasing came to Teague's house while she was there. The person showed her a form for the purchase of furniture that had Foster's name on it along with Teague's name. She noticed that the signature that was purportedly Teague's was "not his signature." Smith brought Teague's driver's license to court and compared it to the identification on the lease; the lease had Teague's name and his correct driver's license number and birth date, but the address was for a home on Gladstone rather than Flemming. Moreover, the man in the picture was not Teague. Smith testified that she also found a card in Teague's home that had Foster's name on it. After that, she filed a police report and gave Foster's name to the officer.

Officer Williams testified that he investigated Tyler Care and learned that it was registered to Foster's husband. He also went to the 38 West Grand location and saw a house that did not appear to be a business—it looked like there were "[c]rackheads on the front porch." He also went to the Gladstone address listed on the lease. He stated that the house appeared to be abandoned and when he checked the address in the crime reporting system he learned that the home was associated with Foster's brother. Williams examined the identification that was used in the lease and noted that it had Teague's driver's license number, but that it was not Teague. He stated that the picture was of a man who was then seated in the back of court; the man was related to Foster. Williams testified that he seized a bill addressed to Tyler Care and Tyler Care stationary from Foster's home, which was actually on Tavistock.

D. ANALYSIS

The testimony and evidence concerning the 2007 incident at Target and the 2008 incident at Aaron Sales & Leasing demonstrated sufficient common features with the incidents at issue in this case to permit an inference that the common features were no accident; that is, the evidence permitted an inference that the most natural explanation for the common features was that each incident arose from a common scheme to fraudulently induce elderly people to reveal personal identifying information and permit access to financial transaction devices, which information and devices were then used to illegally obtain goods. See *Sabin*, 463 Mich at 64-66. Like the incidents at issue, there was evidence that both the 2007 and 2008 incidents involved the elderly: Mary Hill was born in 1930; and Koger and Teague were both born in 1927. In addition, there was evidence in each case that would permit a fact-finder to infer that Foster or another young woman fraudulently gained access to the elderly person's home.

Mary Hill testified that a woman came to her home for some "work" and Koger stated that a woman, who she said was Foster, came to her home to sell cosmetics. And Teague's caregiver testified that she found a card with Foster's name on it in Teague's home while he was in the hospital. Although Teague had since died and could not, therefore, explain the circumstances surrounding how the card came to be in his home, a reasonable fact-finder could infer that the card was a business card and that Foster presented it to Teague at some point. Moreover, the evidence from the lease showed that Foster represented herself as a CNA with her husband's business, Tyler Care. At trial, Foster denied that the CNA stood for certified nursing assistant—she testified that it stood for community network administrator—but a reasonable jury examining the evidence might infer that she represented herself to Teague as a certified nursing assistant with Tyler Care and gave him her card to gain access to his information. This inference was also consistent with the evidence that Foster, Page, and West represented or implied that they were medical professionals or social workers to gain access to the homes and information belonging to elderly persons. The evidence also tended to show that, after gaining access to the elderly persons' homes, Foster used the information to illegally procure goods, which was consistent with the evidence relating to the incidents at issue at trial.

Admittedly, there were some differences between the acts giving rise to the charges at issue and the other acts evidence. For example, the 2008 incident with Teague did not involve a stolen credit card and Koger testified that the young lady who came to her home was not offering medical or social services, she was selling cosmetics. But there does not need to be a "high degree of similarity between the other acts and the charged acts." *People v Hine*, 467 Mich 242,

252; 650 NW2d 659 (2002). Rather, the other acts evidence need only permit an inference that the similarities between the other acts evidence and the acts at issue could most naturally be explained because they arose from a common scheme, plan, or system in doing the acts. *Sabin*, 463 Mich at 64-66. And we conclude that the testimony and evidence concerning the other acts met that burden. Moreover, even if reasonable people might disagree as to "whether the charged and uncharged acts contained sufficient common features to infer the existence of a common system" to commit the acts, that disagreement would be insufficient to warrant concluding that the trial court abused its discretion. *Id.* at 67.

We likewise cannot agree with Foster's contention that the probative value of the other acts evidence was "substantially outweighed by the danger of unfair prejudice . . . ." MRE 403. As with all relevant evidence, the testimony and evidence concerning the other acts was surely prejudicial—it did after all tend to show that Foster had developed a common system for defrauding the elderly even before the events at issue. *People v Mill*, 450 Mich 61, 75; 537 NW2d 909 (1995). "[B]ut the fear of prejudice does not generally render the evidence inadmissible" under MRE 403. *Id.* Rather, evidence is inadmissible under MRE 403 when there is a danger that the jury will give marginally probative evidence undue or preemptive weight. *Id.*

Here, the evidence concerning the other acts helped to establish not only the common elements of the scheme, but also that Foster acted consistently with the scheme even when Page was not involved. Thus, the other acts evidence was not so marginal—especially when considered in light of the other evidence—that there was a danger that the jury would convict on an improper character to conduct inference. *Id.* Moreover, the trial court properly instructed the jury that it could only consider the other acts evidence to the extent that it tended to show a plan, system, or "characteristic scheme", or the identity of the person who committed the crimes; the court further instructed the jury that it "must not decide that it shows the defendant is a bad person or that she is likely to commit crimes. You must not convict the defendant here because you think she is guilty of . . . other bad conduct." These instructions adequately protected Foster's rights. *Roper*, 286 Mich App at 106.

The trial court did not abuse its discretion when it permitted the admission of this testimony and evidence.

E. THE MOTIONS FOR MISTRIAL

Foster's trial lawyer twice moved for a mistrial on the grounds that the admission of the testimony and evidence concerning these other acts was—at least in part—improper. As our Supreme Court has explained, although a trial court has the discretion to grant a mistrial, not every irregularity during trial will warrant relief. *People v Watson*, 307 Mich 596, 606; 12 NW2d 476 (1943). A trial court should grant a mistrial where there was an irregularity at trial that impaired the defendant's ability to receive a fair trial. *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995). If, however, the trial court can cure the error with a proper instruction, it should not order a mistrial. *People v Horn*, 279 Mich App 31, 36; 755 NW2d 212 (2008).

We cannot conclude that the trial court abused its discretion when it denied Foster's trial lawyer's first motion for a mistrial premised on the erroneous admission of the other acts evidence. Foster's lawyer argued that the other acts evidence was so dissimilar to the charged acts that the prosecutor should not have been permitted to admit it. The trial court denied the motion because it concluded that there was sufficient "commonality" between the charged and uncharged acts and the probative value was not outweighed by the danger of unfair prejudice. As we already explained, the trial court did not abuse its discretion when it permitted the admission of this evidence. As such, there was no irregularity, let alone an irregularity that deprived Foster of a fair trial. *Haywood*, 209 Mich App at 228.

Foster's lawyer also made a second motion for a mistrial. In that motion, Foster's lawyer argued that Foster was entitled to a mistrial for what he characterized as prosecutorial misconduct. He explained that the misconduct involved the use of voluminous other acts evidence: "The problem is, Judge, there has been so much, so many witnesses, so many exhibits, so many photographs that are attributable to everything but the allegations against my client in this case. She is basically being tried on the other act evidence." He also briefly mentioned that the prosecutor elicited other acts testimony that implicated Foster's family members, which guilt by association she could not defend against, and that it was his belief that it was improper for the prosecutor to ask Foster to put on the coat for the jury.

The trial court disagreed with Foster's lawyer's argument. It reiterated that the other acts evidence was relevant to a proper purpose and not excludable under MRE 403. It also opined that the amount of testimony and evidence—given the nature of the proofs necessary to establish the other acts—was not "overkill", but necessary to establish the "similarities." The court also rejected his contention that the references to Foster's family members were inappropriate. The testimony was proper to explore the representations that Foster made on the lease. The trial court also disagreed that it was improper for the prosecutor to ask Foster to put on the coat. For those reasons, it denied the second motion for a mistrial as well.

On this record, we cannot state that the trial court abused its discretion when it denied Foster's second motion. Again, the trial court did not abuse its discretion when it determined that the other acts evidence was admissible to prove common scheme, plan, or system in doing an act. We also agree with the trial court's determination that the other acts evidence was not excessive and that the references to the appearance of the building associated with Tyler Care and Foster's family members were minimally related to the evidence. Moreover, any prejudice that occurred as a result of these references could easily have been cured by an appropriate jury instruction. Therefore, even if it were error to permit these references, the errors would not warrant a mistrial. *Horn*, 279 Mich App at 36. Finally, the prosecutor did not violate Foster's rights by requesting that she put on the coat seized from her home. *People v Burns*, 118 Mich App 242, 250-251; 324 NW2d 589 (1982).

The trial court did not err when it denied Foster's motions for a mistrial.

V. WITNESS ERROR

Finally, Foster argues that she was deprived of a fair trial because there was evidence that the complaining witnesses discussed the case and their testimony in the witness room. Specifically, she notes that Bessie Motley admitted in a letter that was read at sentencing that she discussed the case with the other witnesses. Foster contends that, after Motley's admission, her lawyer should have taken some action to cure the error and the trial court should have sua sponte taken steps to investigate the admission. A trial court has the discretion to sequester witnesses so that they cannot hear the testimony by other witnesses. MRE 615. And, if a witness violates a sequestration order, the trial court has the discretion to exclude that witness' testimony. *People v Nixten*, 160 Mich App 203, 209; 408 NW2d 77 (1987). The violation of a sequestration order will not warrant relief unless the defendant can show that the violation prejudiced his or her trial. *People v King*, 215 Mich App 301, 309; 544 NW2d 765 (1996).

At sentencing, the prosecutor read a letter from Bessie Motley to the court. In it, Motley wrote: "During the court proceedings I sat in the witness room with four or five other victims of these Defendants. Their story was the same as mine."

Although Foster claims that this letter constitutes an admission that the witnesses inappropriately discussed their testimony, the letter does not actually state as much. In the relevant portion of her letter, Motley states two things: she sat in the witness room with other victims and the other victims had the same story. Although one might infer that Motley learned that the other witnesses had the same story while sitting in the witness room, it is also possible that she learned about the similarities at some later point.

In any event, on appeal Foster has not identified the sequestration order and has not shown whether the trial court ordered the witnesses to refrain from discussing the case. Because the witnesses are not automatically precluded from discussing the case by a sequestration order, there may be no error. See *People v Davis*, 133 Mich App 707, 714; 350 NW2d 796 (1984). Similarly, Foster has not established how any discussion between these witnesses might have prejudiced her trial beyond assertions that such conduct is "inflammatory" and that they "were likely able to conform their testimony." Foster's speculation is insufficient to establish prejudice; especially given that the complaining witnesses' testimony involved events that were so distinct in time and detail that it would be difficult to discern how they might have been able to coordinate their testimony. See *King*, 215 Mich App at 309 (noting that a trial court does not have a duty to sua sponte investigate a possible sequestration violation and stating that the defendant bears the burden of proving prejudice). By failing to address the actual nature of the sequestration order—if any—and failing to meaningfully address the potential prejudice, Foster abandoned this claim of error. *Martin*, 271 Mich App at 315.

VI. CONCLUSION

The prosecutor presented sufficient evidence to support each of Foster's convictions. In addition, the trial court did not abuse its discretion when it permitted the prosecutor to present other acts evidence to prove that Foster had a common scheme, plan, or system in doing an act and did not abuse its discretion when it denied Foster's lawyer's motions for a mistrial. Because there were valid strategic reasons for proceeding to trial without moving to quash Foster's

bindover, we also cannot conclude that her trial lawyer's decision not to make such a motion fell below an objective standard of reasonableness under prevailing professional norms. Finally, Foster abandoned any claim that she is entitled to a new trial because Motley or other witnesses violated a sequestration order.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Douglas B. Shapiro