No. 08-1109

In the Supreme Court of the United States

CRYSTAL PORTER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner's proposed jury instruction on the degree to which a fake bill must resemble genuine currency to qualify as "counterfeit" was adequately covered by the jury instructions explaining that a counterfeit bill must have a likeness or resemblance to genuine currency and that petitioner must have intended to make another person think the note was real.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-23a) is reported at 542 F.3d 1088.

JURISDICTION

The judgment of the court of appeals was entered on September 16, 2008. A petition for rehearing was denied on December 4, 2008 (Pet. App. 36a-37a). The petition for a writ of certiorari was filed on March 4, 2009. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Texas, petitioner was convicted of conspiring to manufacture and utter coun-

terfeit obligations of the United States, in violation of 18 U.S.C. 371, 471, and 472. Petitioner was sentenced to time served, to be followed by two years of supervised release.

1. In late 2005, Joey Barrett owed his drug dealer, Carlos, $300. Pet. App. 2a. Barrett and his common-law wife, Erica Horton, agreed to pay off the debt by allowing Carlos to use their computer and color photocopier/scanner to make counterfeit money. *Ibid.* Horton knew that petitioner worked as a cashier at Wal-Mart, and the group planned to use the counterfeit notes to buy gift cards at petitioner's register. *Id.* at 2a-3a; Gov't C.A. Br. 3.

Over a two-day period in December 2005, Carlos and Horton fabricated the money. Pet. App. 2a; Gov't C.A. Br. 3. Petitioner came over while Carlos and Horton were making the money. Pet. C.A. Br. 9; Gov't C.A. Br. 3. Horton showed petitioner some fake bills and described the plan to pass counterfeit money at her register. Pet. App. 3a; Pet. C.A. Br. 9. Petitioner agreed to participate, saying, "Yeah, this will work." Pet. App. 3a; Gov't C.A. Br. 3.

Barrett and Horton went through petitioner's checkout line at Wal-Mart and bought $500 worth of gift cards with counterfeit $100 bills that Horton and Carlos had made. Pet. App. 3a. Wal-Mart's cash office detected the counterfeit bills, traced them to petitioner's register, and called the police. *Ibid.* The police went to petitioner's house, and she agreed to cooperate. *Ibid.* Petitioner told the police that Barrett and Horton had passed the bills. *Ibid.*; Gov't C.A. Br. 4. Petitioner, Barrett, and Horton all went to the police station and gave written statements to the police and to the United States Secret Service. *Ibid.* In her written statement, peti-

tioner admitted that she had seen fake $20 bills at Horton's house, that Horton had asked her for a genuine $50 or $100 bill to use as a model, and that she had agreed that Horton could buy gift cards with counterfeit money from her checkout line at Wal-Mart. *Ibid.*; Pet. App. 3a.[1]

2. On February 22, 2007, a federal grand jury indicted petitioner along with Barrett and Horton. Pet. C.A. Br. 8. Petitioner was charged with one count of violating 18 U.S.C. 371, by conspiring with Barrett and Horton to commit certain offenses against the United States (specifically, making and passing counterfeit obligations of the United States in violation of 18 U.S.C. 471 and 472). Pet. App. 1a-2a. Unlike her co-conspirators, petitioner was not charged with substantive counts of making or passing counterfeit currency in violation of 18 U.S.C. 471 or 472.[2] Horton pleaded guilty to the conspiracy in violation of Section 371 and to substantive counts of making and passing counterfeit money in violation of both Section 471 and Section 472. *United States* v. *Horton*, No. 3:07-CR-57-G(01) (N.D. Tex. Sept. 10, 2007). Barrett pleaded guilty to the conspiracy and to a sub-

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[1] As petitioner repeatedly noted in her opening brief in the court of appeals, the trial testimony indicated that, when petitioner agreed to participate in the scheme, she had not seen the fake $100 bills that were ultimately used. See Pet. C.A. Br. 9, 10, 15; see also Gov't C.A. Br. 10 (also noting that petitioner "saw only incomplete bills").

[2] Section 471 provides as follows: "Whoever, with intent to defraud, falsely makes, forges, counterfeits, or alters any obligation or other security of the United States, shall be fined under this title or imprisoned not more than 20 years, or both." 18 U.S.C. 471.

Section 472 provides for the same punishment of "[w]hoever, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent * * * keeps in possession or conceals any falsely made, forged, counterfeited, or altered obligation or other security of the United States." 18 U.S.C. 472.

stantive count of passing counterfeit money in violation of Section 472. *United States* v. *Barrett*, No. 3:07-CR-57-G(02) (N.D. Tex. Sept. 10, 2007). Petitioner went to trial. Pet. App. 3a.

After the close of the government's case, petitioner moved for a judgment of acquittal. Pet. App. 3a. She contended that the money did not have a sufficient likeness to genuine currency to be "counterfeit." *Id.* at 3a-4a. The district court denied the motion on the ground that a "conspiracy offense is complete once the agreement is made and an overt act is committed by one or more of the co-conspirators during the existence of the conspiracy, whether or not the object crime is ever accomplished." *Id.* at 4a.

Following closing arguments, the district court instructed the jury on the elements of conspiracy and the elements of the object crimes of making and passing counterfeit currency. Pet. App. 5a. The instructions on the object crimes included the requirement that the defendant acted with "intent to defraud, that is, intending to cheat someone by making the other person think that the Federal Reserve notes were real." *Ibid.* (Section 471 instruction); see also *ibid.* (nearly identical phrasing of instruction for Section 472). The court further instructed the jury that, "[t]o be counterfeit, a Federal Reserve note must have a likeness or resemblance to genuine currency." *Ibid.*

Petitioner requested that the district court expand the definition of "counterfeit" in its instructions on the object crimes of the conspiracy to include the following language:

> A bill is counterfeit only if it possesses similitude: it bears such a likeness or resemblance to genuine currency as is calculated to deceive an honest, sensible

> and unsuspecting person of ordinary observation and care when dealing with a person supposed to be upright and honest.

Pet. App. 4a. The district court declined to use petitioner's proposed language. *Ibid.* The district court was concerned that petitioner's language would inappropriately focus the jury's attention on whether the bills that were actually passed appeared sufficiently genuine to qualify as counterfeit. *Ibid.* The court explained that because the evidence showed that petitioner agreed to accept fake money before the bills were completed and passed, the conspiracy was complete even if petitioner's co-conspirators never succeeded in their efforts to make and pass counterfeit money. Gov't C.A. Br. 6-7. The district court also explained that further elaboration on the definition of counterfeit would "confuse the jury" by focusing its attention on whether petitioner's co-conspirators succeeded in making and passing counterfeiting money rather than on whether petitioner conspired with them to do so. *Id.* at 7.

3. On appeal, petitioner challenged the sufficiency of the evidence on her conspiracy conviction, claiming that the fake bills were not sufficiently similar to genuine bills to be "counterfeit," and thus that she could not have participated in a conspiracy to make and pass counterfeit money. Pet. App. 7a. The court of appeals rejected that claim, noting that petitioner's co-conspirators agreed to make "identical color reproductions of genuine $100 bills," that petitioner affirmatively joined "the ongoing conspiracy," and that "there were multiple overt acts in furtherance of the conspiracy[] * * * well before [petitioner] actually accepted" the fake bills at Wal-Mart. *Id.* at 8a-9a.

The court of appeals also rejected petitioner's contention that the district court abused its discretion by failing to use her proposed language on the degree of "similitude" a bill must possess to qualify as "counterfeit." Pet. App. 9a-14a. The court concluded that, even assuming *arguendo* that petitioner's definition was a correct statement of the law and that failure to instruct on that issue would have seriously impaired petitioner's defense, the district court did not abuse its discretion because petitioner's proffered instruction was "substantially covered" by the instructions "as a whole." *Id.* at 10a-11a. The court of appeals noted that the definition of "counterfeit" used by the district court came from the Fifth Circuit Pattern Jury Instructions for making or passing counterfeit notes under Section 471 or 472 (which incorporated by reference a Ninth Circuit Pattern Jury Instruction), while petitioner's proposed definition came from the pattern instruction for dealing in counterfeit notes under Section 473, which was not one of the object crimes of petitioner's conspiracy.[3] *Id.* at 11a-13a. The court of appeals further noted that Section 473 contains a specific intent requirement that is not found in Section 471 or 472, and that, because of that requirement, petitioner's more detailed instruction on the degree of similitude "might well have been necessary" if she had been charged with conspiring to violate Section 473. *Id.* at 13a. The court concluded, however, that, in this case, the substance of petitioner's proposed instruction was adequately covered by the district

[3] Section 473—which is entitled "Dealing in counterfeit obligations or securities"—applies to anyone who "buys, sells, exchanges, transfers, receives, or delivers any false, forged, counterfeited, or altered obligation or other security of the United States, with the intent that the same be passed, published, or used as true and genuine." 18 U.S.C. 473.

court's instructions as a whole, which explained—per the pattern instruction—that a counterfeit bill must have a likeness or resemblance to genuine currency. *Id.* at 4a, 13a-14a.

Judge Haynes concurred in part and dissented in part. Pet. App. 15a-23a. She agreed with the majority's conclusion that the evidence showed that petitioner "completed the crime of conspiracy * * * well before and independent of" her physical acceptance of the fake bills at Wal-Mart. *Id.* at 15a. Judge Haynes dissented, however, from the majority's ruling that the district court did not abuse its discretion in refusing to give petitioner's proposed jury instruction. She acknowledged that, "in 99 out of 100 cases," the difference between the jury charge and petitioner's requested language "would be a distinction without a difference." *Id.* at 21a. Nevertheless, she reasoned that petitioner's proposed instruction was necessary because petitioner may have agreed to pass only "a *specific* fake bill * * * that she had seen." *Id.* at 22a. Judge Haynes acknowledged that the bills in question "had a 'resemblance'" to genuine currency under the district court's definition, and that, even under petitioner's "proffered jury instruction, a reasonable jury could still find that [petitioner] conspired to pass counterfeit money." *Ibid.* She concluded, however, that because the bills "arguably * * * did not feel like real money," the jury "could have a reasonable doubt" about whether "the specific bills she agreed to pass" were "sufficiently real to qualify as counterfeit." *Ibid.*

ARGUMENT

Petitioner renews (Pet. 16-22) her contention that the district court abused its discretion in declining to

give her proposed jury instruction about the degree to which a fake bill must resemble real money to qualify as "counterfeit" under 18 U.S.C. 471 or 472. She further contends (Pet. 11-15) that the decision of the court of appeals conflicts with decisions of nine other courts of appeals. Those contentions do not warrant this Court's review.

1. a. Petitioner was convicted of conspiring to commit an offense against the United States, in violation of 18 U.S.C. 371. That conspiracy conviction required proof of (1) an agreement between two or more people to pursue an unlawful objective; (2) the defendant's voluntary agreement to join the conspiracy with knowledge of its unlawful objective; and (3) the commission of an overt act by one or more of the conspirators in furtherance of the objective of the conspiracy. See, *e.g.*, *United States* v. *Williams*, 507 F.3d 905, 910 n.4 (5th Cir. 2007), cert. denied, 128 S. Ct. 2074 (2008). The conspiracy conviction did not require proof that petitioner's co-conspirators actually made and passed counterfeit bills in violation of 18 U.S.C. 471 and 472.

It is well established that a conspiracy to commit a substantive crime is a separate and distinct offense from the underlying crime. *Pinkerton* v. *United States*, 328 U.S. 640, 643 (1946). The conspirator "must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices that he adopt the goal of furthering or facilitating the criminal endeavor." *Salinas* v. *United States*, 522 U.S. 52, 65 (1997). Accordingly, "a conspiracy may exist and be punished whether or not the substantive crime ensues, for the conspiracy is a distinct evil, dangerous to the public, and so punishable in itself." *Ibid*. Thus, the basis of a conspiracy charge is the agreement

itself and the defendant's intent. A conspiracy may exist and be punished whether or not the substantive offense was actually committed by the conspirators. That principle remains true even if the goals of the conspiracy were from inception objectively unattainable. See, *e.g.*, *United States* v. *Jimenez Recio*, 537 U.S. 270, 275-276 (2003) (citing 2 Wayne R. LaFave & Austin W. Scott, Jr., *Substantive Criminal Law* §§ 6.5, 6.5(b), at 85, 90-93 (1st ed. 1986)).

b. In light of those principles, the district court did not abuse its discretion in declining to give petitioner's proposed jury instruction, because the issue petitioner raised—whether the conspirators had agreed to make and pass fake bills that another person might think were real—was substantially covered in the jury charge that the district court gave.

As the district court noted, because petitioner was charged only with conspiracy, the government was not required to prove that the fake bills that the conspirators actually made and passed were realistic enough to be "counterfeit." Even if petitioner's co-conspirators had abandoned the plan before completing the manufacturing process—or because the fake bills were of too poor a quality to fool anyone—she and her co-conspirators would still have been guilty of conspiracy if their *intent* had been to make and pass money that could fool someone. The quality of the actual bills was relevant only as evidence of whether they had such an intent in the first place.

The district court's jury charge adequately addressed that issue. The instructions explained that to be "counterfeit" a bill "must have a likeness or resemblance to genuine currency." Pet. App. 5a. The instructions further explained that the defendant must have acted

with "the intent to defraud, that is, intending to cheat someone by *making the other person think that the Federal Reserve notes were real*." *Ibid*. (emphasis added); see also *ibid*. (defining "intent to defraud" as the intent "to cheat someone by making that person think the Federal Reserve notes were real"). Because the instructions that were given already required the jury to find that petitioner joined a plan to make notes that resembled real currency *and* to make another person think the notes were "real," the jury charge effectively precluded reasonable jurors from convicting petitioner if they believed (as she claimed) that she had intended only to accept bills of "Monopoly money" quality that were too obviously fake to fool anyone. See Pet. C.A. Br. 9. In this context, there is thus no material difference between the court's instructions, which required the jury to find that the conspirators planned to make and pass bills resembling genuine currency with the intent to make someone think they were real, and petitioner's proposed instruction, which required a finding that they planned to make and pass bills with such resemblance to genuine currency as is calculated to deceive an unsuspecting person. See *United States* v. *Bedford*, 536 F.3d 1148, 1155-1156 (10th Cir. 2008) (finding no error when the district court failed to instruct on the elements of the object crime because the instructions as a whole adequately instructed the jury on the requisite criminal intent), cert. denied, 129 S. Ct. 1359 (2009).

c. The court of appeals' conclusion that the district court's instructions adequately covered the issue of the bills' similitude finds support in the Ninth Circuit decision on which petitioner relies (Pet. 13). In *United States* v. *Johnson*, 434 F.2d 827 (1970), the bills were (like the ones in this case) photocopied reproductions of

both sides of genuine bills pasted together. *Id.* at 829. The court said: "While they certainly are not good counterfeits, they are unquestionably imitations of genuine bills which resemble genuine bills and which might, under favorable circumstances, be uttered and accepted as genuine." *Ibid.* That, the court believed, satisfied the test of *United States* v. *Smith*, 318 F.2d 94 (4th Cir. 1963), one of the cases articulating the very definition of counterfeit that petitioner wanted to use. *Johnson*, 434 F.2d at 830; see *United States* v. *Mousli*, 511 F.3d 7, 15 (1st Cir. 2007) (characterizing *Smith*'s similitude requirement as a "low standard"); see also Pet. 13 (endorsing *Smith*). Thus, the *Johnson* court equated the *Smith* test with a requirement that the manufactured bills "must be sufficiently complete to be an imitation of and to resemble the genuine article." *Johnson*, 434 F.2d at 830. That latter formulation is essentially the same as the instruction given to petitioner's jury.

2. Petitioner contends (Pet. 22-24) that the failure to give the more specific instruction on "counterfeit" that she requested was prejudicial because she asserts her agreement with her co-conspirators was limited to accepting only bills that were too obviously fake to fool anyone. Specifically, petitioner argues (Pet. 23 n.8) that her agreement to accept fake money at her register was restricted to the specific bill that she saw at Horton's house, as it appeared at that time. But the evidence indicated that petitioner knew that the money-fabricating process was ongoing at the time petitioner joined the conspiracy. Petitioner told police that Horton had asked petitioner for a real $50 or $100 bill for them to copy. Gov't C.A. Br. 3-4. Moreover, Barrett said that the manufacturing process was not finished when petitioner came over and that the bills she saw were not complete,

as petitioner herself contended on appeal. See Pet. C.A. Br. 9-10.

Thus, both the evidence and common sense indicate that the scope of petitioner's agreement subsumed any further improvements her co-conspirators might have made to the quality of the fake bills. Whether they succeeded in making such improvements made no difference to the scope of the conspiracy, because petitioner's agreement included accepting fake bills that were sufficiently realistic to fool an unsuspecting person.

3. Petitioner contends (Pet. 11-15) that the court of appeals' decision creates a conflict with other courts of appeals over the definition of "counterfeit" in Sections 471 and 472 and the scope of conduct prohibited by those statutes. In petitioner's view, the court of appeals erred by fashioning different tests for the meaning of counterfeit in Sections 471 and 472, on the one hand, and Section 473, on the other. In fact, the decision below does not directly conflict with the decisions petitioner cites, and the asserted conflict does not warrant this Court's review.

The court of appeals' holding was narrow. In a case charging only conspiracy to violate Sections 471 and 472, the court held, the district court did not abuse its discretion because petitioner's proposed, more extensive definition of counterfeit was adequately covered by the court's jury charge as a whole. The court of appeals did not hold that petitioner's instruction improperly defined "counterfeit" under those sections. Indeed, it explicitly assumed that petitioner's proposed instruction was a correct statement of the law. See Pet. App. 14a (holding that the district court's rejection of petitioner's language was not an abuse of discretion "even if we were to assume *arguendo* that hers was a correct statement of law

and that it concerned an important trial point" because "the substance of [petitioner's] proffered instruction was substantially covered by the trial court's charge on the meaning of counterfeit").

In concluding that the instructions as given were sufficient, the court of appeals did note that, if Section 473 had been the object crime of petitioner's conspiracy, then petitioner's more detailed instruction on similitude might have been necessary. Pet. App. 13a. That conclusion, however, was based on the court's observation that Section 473 has a more stringent specific intent requirement—that the bills be perceived by the recipient as "true and genuine." *Ibid.* The court reasoned that a showing of that level of specific intent would require bills with a "substantially greater degree of similitude" than bills that could support proof of the "intent to defraud" that is required under Section 471 or 472. *Ibid.*; 18 U.S.C. 471, 472.

Other courts have similarly stated that the district court's discretion on whether to give a similitude instruction should be informed by the different kinds of intent required under different counterfeiting offenses. In a prosecution for attempting to pass altered currency under Section 472, the Eighth Circuit held that the district court properly refused to give a similitude instruction that was substantially the same as the one petitioner requested here. *United States* v. *Hall*, 801 F.2d 356, 359-360 (1986). In reaching that conclusion, the court noted that a similitude instruction is both "a definition of counterfeit" and "an aid to determining fraudulent intent." *Id.* at 359. The court noted that the instruction was not required in Hall's case because his attempt to pass the note demonstrated his fraudulent intent, while in other cases, especially prosecutions for

mere possession of counterfeit notes, a similitude instruction may be "imperative" because similitude applies to "both definitional and intent aspects" of such cases. *Id.* at 360 n.7; see also *United States* v. *Prosperi*, 201 F.3d 1335, 1343 (11th Cir.) (explaining that the "similitude requirement [was] developed both as a definition, allowing for juries to determine whether a counterfeit document copied its genuine analogue, and as evidence of the defendant's intent to defraud"), cert. denied, 531 U.S. 956 (2000); *Mousli*, 511 F.3d at 15 (recognizing that the possession of counterfeit bills of very poor quality might not support inference of intent to defraud). Thus, because a similitude instruction is relevant both to the definition of "counterfeit" and to establishing a defendant's intent, the observation by the court of appeals in this case that a similitude instruction might have been required if the object crime had a different intent requirement does not create any conflict with cases that discuss similitude as a required attribute of actual bills in prosecutions for substantive offenses.

Petitioner argues (Pet. 20) that the differences between Section 473 and Sections 471 and 472 would require only a different instruction on *intent* and should make no difference to the objective level of similitude that the finished bills must reach. That argument ignores the context of the discussion in the opinion below —namely, a case charging only conspiracy, in which the similitude of the finished bills is relevant only as evidence of the scope of what the conspirators intended to accomplish.

Because the court of appeals' holding was limited to analyzing the sufficiency of the instructions in a pure conspiracy case, it need not be interpreted as addressing the objective level of similitude that actual bills must

attain to be "counterfeit" in cases charging the completed crime. The cases that petitioner claims create a conflict are distinguishable on that basis. In none of those cases was a defendant charged—as petitioner was—only with a conspiracy to deal in counterfeit money. In most of them, there was no conspiracy charge at all. Also, most of those cases did not involve a question about whether a jury instruction amounts to error, and none of them presented the precise instructional issue here.[4] In light of those several differences, the court of

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[4] See, *e.g.*, *Mousli*, 511 F.3d at 11, 14-16 (defendant, charged under Section 472 for possession of counterfeit currency, mounted unsuccessful sufficiency challenge on ground that bills were misshapen, discolored, splotched, and poorly cut; court rejected arguments that there was insufficient similitude under the requested definition and that the bills' poor quality showed lack of intent to defraud; no jury instruction issue); *Prosperi*, 201 F.3d at 1341-1345 (holding that showing of "similitude" is not required to support conviction for making counterfeit securities in violation of 18 U.S.C. 513(a); no conspiracy charge); *United States* v. *Taftsiou*, 144 F.3d 287, 290-291 (3d Cir.) (defendants, charged with conspiracy and substantive offenses under Sections 472 and 473, unsuccessfully challenged evidentiary sufficiency of similitude; no jury instruction issue), cert. denied, 525 U.S. 899 (1998), and 526 U.S. 1020 (1999); *United States* v. *Wethington*, 141 F.3d 284, 287-288 (6th Cir. 1998) (defendant charged under Sections 471 and 472 unsuccessfully challenged sufficiency of evidence of similitude; no conspiracy charge; no analysis of counterfeit definition in jury charge); *United States* v. *Ross*, 844 F.2d 187, 189-191 (4th Cir. 1988) (defendants successfully challenged sufficiency of evidence for substantive convictions under Sections 471 and 472 for photocopy of bill recognized as fake from a distance of 100 feet; no conspiracy charge); *United States* v. *Cantwell*, 806 F.2d 1463, 1469-1471 (10th Cir. 1986) (defendant, charged with conspiracy and with substantive offenses under Section 471 and 18 U.S.C. 474, unsuccessfully challenged sufficiency of evidence on Section 471 count on similitude grounds, even though fake bills were still in uncut sheets; no jury instruction issue); *Hall*, 801 F.2d at 357-360 (defendant charged under Section 472 for attempting to pass "altered," rather than

appeals' treatment of a trial court's refusal to give a requested counterfeit definition in a pure conspiracy case raises no conflict with other circuits that warrants this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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"counterfeit," currency; no conspiracy charge); *United States* v. *Brunson*, 657 F.2d 110, 113-114 (7th Cir. 1981) (defendant, charged with conspiracy and substantive offenses under Sections 471, 472, and 474, unsuccessfully challenged jury instruction stating that uncut sheets of bills could be considered counterfeit), cert. denied, 454 U.S. 1151 (1982); *United States* v. *Fera*, 616 F.2d 590, 598 (1st Cir.) (defendant unsuccessfully challenged sufficiency of evidence in prosecution for substantive violation of Section 473; no conspiracy charge), cert. denied, 446 U.S. 969 (1980); *United States* v. *Grismore*, 546 F.2d 844, 849 (10th Cir. 1976) (rejecting defendant's challenge to jury instruction stating that uncut bills could not be counterfeit; no conspiracy charge); *United States* v. *Chodor*, 479 F.2d 661, 664 (1st Cir.) (rejecting defendant's sufficiency challenge to substantive convictions under Sections 472, 473, and 474; no conspiracy charge), cert. denied, 414 U.S. 912 (1973); *Johnson*, 434 F.2d at 828-831 (defendant, charged with passing and possessing counterfeit notes under Section 472, successfully challenged sufficiency of evidence as to some bills; no conspiracy charge; no jury instruction issue); *Smith*, *supra* (defendant, charged under Section 472, successfully challenged sufficiency of evidence where bills showed only one side of a real note, the images and words were faint, and the words were backwards; no conspiracy charge).