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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2083**

Michelle Lee Koester, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 17, 2019
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CR-15-34795

Melissa Sheridan, Assistant Public Defender, Eagan, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Cleary, Chief Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the denial of postconviction relief, arguing that the postconviction court abused its discretion by denying her a new trial because her trial on

numerous crime-spree charges was improperly joined with that of her codefendant. We affirm.

FACTS

During the afternoon of October 18, 2015, appellant Michelle Koester coordinated with Alvin McIntosh and Alvin Bell to “hit a lick.”¹ She told Bell they would need a gun. Koester also asked Shannon Haiden to drive Koester’s vehicle for them because Haiden had a valid driver’s license.

Around 9:00 p.m., Haiden drove McIntosh and Koester to a Minneapolis apartment building, followed by Bell and Isiah Harper in a separate vehicle. Once there, Haiden and Koester remained in Koester’s vehicle while McIntosh, Bell, and Harper robbed A.R. at gunpoint, taking his vehicle, cell phone, and wallet. The group drove to a gas station where McIntosh and Koester attempted to use A.R.’s debit card to withdraw cash and purchase gas. They abandoned A.R.’s vehicle near the gas station.

Haiden then drove Koester and McIntosh, with Bell and Harper following, to another Minneapolis neighborhood. McIntosh, Bell, and Harper attempted to rob J.M.-C. When he resisted, McIntosh shot him five times, causing his death. The men ran back to the vehicles.

The group proceeded to a third location. Koester and Haiden again remained in Koester’s vehicle while McIntosh, Bell, and Harper entered the home of G.O. and C.W.H. They robbed the two at gunpoint in the presence of multiple children, taking G.O.’s wallet

¹ To “hit a lick” means to rob someone.

containing credit cards and identification; a safe containing personal documents, a passport, and money; four cell phones; C.W.H.'s purse containing her credit card, identification, and medical cards; and a PlayStation.

Thereafter, Koester drove Bell and Harper to Walmart to use the stolen credit and debit cards. Bell purchased an Xbox One, but the cards did not work when Koester and Harper tried to purchase other items. When they later met with McIntosh, Bell and McIntosh disputed who would keep the Xbox. McIntosh became angry and, while standing next to Koester's vehicle, shot at the vehicle Bell had been driving.

The following day, Koester discovered shell casings underneath her windshield wipers. She sent a text message to McIntosh with a photo of herself holding the casings. He told her to get rid of them, and she responded, "Done." Around the same time, she contacted another person, trying to sell the Xbox.

Police discovered the vehicle with bullet holes and were able to link nearby shell casings to the gun used to shoot J.M.-C., and DNA in the vehicle to Bell and Harper. Further investigation led police to gas station surveillance footage depicting the whole group and Koester's vehicle.

Koester was charged with aiding and abetting first-degree aggravated robbery, aiding and abetting second-degree intentional murder, two counts of aiding and abetting first-degree burglary, second-degree felony murder, and two counts of aiding an offender after the fact. McIntosh was charged with the same offenses, except aiding an offender.

Harper, Haiden, and Bell pleaded guilty to various offenses related to the crime spree,² and Harper and Haiden agreed to testify against Koester and McIntosh.

Over Koester's objection, the district court ordered a joint trial on the charges against Koester and McIntosh. After a three-week-long trial, a jury found Koester guilty of all charges except one aiding-an-offender count, and found McIntosh guilty of all charges.³ The district court sentenced Koester to 386 months' imprisonment. She did not pursue a direct appeal. In July 2018, she petitioned for postconviction relief, arguing that the district court abused its discretion by ordering a joint trial. The postconviction court denied relief. Koester appeals.

DECISION

We review a postconviction court's denial of a petition for an abuse of discretion, analyzing legal issues de novo and factual findings to determine if there is sufficient evidentiary support in the record. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). The petitioner has the burden of producing facts that entitle her to relief. *Carridine v. State*, 867 N.W.2d 488, 492 (Minn. 2015).

Whether to join for trial multiple defendants "charged with the same offense[s]" is also within the district court's discretion. Minn. R. Crim. P. 17.03, subd. 2. There is no

² Harper pleaded guilty to second-degree felony murder. Haiden pleaded guilty to aiding an offender after the fact (second-degree murder). Bell pleaded guilty to first-degree aggravated robbery and second-degree felony murder.

³ McIntosh appealed his convictions, asserting multiple trial errors but not challenging the joint trial. We affirmed. *State v. McIntosh*, No. A17-0920 (Minn. App. June 18, 2018), review denied (Minn. Sept. 18, 2018).

presumption for or against joinder. *State v. Johnson*, 811 N.W.2d 136, 142 (Minn. App. 2012), *review denied* (Minn. Mar. 28, 2012). The district court must consider: “(1) the nature of the offense charged; (2) the impact on the victim; (3) the potential prejudice to the defendant; and (4) the interests of justice.” Minn. R. Crim. P. 17.03, subd. 2. When reviewing joinder decisions, we also inquire into “any substantial prejudice to defendants that may have resulted from their being joined for trial.” *State v. Powers*, 654 N.W.2d 667, 674 (Minn. 2003) (quotation omitted). We consider each joinder factor in turn.

Nature of the Charged Offenses

This factor favors joinder when “the overwhelming majority of the evidence presented is admissible against both defendants, and substantial evidence is presented that codefendants worked in close concert with one another.” *Johnson*, 811 N.W.2d at 142 (quotation omitted).

Substantial evidence showed Koester worked in close concert with McIntosh. She proposed and coordinated the robberies, provided her vehicle, suggested the use of a gun, and engaged a licensed driver. She drove McIntosh to meet with the other participants and accompanied him in her vehicle to each crime scene. And she actively participated in efforts to profit from the robberies. Koester and McIntosh faced almost identical charges, and Koester does not dispute that substantially the same evidence was admissible to prove both her and McIntosh’s guilt. The postconviction court did not abuse its discretion by determining this factor favors joinder.

Impact on the Victims

A court should not order a joint trial merely for the convenience of witnesses but may consider the trauma to victims and eyewitnesses of having to testify at multiple trials. *State v. Blanche*, 696 N.W.2d 351, 371 (Minn. 2005).

Koester contends this factor could not favor joinder because “the state did not present any evidence . . . that testifying at two trials would be particularly painful for the victims.” She identifies no authority for the proposition that the state must affirmatively demonstrate that the victims would be adversely affected by testifying multiple times about the violent crime committed against them. To the contrary, the supreme court has recognized that testifying about criminal violence likely is traumatic not only for direct victims but also for eyewitnesses. *See id.* (noting that vulnerable eyewitnesses could be traumatized by testifying at multiple trials). The series of crimes for which Koester and McIntosh were charged involved threatening and violent conduct. All of the direct victims, and the widow of one of the direct victims, testified at trial. The postconviction court did not abuse its discretion by determining that relieving these witnesses of the burden of repeatedly testifying about their traumatic experiences weighed in favor of a joint trial.

Potential Prejudice to the Defendant

Codefendants may be prejudiced by joinder if their theories of defense are antagonistic. *Johnson*, 811 N.W.2d at 143. “Defendants have antagonistic defenses when the defenses are inconsistent and when they seek to put the blame on each other and the jury is forced to choose between the defense theories advocated by the defendants.” *State v. Jackson*, 773 N.W.2d 111, 119 (Minn. 2009) (quotation omitted).

Koester argues that her defense was antagonistic to McIntosh's because her "best defense" was to focus on McIntosh's culpability and deny any knowledge or involvement in the crimes. But at the time of the joinder motion, both Koester and McIntosh asserted innocence as their theory of defense.⁴ This did not force the jury to decide between conflicting defenses. McIntosh's culpability is not inconsistent with Koester's culpability, and Koester's denial of any knowledge or involvement is not inconsistent with McIntosh's culpability. Rather, as Koester's closing argument illustrated, any conflict was between Koester and Haiden—Koester sought to exonerate herself by arguing that it was Haiden, not she, who aided and abetted the offenses by driving the vehicle. Because Koester and McIntosh did not present antagonistic defenses, the postconviction court did not abuse its discretion by weighing this factor in favor of joinder.

Interests of Justice

In determining whether the interests of justice favor joint or separate trials, the length of separate trials "is a legitimate factor." *Id.* The efficiency of one trial favors a joint trial "in the absence of substantial prejudice" to the defendant. *Id.*

Koester does not directly challenge the district court's determination that separate trials would "cause undue delay." Rather, she contends any evaluation of the interests of justice must focus on affording her a fair trial. But since none of the other joinder factors implicate fairness concerns, and she identifies no particular concern that weighs against the

⁴ Despite the district court's express invitation, Koester did not request severance during trial.

efficiency of a joint trial, we discern no abuse of discretion by the postconviction court in weighing this factor in favor of a joint trial.

In sum, the postconviction court did not abuse its discretion by denying Koester a new trial. The record reflects that a joint trial on Koester's and McIntosh's similar and interrelated charges was an appropriate exercise of the district court's discretion under Minn. R. Crim. P. 17.03. And, for the reasons noted above, we conclude that the joint trial did not substantially prejudice Koester.

Affirmed.