

**Koester v. State, Not Reported in N.W. Rptr. (2019)**

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

Court of Appeals of Minnesota.

Michelle Lee KOESTER,  
petitioner, Appellant,

v.

STATE of Minnesota, Respondent.

A18-2083

|  
Filed June 17, 2019|  
Review Denied August 6, 2019

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

**Attorneys and Law Firms**

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(for respondent)

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

**UNPUBLISHED OPINION**

BJORKMAN, Judge

\*1 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.”<sup>1</sup> 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.

<sup>1</sup> To “hit a lick” means to rob someone.

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 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

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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,<sup>2</sup> and Harper and Haiden agreed to testify against Koester and McIntosh.

<sup>2</sup> 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.

\*2 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.<sup>3</sup> 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.

<sup>3</sup> 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).

**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 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

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

**Potential Prejudice to the Defendant**

\*3 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).

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