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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2317**

State of Minnesota,
Respondent,

vs.

Antione Dominique Collier,
Appellant.

**Filed March 4, 2013
Affirmed
Peterson, Judge**

Clay County District Court
File No. 14-CR-1-860

Lori Swanson, Attorney General, Michael T. Everson, Assistant Attorney General, St. Paul, Minnesota; and

Brian Melton, Clay County Attorney, Heidi M. Fisher Davies, Assistant County Attorney, Moorhead, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jessica Benson Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Presiding Judge; Peterson, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from his conviction of aiding and abetting a robbery, appellant argues that the district court (1) violated his right to present a complete defense by

prohibiting him from cross examining a prosecution witness about evidence of bias and (2) erred by failing to reverse his conviction for aiding and abetting first-degree aggravated robbery after the jury acquitted him of first-degree aggravated robbery. We affirm.

FACTS

On the evening of February 10, 2011, three men robbed a Stop-N-Go store in Moorhead. One of the men pointed a revolver at the store employee, C.L.B., and demanded that C.L.B. give them all the money in the till and safe, which he did. During the ensuing investigation, police reviewed surveillance videotape from the store but were unable to identify the robbers. The Stop-N-Go district manager, J.E., also reviewed store surveillance videotapes, including tapes from dates that preceded the robbery, and located a store patron from February 4, 2011, who matched the general description of one of the robbers. C.L.B. identified an acquaintance, James Taylor, as the robber who held the gun.

From a separate investigation, police knew that, 18 minutes after the robbery, Taylor rented a room at the Vista Inn & Suites hotel.¹ Hotel surveillance videotape showed Taylor entering the hotel, followed by two other males, and they all entered the same room. C.L.B., who was appellant's good friend, identified appellant Antione Dominique Collier in the hotel videotape. Appellant's former girlfriend, E.S., identified appellant and his brother, Anthony Collier, in the hotel videotape. Detective Joel

¹ Police verified that the robbery took place 18 minutes before Taylor entered the hotel, which was consistent with the amount of time that it took to drive from the Stop-N-Go to the hotel.

Voxland compared the clothing worn by the three men in the store and hotel videotapes and testified that there were distinctive similarities.

On the night of the robbery, L.M.S. watched from her third-floor balcony across the street from the Stop-N-Go as a white, four-door car with a broken driver's-side mirror parked in the parking lot of her apartment building. L.M.S. watched three males get out of the car and walk toward the Stop-N-Go and thought it "odd" that the men parked some distance away from their intended destination on a cold February night. Several days after the robbery, L.M.S. happened to be in the Stop-N-Go when she saw a man who was wearing a coat similar to the coat she saw in pictures that the police showed her during their investigation the day after the robbery. She also saw that the same white vehicle that she saw on the night of the robbery was parked outside the Stop-N-Go, and she noticed that the car's broken side mirror had been duct-taped. She wrote down the vehicle's license-plate number.

Police discovered that the vehicle belonged to appellant's girlfriend, J.C., and that appellant was driving it on the night of the robbery. Police executed a search warrant at Taylor's apartment and found a revolver and clothing that matched clothing worn during the robbery.

Appellant was charged with first-degree aggravated robbery, Minn. Stat. § 609.245, subd. 1 (2010), aiding and abetting first-degree aggravated robbery, Minn. Stat. §§ 609.245, subd. 1, .05, subd. 1 (2010), and conspiracy to commit first-degree aggravated robbery, Minn. Stat. §§ 609.245, subd. 1, .175, subd. 2 (2010). There was a three-day jury trial.

On the second day of trial, E.S., appellant's former girlfriend, testified for the state that one of the men in the store surveillance videotape had a gait and posture similar to appellant. The state objected when defense counsel sought to cross-examine E.S. about evidence of post-robbery text messages that E.S., who is Caucasian, sent to J.C., appellant's current girlfriend, who is African American. According to defense counsel, J.C. first disclosed the messages to counsel earlier in the day during a trial recess. In one of the messages, E.S. wrote, "You will have an officer at your door today to take a report, so hide the weed! Your mans gone now its your turn gotta keep the monkeys off the street." Another text message said, "[J.C.] come get some, cuz at the end of the day u was hatin from outside the club:) haha. Im white u black, u might throw a good punch but really whos gona win." The state objected on grounds of relevance and failure to disclose the evidence before trial. The district court excluded the evidence, noting that it was relevant, but "extremely prejudicial" and inflammatory, as well as not disclosed to the state in a timely manner.

The jury found appellant guilty of aiding and abetting first-degree aggravated robbery and conspiracy to commit first-degree aggravated robbery. The district court imposed a 58-month executed sentence for the aiding-and-abetting offense, the presumptive sentence under the sentencing guidelines.

DECISION

Right to Present a Complete Defense.

Appellant argues that the district court erroneously prohibited his counsel from cross-examining E.S. about her text messages, and that this ruling resulted in denial of his

constitutional right to present a defense. “Criminal defendants have a right to prepare and present a complete defense.” *State v. Hokanson*, 821 N.W.2d 340, 350 (Minn. 2012); *see California v. Trombetta*, 467 U.S. 479, 485, 104 S. Ct. 2528, 2532 (1984). “When evidence is erroneously excluded in violation of a defendant’s right to present a complete defense, we consider whether, assuming that the damaging potential of the excluded evidence was fully realized, the erroneous exclusion of evidence was harmless beyond a reasonable doubt.” *Hokanson*, 821 N.W.2d at 353. The right to present a defense includes “at a minimum, [] the right to examine the witnesses against the defendant, to offer testimony, and to be represented by counsel. However, the defendant must still comply with established rules of evidence designed to assure both fairness and reliability in assessing guilt or innocence.” *State v. Reese*, 692 N.W.2d 736, 740 (Minn. 2005) (citation omitted). To merit reversal on this ground, the evidentiary ruling must have been “erroneous and prejudicial;” to be prejudicial, the error must “substantially [have] influenced the jury’s decision.” *State v. Davis*, 820 N.W.2d 525, 536 (Minn. 2012) (quotation omitted).

In ruling to exclude any reference to the text messages during E.S.’s cross-examination, the district court applied the balancing test of Minn. R. Evid. 403. The rule states that “[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury[.]” *Id.* “Bias is a catchall term describing attitudes, feelings, or emotions of a witness that might affect her testimony, leading her to be more or less favorable to the position of a party for reasons other than the merits.” *State v. Lanz-*

Terry, 535 N.W.2d 635, 640 (Minn. 1995) (quotation omitted). Because the text messages may have shown that E.S. had strong reasons to testify against appellant “for reasons other than the merits,” the evidence was relevant and probative to attack her credibility. *See State v. Larson*, 787 N.W.2d 592, 598 (Minn. 2010) (“Evidence of bias of a witness is admissible to attack the credibility of a witness.”); Minn. R. Evid. 616.

But we cannot conclude that appellant was prejudiced by the exclusion of the evidence. During trial, the jury was fully informed about the relationship between E.S. and appellant. The jury heard that E.S. and appellant had dated, that appellant began living with J.C., that while living with J.C. appellant resumed a relationship with E.S., and that appellant and E.S. “broke up” because appellant “was dating someone else at the same time.” E.S. denied that she was “unhappy,” “bitter,” or “angry” with appellant, or that she wanted to “get” appellant or other African Americans. She specifically denied that there was “anything about [appellant’s dating J.C.] that [made her] more likely to identify [appellant]” as one of the robbers. Given defense counsel’s attempts to attack E.S.’s credibility and the jury’s awareness of the history of her relationship with appellant, the jury could properly weigh E.S.’s credibility.

Further, the record shows that the district court relied, in part, on appellant’s failure to comply with Minn. R. Crim. P. 9.02, subd. 1, which requires mandatory disclosure of evidence before trial. While appellant asserts that the state likewise failed to disclose E.S. as a witness until the day before trial, the district court noted that appellant could have discovered the text messages earlier if the defense had interviewed J.C. earlier. Such rulings are generally discretionary. *See State v. Lindsey*, 284 N.W.2d

368, 373 (Minn. 1979) (“The imposition of sanctions for violations of discovery rules and orders is a matter particularly suited to the judgment and discretion of the [district] court.”).

Overall, we conclude that the district court’s exclusion of the evidence played no role in influencing the jury to convict appellant. *See Reese*, 692 N.W.2d at 740. E.S. testified only that one of the men in the store surveillance videotape had a gait and posture similar to appellant. There was other strong evidence to support appellant’s conviction for aiding and abetting the robbery. Three African-American men with distinctive clothing committed the robbery; appellant was among a group of three African-American men who arrived at the hotel within 18 minutes after the robbery and who were wearing clothing that matched the clothing worn by the robbers; they went into a room and left soon after. C.L.M., appellant’s “close friend,” identified appellant in the hotel surveillance videotape. The car involved in the robbery belonged to appellant’s girlfriend, and appellant was driving the car on the night of the robbery. Thus, even if the damaging potential of the evidence that purportedly showed E.S.’s bias had been fully realized and the jury had found E.S. totally lacking in credibility, other evidence proved beyond a reasonable doubt that appellant was guilty of aiding and abetting the robbery. Any error in excluding the text-message evidence was harmless.

Aiding and Abetting a Robbery Conviction.

Minn. Stat. § 609.05, subd. 1 provides that “A person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.” *See State v. Briggs*,

84 Minn. 357, 360, 87 N.W. 935, 936 (1901) (establishing that aiding-and-abetting statute imposes liability as a principal). The statute assigns the same degree of criminal culpability for a completed substantive offense to those who “played a knowing role in the commission of the crime.” *State v. Crow*, 730 N.W.2d 272, 280 (Minn. 2007); *see State v. Swanson*, 707 N.W.2d 645, 658-59 (Minn. 2006) (requiring intentional participation of accomplice to extend criminal liability to accomplice). Aiding and abetting is not a separate, substantive offense, however. *State DeVerney*, 592 N.W.2d 837, 846 (Minn. 1999) (“We have long held that aiding and abetting is not a separate substantive offense”).

Appellant contends that because he was acquitted of first-degree aggravated robbery, his conviction for aiding and abetting first-degree aggravated robbery must be reversed. He argues that acquittal “bars any conviction for that same crime” under double-jeopardy principles. He further argues that the state could only speculate on a theory of criminal liability that would have permitted the jury to acquit him on the first-degree aggravated-robbery charge, because he was not a principal in that offense, while convicting him on the aiding-and-abetting charge. This court gives de novo review to double-jeopardy claims. *State v. Watley*, 541 N.W.2d 345, 347 (Minn. App. 1995), *review denied* (Minn. Feb. 27, 1996).

Appellant’s argument is without merit. Double jeopardy prohibits the state from prosecuting a criminal defendant “for the same offense after acquittal; a second prosecution for the same offense after conviction; and multiple punishments for the same offense.” *State v. Humes*, 581 N.W.2d 317, 320 (Minn. 1998); *see* Minn. Stat. § 609.035,

subd. 1 (2010). Minn. Stat. § 609.05, subd. 4 (2010), permits an aider and abettor to be “charged with and convicted of the crime although the person who directly committed it has not been convicted, or has been convicted of some other degree of the crime or of some other crime.” See 9 Henry W. McCarr & Jack S. Nordby, *Minnesota Practice* § 45:1 at 524 (4th ed. 2012) (“A person who plays a knowing role in a crime and takes no steps to thwart its completion is guilty of aiding and abetting.”). Appellant was prosecuted for the aggravated robbery under two different theories, as a principal and as an aider and abettor. The jury could have found the evidence of appellant’s presence at the crime scene insufficient to support his conviction as a principal in the aggravated robbery because appellant was not the robber who pointed a revolver at the store employee. See Minn. Stat. § 609.245, subd. 1 (“[w]hoever, while committing a robbery, is armed with a dangerous weapon . . . is guilty of aggravated robbery in the first degree”). But the jury also could have found the evidence of appellant’s presence at the crime scene sufficient to prove that he aided and abetted the robbery. Appellant was charged with aiding and abetting; evidence at trial supported this legal theory of criminal liability; the jury was instructed on the difference between first-degree aggravated robbery and aiding and abetting first-degree aggravated robbery; and the verdict forms permitted the jury to find appellant guilty of the aiding-and-abetting offense or the first-degree aggravated-robbery offense. The jury’s verdicts of acquittal on the first-degree aggravated-robbery charge and guilty on the aiding-and-abetting charge were not inconsistent.

Affirmed.