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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0984**

State of Minnesota,
Respondent,

vs.

Glenn Herman Thomas,
Appellant.

**Filed June 15, 2020
Affirmed
Ross, Judge**

Ramsey County District Court
File No. 62-CR-18-587

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

John Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Jesson, Judge; and Florey, Judge.

UNPUBLISHED OPINION

ROSS, Judge

After an expert witness told a jury his opinion about common sex-trafficking practices, other witnesses testified that Glenn Thomas and a man who had just struck and threatened to kill a 15-year-old girl forced her to engage in various sex acts, that Thomas

and the other man used force during the rape, and that Thomas photographed the girl naked after learning that the man would use the images to solicit her to practice prostitution. The jury found Thomas guilty of five offenses, including first-degree criminal sexual conduct for penetrating the girl while he was aided by an accomplice's use of force or coercion and aiding the solicitation of a minor to practice prostitution. Thomas appeals, arguing that the evidence is insufficient to sustain his convictions for first-degree criminal sexual conduct and aiding solicitation and, further, that the district court improperly admitted the expert witness's sex-trafficking testimony. We affirm because sufficient evidence supports the jury's verdict and the district court properly admitted the expert's testimony.

FACTS

A sex-trafficking investigation led St. Paul police to suspect that Glenn Thomas sexually penetrated a 15-year-old girl while being aided by another man's force or coercion, and that Thomas photographed the girl naked knowing that the man would use the images to induce the girl to practice prostitution. The state charged Thomas with aiding the solicitation of a minor to practice prostitution, using a minor in a pornographic work, and three counts of criminal sexual conduct. *See* Minn. Stat. §§ 609.05, subd. 1, .322, subd. 1(a)(1), .344, subd. 1(b)–(c), .342, subd. 1(f)(i), 617.246, subd. 2 (2016). The state notified Thomas of its intent to offer expert testimony about common sex-trafficking practices. Thomas asked the district court to preclude the evidence as irrelevant and as risking jury confusion. The district court rejected the request, concluding that the state's expert could offer opinions relevant “to the charges at hand . . . and some of the definitions that have been brought up or disclosed in discovery.” The case proceeded to a jury trial.

Expert Testimony

St. Paul Police Commander Sean Lohse-Johnson opined about common terms used in the sex-trafficking industry. He testified that sex traffickers often prey on vulnerable girls, groom them by habituating them to nakedness and sex, and test them by having sex with the girls or by directing them to have sex with others. The commander opined that sex traffickers control victims by threatening violence or manipulating them emotionally. He explained that traffickers use various means to arrange sexual encounters—including online postings—and that patrons sometimes specify their preference for younger victims.

Victim's Testimony and Statements

The girl involved in Thomas's conduct, A.D. ("Victim"), testified as follows. She told the jury that she was 15 years old in November 2017 when she and her 16-year-old friend C.D. ("Friend") ran away from a residential treatment facility. Victim said that she and Friend rode a train from St. Paul to Minneapolis, where they encountered two men—Trent Phipps and "S.A."—got into their car, ingested cocaine and alcohol, and went to Thomas's apartment. Thomas was not home, but they returned to his apartment the next day and met him and Michael Morgan. Morgan groped the girls sexually, telling them they would be a family and that Victim and Friend would become prostitutes. Morgan and Phipps took the girls to a Walmart to purchase clothes, lingerie, and makeup. Victim understood that one of the men would photograph her and Friend so their images could be shown to prostitution patrons.

After they returned to Thomas's apartment, Victim went into the bathroom to change clothes. Morgan followed her into the bathroom and told her that she was his

“bitch” and that if she ever tried to leave him, “he’d find [her]” and hurt or kill her. He demanded that she perform fellatio, grabbed her head, and forced it to his penis. He slapped her head and also penetrated her vaginally with his penis.

Morgan led Victim, naked, out of the bathroom and into the living room. There, he again forced Victim to engage in sex with him, this time in front of others. Thomas joined in, performing cunnilingus on Victim. Morgan pulled Victim’s head toward himself, forcing her to perform oral sex. Thomas did the same, and the two men alternately penetrated Victim orally and vaginally.

The next day, another man took Victim into the apartment bedroom and spoke with her about “doing business,” which meant prostitution. Thomas entered the room angry and began yelling about the door having been shut. Morgan later told Victim “the rules of the business.” She understood that Phipps had arranged a sexual encounter for her but that the potential patron wanted to see pictures of her. Morgan and Thomas posed Victim and took nude or mostly nude photographs of her using Morgan’s cell phone. Thomas was “present for some of the conversations about what was going [to] happen with the pictures.” Victim eventually left the apartment in a car with Morgan and a man named Creed Lewis. Morgan received a message from Phipps, and they began driving to a gas station to meet him.

Police stopped the car and questioned them at the gas station. Officers took Victim to a hospital, where she was reunited with Friend. Victim recounted her story to police and told a nurse practitioner that Morgan and Thomas began “fighting over [her]” during sex, “slamming [her] into the couch.” She said that Morgan coerced her into performing oral sex, threatening, “You better do it or I’ll kill you.”

Friend's Testimony

Friend told the jury that she heard Morgan discuss “selling” Victim and Friend to a man and that Thomas was present. She said that she saw Thomas and Morgan simultaneously sexually penetrating Victim. She was not in the apartment when Morgan and Thomas photographed Victim, but she was with Phipps when he received nude photos sent from Morgan’s phone. She understood that the men intended to show the pictures to a potential prostitution patron.

Michael Morgan's Testimony

Morgan testified as an accomplice. He told the jury that he and Thomas were longtime friends from Chicago. Morgan was living at Thomas’s apartment in November 2017. Phipps and S.A. had come to visit. Morgan acknowledged under the prosecutor’s questioning that he had pleaded guilty in a separate criminal case during a plea hearing in which he admitted to the following: he had engaged in oral and vaginal sex with Victim; Thomas was in the apartment at least once when Morgan had sex with Victim; Thomas and Morgan photographed the Victim in various stages of nudity; and Morgan sent the photos to Phipps because Phipps had arranged a sexual encounter for Victim. On cross-examination, Morgan said that he had been confused during his plea-hearing admission and that Thomas was never there when Morgan photographed Victim.

Other Testimony

A St. Paul police officer said that officers encountered Lewis, Morgan, and Victim at a gas station after noticing them in a car with a nonfunctioning headlight. They spoke

separately with Victim, who recounted the story outlined above. Officers recovered condoms and condom-use instructions from the car.

Verdict and Sentence

The jury found Thomas guilty on all five counts. The district court entered convictions and sentenced Thomas to consecutive prison terms of 187 months for first-degree criminal sexual conduct and 90 months for aiding the solicitation of a minor to practice prostitution. Thomas appeals.

DECISION

Thomas contends that the evidence does not support his convictions arising from his aiding Morgan's solicitation of Victim to practice prostitution and his sexually assaulting Victim with Morgan's aid. He also contends that we should order a new trial because the district court improperly admitted expert testimony. We address each contention in turn.

I

We first consider Thomas's argument that the evidence is insufficient to support his conviction for aiding Morgan's solicitation of Victim to practice prostitution because the evidence proved neither that he intended to aid Morgan nor that Morgan did nothing after receiving Thomas's aid that he would not have done without it. We reject the argument.

We must decide whether the evidence supports Thomas's conviction on the state's accomplice-liability theory. To find Thomas guilty on an accomplice-liability theory, the jury had to find that Morgan intentionally solicited Victim to practice prostitution, that Thomas knew that Morgan was committing or would commit a crime, and that Thomas

intended his presence or actions to help Morgan commit the crime. *See* Minn. Stat. §§ 609.05, subd. 1, .322, subd. 1(a)(1); *State v. McAllister*, 862 N.W.2d 49, 52 (Minn. 2015). Thomas questions the sufficiency of the evidence of his intent and the evidence that his presence or actions aided in Morgan’s crime.

We are satisfied that the circumstantial evidence proved Thomas’s criminal intent. An accomplice’s intent to aid the commission of a crime is a state-of-mind requirement that is rarely proved by direct evidence. *McAllister*, 862 N.W.2d at 53. A jury may instead infer an accomplice’s state of mind through circumstantial evidence, like the defendant’s close association with the principal actor, his presence during the crime, his lack of objection to or surprise at the principal’s actions, or his flight with the principal. *Id.* Because the state relied on circumstantial evidence to prove intent, we must first determine the circumstances proved and then consider whether those circumstances permit any reasonable inference other than Thomas’s guilt. *See Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

The state proved the following circumstances relevant to Thomas’s intent to aid Morgan’s crime. Thomas was present when Morgan discussed his plans to “sell” Victim and Friend to a man. Thomas became angry and confrontational when another man spoke with Victim behind a closed door. Thomas and Morgan posed Victim nude and photographed her with Morgan’s phone after a potential patron inquired about her. Thomas was present when Morgan discussed the solicitation purpose of the photographs.

Thomas concedes that these circumstances “might” support the jury’s finding, but he argues that they also support the rational hypothesis that he was merely “passively

present” in his apartment, not intending his actions to aid Morgan. He emphasizes that Morgan, Phipps, and S.A. had primary roles in targeting, grooming, and soliciting the girls to practice prostitution. His argument misses the mark because his guilt is that of an accomplice, which assumes that someone else was the principal. That Morgan and possibly others played primary roles in the scheme is a necessary component of Thomas’s crime.

Also unavailing is Thomas’s passive-presence theory. He contends that no direct evidence established “that Morgan said anything to Thomas about prostitution or sex trafficking” and that he was merely present when Morgan discussed the scheme with others. Thomas insists that Victim’s testimony about *her* understanding sheds little light on *his* understanding. The theory overlooks the fact that we do not review circumstantial evidence based on isolated facts but as a whole. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). And the evidence as a whole includes Thomas’s presence while Morgan discussed the sex-trafficking arrangement, Thomas’s presence when Morgan discussed the purpose of posing and photographing Victim nude, and Thomas’s active role in posing and photographing Victim using Morgan’s phone. Thomas’s passive-presence theory is implausible on the facts as a whole. The circumstantial evidence proved his intent.

We are likewise satisfied that the evidence proved that Thomas’s actions aided in Morgan’s crime. Thomas relies on *State v. Ulvinen*, 313 N.W.2d 425, 428 (Minn. 1981), to contend that accomplice liability requires proof that the defendant encouraged the principal “to take a course of action which he might not otherwise have taken.” *Ulvinen* is distinguished on its facts. In *Ulvinen*, the defendant knew of her son’s plan to murder his wife and was present in the home when he did it. *Id.* at 426. The supreme court reversed

her aiding-and-abetting conviction, holding that the evidence was insufficient because it proved nothing more than her passive approval. *Id.* at 428. The supreme court focused on her statements to her son that the wife's death would be for the best, concluding that the statements were not "active encouragement or instigation" and that no evidence proved they influenced her son's decision to murder. *Id.* Unlike in *Ulvinen*, the state's case here did not focus on advising, encouraging, or counseling a principal to commit a crime. Here the state focused on Thomas's active role in aiding the principal, and it proved the case with evidence that he helped create images to solicit a potential patron.

We have carefully considered the circumstances in their entirety. We have no difficulty concluding that those circumstances establish Thomas's guilt as an accomplice and preclude any rational hypothesis inconsistent with guilt.

II

We next address Thomas's argument that the evidence does not support his conviction of first-degree criminal sexual conduct. To find Thomas guilty of first-degree criminal sexual conduct under Minnesota Statutes section 609.342, subdivision 1(f)(i), the jury had to find that he sexually penetrated Victim, that Morgan aided or abetted Thomas, and that Morgan "use[d] force or coercion to cause the complainant to submit." Thomas focuses on the last element, arguing that the evidence was insufficient to prove that Morgan's actions caused Victim to submit to Thomas's penetration. We hold that the evidence of Morgan's force and coercion gave the jury ample grounds to find that the state proved the element.

Our decision depends in part on the meaning of “force” and “coercion.” Force includes the “threatened infliction by the actor of bodily harm . . . against the complainant” which causes her to reasonably believe the actor is capable of executing the threat, and which causes the complainant to submit. Minn. Stat. § 609.341, subd. 3 (2016). Coercion involves an actor’s use of words or circumstances causing a complainant to fear bodily harm, or an actor’s use of “confinement, or superior size or strength, against the complainant that causes the complainant to submit to sexual penetration . . . against the complainant’s will.” *Id.*, subd. 14 (2016). A variety of circumstantial evidence implies that Morgan employed force or coercion to cause Victim to submit to Thomas.

Again, we first consider the circumstances proved by the state. *See Loving*, 891 N.W.2d at 643. The following circumstances proved are relevant here. Victim was 15 years old. Thomas and Morgan were both 36 years old. In the bathroom and immediately before Thomas penetrated Victim, Morgan told her that she was “his bitch,” threatened to hurt or kill her if she left him, slapped her head, forced her to perform oral sex, and penetrated her vaginally. Morgan paraded Victim into the living room naked and continued penetrating her orally and vaginally. Thomas joined in, performing oral sex on Victim. Morgan and Thomas began “fighting over [her]” during the sexual episode, “slamming [her] into the couch.” The two men alternated between penetrating Victim orally and vaginally, each grabbing her head and pulling her hair to force her to perform oral sex. And when she attempted to stop, Morgan threatened her, saying, “You better do it or I’ll kill you.”

These circumstances allow for no rational inference inconsistent with guilt. *See id.* Morgan’s conduct constituted both force *and* coercion. *See* Minn. Stat. § 609.341, subds. 3, 14. Coercion need not precede criminal sexual conduct, but can occur while the conduct is being accomplished. *State v. Whitley*, 682 N.W.2d 691, 695 (Minn. App. 2004). And conduct that contributes to an “atmosphere of fear” indicates coercive influence. *See State v. Gamez*, 494 N.W.2d 84, 87 (Minn. App. 1992), *review denied* (Minn. Feb. 23, 1993). The circumstances proved include all of these features and easily support the verdict.

Thomas acknowledges that Morgan “certainly used force or coercion to cause [Victim] to submit to his own penetration of her” and even that Thomas’s actions established that he forced Victim to engage in sex. But he contends that, because each man’s actions enabled his own criminal sexual conduct, Morgan’s force or coercion could not have separately caused Victim to submit to Thomas. But multiple causes may contribute to the same effect. In other criminal contexts, we have analyzed causation by considering whether a defendant’s actions were a substantial causal factor of a result. *See, e.g., State v. Dunagan*, 521 N.W.2d 355, 356 (Minn. 1994) (applying the substantial-factor test in a criminal-vehicular-operation case); *State v. Sutherlin*, 396 N.W.2d 238, 240–41 (Minn. 1986) (explaining that a premeditated act must be a substantial causal factor in the death). Likewise, we do not read the statutes prohibiting criminal sexual conduct accomplished by force or coercion as requiring proof that the rape victim submitted because of a single forceful or coercive cause. Nor do we see any logic in the premise that one man’s threats coercing a child to submit to sex acts with him cannot coerce a child to submit to sex acts with additional men during a group encounter. The circumstantial

evidence supports the verdict on the challenged element and precludes any rational hypothesis inconsistent with guilt.

III

Finally, we consider Thomas's argument that he is entitled to a new trial because the district court improperly admitted expert testimony about the illegal sex-trafficking industry. This argument also fails. We review the district court's decision to admit expert testimony for an abuse of discretion. *State v. Thao*, 875 N.W.2d 834, 840 (Minn. 2016). For the following reasons, we conclude that the district court did not abuse its discretion by allowing the testimony.

Thomas argues that the district court should have precluded Commander Lohse-Johnson's opinion testimony because it was irrelevant and unhelpful. Relevant evidence is evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. If specialized knowledge will assist the jury to understand the evidence or to resolve a factual issue, a qualified witness "may testify thereto in the form of an opinion or otherwise." Minn. R. Evid. 702. The ultimate question is whether the expert's testimony will help the jury to resolve the factual questions presented, and even if this is so, the district court should consider whether the testimony's probative value is substantially outweighed by the danger of either unfair prejudice or misleading the jurors. *State v. Koskela*, 536 N.W.2d 625, 629 (Minn. 1995).

Thomas argues that evidence of his guilt for aiding the solicitation of a minor was focused so narrowly on his conduct of photographing Victim that generalized

sex-trafficking testimony was not helpful. The argument overlooks the fact that the state also had to prove that Thomas intentionally aided Morgan in his solicitation crime as applied to the allegation that Thomas was liable “for a crime committed by another.” Minn. Stat. § 609.05, subd. 1. The relevance and helpfulness of the expert testimony was therefore not limited to the narrow issue of the photography. The commander’s testimony tended to help resolve an essential fact question by providing relevant information about how traffickers control their victims and find patrons. The testimony was therefore relevant and helpful.

Thomas contends that the testimony was excessive and unnecessary because this case “did not involve a sophisticated prostitution ring.” He relies on *State v. DeShay*, where the supreme court observed that “[g]ang expert testimony in this noncomplex drug conspiracy, to the extent relevant, was largely duplicative, giving little assistance to the jury in evaluating the evidence.” 669 N.W.2d 878, 886 (Minn. 2003). But the *DeShay* court cited numerous problems with admitting the expert testimony in that case: witnesses with firsthand knowledge had already given testimony tending to prove gang membership; the prosecutor told the jury the crimes hinged on witness credibility; there was a risk of laundering inadmissible hearsay evidence; the testimony was “potentially prejudicial”; and “as a practical matter, [extensive testimony about gang activities in general] places the defendant in the position of defending allegedly criminal activities of others.” *Id.* at 886–87. In contrast, here the expert testimony occurred first. The testimony did not potentially introduce inadmissible hearsay. And Thomas’s conduct was appropriately linked to the criminal activities of others because of the aiding-and-abetting liability theory. Whether

the prostitution scheme was complex has little bearing on whether the expert testimony was helpful in determining whether Thomas's photographing Victim aided Morgan's crime. The commander's testimony about how traffickers find patrons and how patrons sometimes specified their preferences helped the jury in understanding how Victim's photographs would be used to solicit or induce prostitution. And in this case Friend's testimony corroborated the expert testimony about the purpose of Victim's pictures:

[The patron] was an older, white man. He said that he wanted to see her to do anal sex. And so they sent the pictures to the guy so he could look at her because he . . . only wanted to see black girls. And he said that she was okay.

We reject Thomas's contention that the expert testimony was inadmissibly cumulative on his theory that there was "ample" evidence establishing "that Morgan was trying to get [Victim] to engage in prostitution activities." Minnesota Rule of Evidence 403 allows for the exclusion of relevant evidence "if its probative value is substantially outweighed . . . by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Thomas does not demonstrate that the expert's testimony was inappropriately cumulative, let alone that the alleged accumulation substantially outweighed the testimony's probative value.

Thomas also argues that the expert's limited testimony concerning sex-trafficking-specific terminology and pricing strategies was irrelevant to Thomas's crimes. But the evidence was relevant to Morgan's crime and therefore to Thomas's aiding and abetting. The district court did not abuse its discretion by admitting the evidence.

Affirmed.