Affirmed and Opinion Filed July 1, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00423-CR

QUONSHA MURPHY, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 282nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. F-1875431-S

MEMORANDUM OPINION

Before Justices Schenck, Osborne, and Reichek
Opinion by Justice Osborne

Quonsha Murphy appeals the trial court's final judgment convicting her of sexual assault of a child younger than seventeen years of age as a party to Enrique Peralta's sexual assault of her daughter.[1] The jury found her guilty and assessed her punishment at ten years of imprisonment. In two issues, Murphy argues: (1) the evidence was insufficient to support her conviction; and (2) the trial court erred when it denied her counsel's objection to the State's notice of consolidation of her trial

[1] Murphy was tried jointly with Peralta. *See Peralta v. State*, No. 05-19-00623-CR (Tex. App.—Dallas July 1, 2020 no pet. h.) (mem. op.). While the parties have separate appeals with different legal arguments, these appeals involve the same facts and, for the most part, share a reporter's record.

with Peralta's. We conclude the evidence is sufficient to support Murphy's conviction and Murphy is estopped from arguing the trial court erred when it allegedly denied her counsel's objection to her being tried jointly with Peralta. The trial court's judgment is affirmed.

I. FACTUAL AND PROCEDURAL BACKGROUND

The victim lived in a small three-bedroom house with Quonsha Murphy, her mother, and Peralta as well as her younger half-sister, Peralta's two sons, and for a time, Peralta's daughter and granddaughter. Murphy worked outside of the home and Peralta stayed at home and received disability checks due to injuries sustained in an automobile accident. On weekends, the victim would be left at home with Peralta while the other children visited with their noncustodial parent or went out with friends.

Peralta sexually assaulted Murphy's daughter, the victim, over several years. The sexual assaults began when the victim was in the middle of the sixth grade and continued until she was fifteen years old and in high school. She described the sexual assaults as painful. The victim said that usually, Peralta used a condom and assaulted her when no one else was home or her younger half-sister was in the shower.

The victim did not tell Murphy about the sexual assaults. However, Peralta told the victim that Murphy knew he was having sex with the victim and that Murphy was okay with it. The victim related that at one point she had a burning rash in her

genital area. She said that Peralta asked her if she thought it was because they had sex and when Murphy took her to the doctor, Peralta gave Murphy instructions not to tell the doctor there was a man in the house.

The victim also told of a time when Murphy and Peralta went "partying" or dancing, drinking, and talking with their friends. When they returned, it was dark outside and the victim, who was drawing in her bedroom, heard the metal door clank shut. The victim stated that the metal door to the house makes a rumbling noise and vibrates when it closes. Then, the victim heard Murphy and Peralta having sex in their bedroom. Right after the victim heard them stop, Murphy appeared completely naked in the doorway to the victim's bedroom and told the victim that "whatever [Peralta] says goes." The victim understood this to mean that Murphy knew Peralta was sexually assaulting her. Right after Murphy left the doorway, Peralta came to the victim's bedroom, told the victim "your mom's okay with it," turned out the lights, instructed her to take off her clothes, and proceeded to sexually assault her "rough[ly]" while moaning loudly. According to the victim, Peralta was moaning loud enough for Murphy to hear that he was having sex with her. The victim also stated that she did not hear Murphy leave the house during this sexual assault because she did not hear the dogs bark, the metal door to the house clang shut, or Murphy's car "crank."

At school, two teacher's assistants became concerned that the victim might be suffering sexual abuse. In particular, they noticed her hair was unkept, she had a

body odor they associated with women not cleaning themselves, and they saw her walk "tightly" on one occasion. When one of the teacher's assistants asked the victim whether someone was "messing with her," the victim looked down and started crying but did not say anything. One day, the victim, who was fifteen years old at the time, told these teacher's assistants that she was being sexually assaulted. As a result, the victim was taken to the Children's Advocacy Center for a forensic interview at approximately 12:30 p.m. Police officers were sent to the victim's house and they tried to contact Peralta by phone but were not able to reach him.

The school's resource officer called Murphy at work and gave her a little bit of information as to what was going on but not everything. After receiving the call from the resource officer, Murphy left work as soon as someone was able to replace her. Murphy called Peralta and then took public transportation to the victim's school where she met with the school counselor. During that time, she received a call from Ivannia Frias, an investigator for the Department of Family Protective Services. Eventually, Peralta picked Murphy up at the victim's school. The victim's younger half-sister stated that, after Murphy received the phone call about the victim, Murphy and Peralta picked her and Peralta's children up from school before dismissal time. She stated that Murphy's phone was ringing repeatedly but Murphy did not answer it every time. When Murphy did answer the phone, Peralta gave Murphy instructions on what to say. According to the victim's half-sister, they drove to Peralta's mother's house where they stayed for a "long time" and, while there,

Murphy received a phone call about the victim. Then, Murphy drove with her younger daughter to their house, but when Murphy saw the police she decided to "go another way."

Frias tried to reach Murphy approximately thirty times starting around 12:30 p.m., but her calls were being sent directly to Murphy's voicemail. However, at one point, Murphy answered Frias's call. Frias told Murphy that her child was at the advocacy center and needed her mother. In response, Murphy told Frias that "[she] could keep her. [Murphy] didn't want her."

Approximately six hours after speaking with Frias, Murphy and the victim's half-sister arrived at the child advocacy center. According to Frias and Sergeant Chris Adams of the Dallas Police Department, Murphy was very defensive, and she was concerned about and supportive of Peralta. Frias stated that Murphy did not ask any questions about the victim. The victim and her half-sister were removed from the home and, with Murphy's consent, placed with Murphy's estranged mother. The police also spoke to Peralta at approximately 8:00 p.m. and he stated that "he wasn't coming in." However, Peralta eventually met with the police a few days later and was arrested.

A few days after the victim's outcry, Suzanne Dakil, M.D., performed a forensic examination of the victim which revealed transection injuries or tearing to her vagina consistent with multiple penetrative acts. The victim also had a bacterial infection that can cause a "fishy" odor and is often associated with sexual activity.

Peralta was indicted for three sexual assault offenses: one charge for aggravated sexual assault of a child younger than fourteen years of age and two charges for sexual assault of a child younger than seventeen years of age. Murphy was indicted for the offense of sexual assault of a child as a party to the offense. Peralta and Murphy were tried jointly and both testified at the trial. The jury found Murphy guilty. The jury also found Peralta guilty of the aggravated sexual assault charge and one of the sexual assault charges. It acquitted Peralta of the second sexual assault charge. The jury assessed Murphy's punishment at ten years of imprisonment.

II. SUFFICIENCY OF THE EVIDENCE

In her first issue on appeal, Murphy argues the evidence is insufficient to support her conviction. She claims that the victim insinuated that Murphy was ordering her to have sex with Peralta, which does not constitute proof of her guilt. Murphy contends that the evidence shows the phrase "whatever [Peralta] says goes," refers to the victim's doing chores, not sex. Further, Murphy argues that the "verdict is based solely on [the victim's] outcry without any other evidence and because [the evidence showed the victim had] motive to lie [because she wanted to be with her grandmother,] it does not meet the legal standard of proof beyond a reasonable doubt." The State responds that the victim's testimony, standing alone, is sufficient to support a sexual assault conviction and the jury was free to reject the conflicting and self-serving testimonies of Murphy and Peralta.

A. Standard of Review

When reviewing the sufficiency of the evidence, an appellate court considers all of the evidence in the light most favorable to the verdict to determine whether the jury was rationally justified in finding guilt beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979); *Metcalf v. State*, 597 S.W.3d 847, 855 (Tex. Crim. App. 2020); *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010) (plurality op.). An appellate court is required to defer to the jury's credibility and weight determinations because the jury is the sole judge of the witnesses' credibility and the weight assigned to their testimony. *See Jackson*, 443 U.S. at 319, 326; *Metcalf*, 2020 WL 1542324, at *4; *Brooks*, 323 S.W.3d at 899. All evidence, whether properly or improperly admitted, will be considered when reviewing the sufficiency of the evidence. *See McDaniel v. Brown*, 558 U.S. 120 (2010) (per curiam); *Lockhart v. Nelson*, 488 U.S. 33, 41–42 (1988); *Jackson*, 443 U.S. at 319.

B. Applicable Law

A person commits sexual assault of a child if he intentionally or knowingly causes the penetration of the sexual organ of a child by any means. TEX. PEN. CODE ANN. § 22.011(a)(2)(A). The sexual assault statute defines "a child" as "a person younger than 17 years of age." *Id.* § 22.011(c). Under the law of parties, the State is able to enlarge a defendant's criminal responsibility to include acts in which she may not have been the principal actor. *See Goff v. State*, 931 S.W.2d 537, 544 (Tex. Crim. App. 1996). Under § 7.02(a)(2), a person is criminally responsible for

another's conduct if, acting with intent to promote or assist the commission of the offense, she solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense. *Id.* § 7.02(a)(2); *Metcalf*, 2020 WL 1542324, at *5.

To prove the intent-to-promote-or-assist element, the State must show that it was the defendant's conscious objective or desire for the primary actor to commit the crime. *See* PEN. § 6.03(a); *Metcalf*, 2020 WL 1542324, at *5. In assaying the record for evidence of intent, an appellate court looks to events before, during, and after the commission of the offense. *Metcalf*, 2020 WL 1542324, at *5. However, although an appellate court can look to events taking place after commission of the offense, the intent to promote or assist must have been formed contemporaneously with, or before, the crime alleged was committed. *Id.* Circumstantial evidence is as probative as direct evidence when determining whether a person was a party to an offense. *Id.* Evidence is sufficient to convict a defendant under § 7.02(a)(2) where it shows that the defendant acted with the intent to promote or assist the commission of the offense and encouraged the commission of the offense either by words or other agreement. *Metcalf v. State*, 562 S.W.3d 48, 54 (Tex. App.—Texarkana 2018), *aff'd*, 2020 WL 1542324.

An appellate court draws all reasonable inferences in favor of the verdict. *Metcalf*, 2020 WL 1542324, at *7. But juries are not permitted to come to conclusions based on mere speculation or factually unsupported inferences or presumptions. *Id.* An inference is a conclusion reached by considering other facts

and deducing a logical consequence from them. *Id.* Speculation is mere theorizing or guessing about the possible meaning of facts and evidence presented. *Id.* While a conclusion reached by speculation may not be completely unreasonable, and it might even prove to be true, it is not sufficiently based on facts or evidence to support a finding beyond a reasonable doubt. *Id.*

C. Application of the Law to the Facts

Murphy was indicted for the offense of sexual assault of a child younger than seventeen years of age by knowingly causing the penetration of the victim's sexual organ with Peralta's sexual organ. Although the victim was assaulted by Peralta over several years, the specific sexual assault with which Murphy was charged as a party was the assault that occurred in the victim's bedroom after Murphy told the victim "whatever [Peralta] says goes." The jury was instructed on the law of parties as follows:

> A person is criminally responsible as a party to an offense if the offense is committed by her own conduct, by the conduct of another for which she is criminally responsible or by both. Mere presence alone, however, will not constitute one a party to an offense.
>
> A person is criminally responsible for an offense committed by the conduct of another if, acting with intent to promote or assist the commission of the offense, she solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense.

This required the State to prove that: (1) Murphy; (2) acting with intent to promote or assist the commission of sexual assault; (3) solicited, encouraged, directed, aided,

or attempted to aid; (4) the penetration of the victim's sexual organ; (5) by Peralta's sexual organ.

At trial, the victim testified that when it was dark outside, she was in her bedroom and heard the metal door clank shut when Murphy and Peralta returned from "partying." Then, the victim heard Murphy and Peralta having sex in their bedroom. She stated she could hear Murphy moaning and the bed making noises. Right after the victim heard them stop, Murphy appeared completely naked in the doorway to the victim's bedroom and told the victim that "whatever [Peralta] says goes." The victim understood this to mean that Murphy knew Peralta was sexually assaulting her because right after Murphy left the doorway, Peralta came to the victim's bedroom, told the victim "your mom's okay with it," turned out the lights, instructed her to take off her clothes, and sexually assaulted her "rough[ly]" while moaning loudly. She stated that Peralta was moaning loud enough for Murphy to hear that he was having sex with her. The victim also stated that she did not hear Murphy leave the house during this sexual assault because she did not hear the dogs bark, the metal door to the house clang shut, or Murphy's car "crank."

At trial, Murphy and Peralta testified that, when Murphy told the victim "whatever [Peralta] says goes," it was a reference to the victim doing her chores. They also claimed that Murphy was not naked when she said this. However, the victim testified that it was not about chores because "if [Murphy] was talking about chores she wouldn't be naked in front of her," at that hour it would have been odd

for Murphy to stand in her bedroom doorway and talk about her washing dishes, and it would have been odd for her to stand there naked after having had sex and tell the victim to sweep the floor. The victim stated that based on Murphy's statement, she was certain that Murphy knew Peralta was sexually assaulting her.

We conclude that a rational jury could have inferred from the facts adduced at trial relating to the events immediately preceding and during the sexual assault that Murphy acted with the intent to promote or assist Peralta in the commission of the sexual assault of her daughter. The jury is the sole judge of the credibility of the witness and was free to reject Murphy's and Peralta's self-serving testimonies that the statement "whatever [Peralta] says goes" referred to the victim doing chores. Evidence that permits the logical deduction that it was Murphy's conscious objective or desire for Peralta to sexually assault the victim includes Murphy's appearing naked in the victim's doorway after having sex with Peralta and instructing the victim that "whatever [Peralta] says goes" followed by Peralta entering the victim's room, telling the victim "your mom's okay with it," turning out the lights, instructing her to take off her clothes, and sexually assaulted her "rough[ly]" while moaning loudly. Further, there was evidence that Murphy did not leave the small house during the sexual assault. These facts amount to more than mere theorizing or guessing about the possible meaning of these events.

We also note that the jury's inference is further strengthened by the facts adduced at trial relating to Murphy's conduct after the victim's outcry. The evidence

showed that, after the school's resource officer called Murphy at work and gave her a little bit of information as to what was occurring, Murphy drove with Peralta to get the other children from school before dismissal, went to Peralta's mother's house, ignored approximately thirty calls from Frias, received instructions from Peralta on what to say on the phone, and took steps to avoid the police at her house. Also, when Murphy did answer one of Frias's calls, she told Frias that "[she] could keep [the victim]. She didn't want [the victim]." Murphy did not arrive at the children's advocacy center until about six hours after speaking with Frias.

We are aware of the Texas Court of Criminal Appeals's recent opinion in *Metcalf*, which issued after this appeal was briefed and submitted. *Metcalf*, 2020 WL 1542324. In that case, the victim was sexually assaulted by her stepfather over several years, but never told Metcalf, her mother. The evidence showed that, during one of the assaults, the victim called out for Metcalf and her mother never came to investigate, but the victim stated she did not know where Metcalf was at the time. *Id.* at *2. The victim also told Metcalf her stepfather was "doing bad things" and was a "monster" but she gave no more details and Metcalf did not ask what she meant. *Id.* The victim stated that when she cried out during the assaults, her mother would ask what was going on and her stepfather would say the victim was having a nightmare. At some point, the victim stopped crying out because she believed Metcalf was "letting it happen." *Id.* Another time, the victim's stepfather slapped her and tried to pull down her shorts, resulting in Metcalf kicking him out of the

house for a short period of time and giving the victim a cell phone and whistle. *Id.* However, Metcalf told the victim to call her and not the police if something happened. *Id.* Eventually, Metcalf caught him touching the victim's vagina and kicked him out of the house, but again Metcalf let him return. *Id.* The victim stated that she did not tell Metcalf that her stepfather had been raping her until she was twenty-two years old. *Id.* at *2 n.6. The jury convicted Metcalf as a party to her husband's sexual assault of her daughter that occurred on one of the nights that he told Metcalf the victim was having a nightmare. *Id.* at *1.

The Texas Court of Criminal Appeals concluded the evidence was insufficient to show that Metcalf intended to promote or assist in the commission of the offense because the evidence did not show that it was Metcalf's conscious objective or desire for her husband to sexually assault her daughter. The Court noted that a rational jury could have believed or disbelieved the victim's testimony. *Id.* at *8. However, the Court concluded that the victim's comments were insufficient to support a reasonable inference that Metcalf knew that the victim meant that her stepfather was sexually assaulting her when she said he was "doing bad things" and called him a "monster," there was no evidence that would have permitted an inference that Metcalf did not believe that the victim was having nightmares or that she believed her husband was sexually assaulting their daughter but did nothing about it, and the victim did not inform Metcalf her stepfather was sexually assaulting her before the offense alleged in the indictment. *Id.* The Court agreed it was indisputable that

Metcalf knew her husband was sexually assaulting the victim when she saw his hand on her daughter's vagina, but that offense occurred after the charged offense. *Id.* at *9.

This case is distinguishable from *Metcalf*. We acknowledge that in both this case and *Metcalf*, the victims did not inform their mothers that they were being sexually assaulted. However, unlike in *Metcalf*, where the mother did nothing and her intent was based on speculation, in this case there was evidence from which the jury could infer that it was Murphy's conscious objective or desire to promote or assist Peralta in the sexual assault of her daughter. As we previously noted, immediately before the sexual assault for which Murphy was convicted, Murphy appeared naked in the victim's doorway after having sex with Peralta and instructed the victim that "whatever [Peralta] says goes." This was followed by Peralta entering the victim's room, telling the victim "your mom's okay with it," turning out the lights, instructing her to take off her clothes, and sexually assaulting her "rough[ly]" while moaning loudly. In this case, there are facts that amount to more than mere speculation and permit the logical deduction that Murphy intended to promote or assist Peralta in the commission of the sexual assault charged in the indictment.

We conclude the evidence is sufficient to support Murphy's conviction. Murphy's first issue is decided against her.

III. MOTION TO SEVER

In her second issue on appeal, Murphy argues the trial court erred when it denied her motion to sever. She claims she should not have been tried jointly with Peralta because Peralta had a prior theft conviction, she and Peralta did not commit the same offense, and the trial court improperly permitted her to have hybrid representation when it accepted her decision to be tried jointly with Peralta over her attorney's argument that their trials should be severed. The State responds that Murphy should be "estopped" from complaining on appeal that the trial court erred when it overruled her defense counsel's motion to sever because she unequivocally opposed her attorney's request after being admonished.

A. Applicable Law

As a general rule, when two defendants are indicted for the same offense, they should be tried jointly. TEX. CRIM PROC. art. 36.09. However, the trial court has discretion to order separate trials. *Id.* A severance is mandatory, if upon a timely motion to sever and evidence introduced thereon, it is made known to the trial court that: (1) there is a previous admissible conviction against one defendant; or (2) a joint trial would be prejudicial to any defendant. *Id.* However, even when a severance is mandatory upon the request of counsel, that counsel may have strategic reasons for not requesting a severance. *See Woods v. State*, 998 S.W.2d 633, 635–36 (Tex. App.—Houston [1st Dist.] 1999, pet. ref'd).

Whether or not there should be a severance is a matter of strategy, tactics, and judgment to be decided upon by the defendant and her counsel. *See White v.* State, 495 S.W.2d 903, 905 (Tex. Crim. App. 1973). Irrespective of any prejudice to the defendant, a trial court's decision not to sever is not error if the defendant decides she does not want a severance. *See generally id.* (trial court did not err where defendant personally waived right and agreed to be tried on charges in three indictments at same time); *Lee v. State*, No. 12-05-00359-CR, 2007 WL 431116, at *3 (Tex. App.—Tyler Feb. 9, 2007, no pet.) (mem. op., not designated for publication) (noting that if trial court believed counsel's statement that it was defendant's decision not to seek severance at motion for new trial hearing that would support trial court's ruling irrespective of prejudice); *Montes v. State*, No. 08-02-00406-CR, 2004 WL 594958, at *4–5 (Tex. App.—El Paso Mar. 25, 2004, pet ref'd) (mem. op., not designated for publication) (concluded counsel's failure to request severance was not ineffective assistance of counsel and noted that, at hearing on motion for new trial, counsel stated Montes knew advantages and disadvantages of joint trial and did not want severance); *Wedlow v. State*, 807 S.W.2d 847, 851 (Tex. App.—Dallas 1991, pet. ref'd) (discussing prosecution of multiple indictments in a single trial and stating defendant waives right to severance if he agrees to or does not object to single trial); *Guia v. State*, 723 S.W.2d 763, 768 (Tex. App.—Dallas 1986, pet. ref'd) (noting although defendant may acquiesce in or agree to consolidated trial and thereby waive right to be tried separately, no such waiver

occurred in case). Absent any statutory duty, a trial court has no duty to independently determine if a defendant's decision not to sever consolidated causes of action is knowingly and intelligently made where the defendant is represented by trial counsel and the defendant states that she does not desire a severance. *See generally White*, 495 S.W.2d at 905; *Chaney v. State*, No. 05-97-02194-CR, 1999 WL 410356, at *3 (Tex. App.—Dallas June 22, 1999, no pet.) (not designated for publication) (trial court had no duty to independently determine if defendant's decision not to sever consolidated causes was knowingly and intelligently made).

B. Application of the Law to the Facts

Prior to trial, the State filed a notice of consolidation and joinder of the prosecutions of Murphy and Peralta. Counsel for Murphy filed an objection and attached a copy of the State's notice of extraneous offenses filed in Peralta's case to its brief.

A pretrial hearing was held on Murphy's objection. During the hearing, Murphy's counsel argued that the severance was required by article 36.09 of the Texas Code of Criminal Procedure because Peralta had a prior admissible conviction and Murphy would be prejudiced by the joint prosecution. The State responded that: (1) Murphy and Peralta were "parties to cases ending in 330 and 331 [sic]," (2) there was no prejudice because the State would not offer Peralta's prior theft conviction during guilt, and (3) "The State is moving to join these cases for judicial economy and for the fact that this kid would only have to testify once. It is the same evidence.

It is against the same two defendants." The trial court stated that it would take the matter under advisement.

However, before the proceedings ended, Murphy's counsel advised the trial court that he was in conflict with his client with regard to trial strategy. At that point, the trial court asked Murphy if there was anything she wanted to make the trial court aware of. The following exchange occurred:

> Murphy: [I] want to get a new attorney.
>
> Trial Court: You want to pay for your own attorney?
>
> Murphy: Yes, ma'am.
>
> Trial Court: And what's the basis?
>
> Murphy: I don't feel like that I'm represented right as far as the conditions that's going on right now.
>
> Trial Court: You mean regarding the motion [to sever]?
>
> Murphy: Right. Regarding the motion and everything else. I feel—how I feel—
>
> . . . .
>
> Trial Court: Ms. Murphy, what—what about today?
>
> You have to be specific.
>
> Murphy: I want our case to be tried together.
>
> Trial Court: You want a joint trial?
>
> Murphy: Yes.
>
> Trial Court: With Mr. Peralta?
>
> Murphy: Yes.

After this exchange, the trial court allowed Murphy's counsel to admonish her on the record. Then, the trial court expressed concern that Peralta appeared to be "mouthing" something to Murphy and that her decision was not independent. As a result, the trial court ordered as an additional condition of their bonds that Murphy and Peralta have no further contact with one another. After receiving some additional admonishments, Murphy indicated that she wanted to keep her current counsel and proceed with a joint trial. Before ruling, the following further exchange occurred between the trial court and Murphy:

> Trial Court: But do you want to proceed with a joint trial after everything I told you, after counsel has admonished you?
>
> This is your decision. There's nothing happening in the background that the Court is not aware of that for some reason someone told you something like it would benefit you to, you know, have the case tried with Mr. Peralta?
>
> There's no one that is threatening you. There's no one that is—has given you any money. Nothing has happened that would influence you. This is your own independent decision?
>
> Murphy: That's correct, Your Honor.
>
> Trial Court: You're sure about that?
>
> Murphy: Yes, Your Honor.

At the conclusion of the hearing, the trial court stated "[Murphy and Peralta] will both be tried together."

To preserve an error for appellate review, the record must show that the trial court ruled on the objection either expressly or implicitly, or the trial court refused

to rule and Murphy objected to that refusal. TEX. R. APP. P. 33.1(a)(2). We note that it does not appear that the trial court ruled on the counsel's objection to the State's notice of consolidation. Rather, at the conclusion of the proceedings the trial court merely commented that Murphy and Peralta would be tried together and Murphy did not request a ruling on her counsel's objection to the consolidation.

Also, the record reflects that Murphy personally requested to be tried jointly with Peralta and invited the error to which she now complains. Under the invited-error doctrine, a party is estopped from raising an appellate issue based on an action she induced. *See Vennus v. State*, 282 S.W.3d 70, 74 (Tex. Crim. App. 2009); *Prystash v. State*, 3 S.W.3d 522, 531 (Tex. Crim. App. 1999). Here, counsel objected to the State's notice of consolidation, but Murphy told the trial court she was not in agreement with that strategy and wanted a joint trial with Peralta. Even after Murphy was carefully advised by her counsel on the record that she had a right to request a severance and that it was her counsel's advice that she do so, Murphy personally waived the right and agreed to be tried jointly with Peralta. Although it was not required to do so, the trial court independently inquired as to whether Murphy was knowingly and intelligently waiving her objection to the State's notice of consolidation. *See generally White*, 495 S.W.2d at 905; *Chaney*, 1999 WL 410356, at *3. Despite the trial court's and counsel's concern that Peralta appeared to be influencing Murphy's decision, Murphy assured them that it was her wish to

be tried jointly. On appeal, Murphy is complaining of an alleged trial court error that she induced.

We conclude that Murphy waived the right to seek a severance and is estopped from complaining on appeal that the trial court erred when it denied her counsel's objection to the consolidation of her trial with Peralta because she induced any alleged error. Issue two is decided against Murphy.

IV. CONCLUSION

The evidence is sufficient to support Murphy's conviction. Also, Murphy is estopped from arguing the trial court erred when it denied her counsel's objection to her being tried jointly with Peralta.

The trial court's judgment is affirmed.

/Leslie Osborne/
LESLIE OSBORNE
JUSTICE

Do Not Publish
TEX. R. APP. P. 47

190423F.U05

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

QUONSHA MURPHY, Appellant	On Appeal from the 282nd Judicial District Court, Dallas County, Texas
No. 05-19-00423-CR V.	Trial Court Cause No. F-1875431-S.
THE STATE OF TEXAS, Appellee	Opinion delivered by Justice Osborne. Justices Schenck and Reichek participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered July 1, 2020