Affirmed and Memorandum Opinion filed April 6, 2017.

In The

Fourteenth Court of Appeals

NO. 14-15-00960-CR
NO. 14-15-00961-CR

STEPHANIE RALEEN FORBES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 212th District Court
Galveston County, Texas
Trial Court Cause Nos. 13-CR-0117, 13-CR-0118

M E M O R A N D U M O P I N I O N

Appellant Stephanie Raleen Forbes challenges her convictions for sexual assault of a child and improper relationship between an educator and student. In three issues, she asserts that the evidence is legally insufficient to support her convictions and that she was denied due process of law. We affirm.

Background

The State alleged that appellant, while a theater arts teacher at Clear Creek High School in Galveston County, engaged in a sexual relationship with a sixteen-year-old male student. The student's father saw text messages between appellant and the student that caused him to suspect their relationship was improper. When the father confronted the student, the student told him about the inappropriate relationship. After the father, the mother, and the student discussed the relationship, the parents took the student to the police to make a report.

Initially, League City Police Department (the "LCPD") officers interviewed the student. However, it became apparent after an investigator conducted a video interview of the student that all of the sexual contact between the student and appellant was alleged to have occurred at Clear Creek High School. The LCPD turned the investigation over to the Galveston County Sheriff's Department (the "Sheriff's Department") because that agency generally takes the lead in investigating offenses that are alleged to have occurred in the school district. The Sheriff's Department sent the student to the Galveston County Children's Assessment Center (the "CAC"), where a CAC worker recorded another interview.

After the investigation, appellant was arrested and indicted for sexual assault of a child and improper relationship between an educator and student. At appellant's trial, the student and his parents, among others, testified. The student described the nature of the relationship between him and appellant, elaborating specific instances of sexual contact between the two. The student explained that his relationship with appellant evolved into a romantic one during his junior year in high school. The two began kissing intimately and the relationship escalated to other intimate acts. Eventually, the two engaged in oral sex, with appellant performing oral sex on the student four to five times on school property, beginning

in December 2012, while he was sixteen. Text messages between appellant and the student were admitted into evidence, and the student described some of the context surrounding those messages. For example, several messages between the two referred to a "joke" or "dream" the two had of running away together to live in Fiji. But none of the messages were clearly or facially sexual in nature. Additionally, both of the recorded interviews of the student, mentioned above, were admitted into evidence and played for the jury.

After hearing the evidence, the jury convicted appellant of both charges. Following the punishment phase of trial, the jury appellant's punishment at ten years' confinement for the sexual assault and two years' confinement for the improper relationship. The jury recommended that the ten-year sentence for sexual assault be suspended and that appellant be placed on community supervision for ten years. As to the two-year sentence for the improper relationship, the jury did not recommend community supervision. The trial court signed judgments in accord with the jury's verdicts and recommendations.

Appellant timely noticed her appeal.

Sufficiency of the Evidence

In her first two issues, appellant challenges the legal sufficiency of the evidence to support her convictions.

A. Standard of Review

Reviewing courts apply a legal-sufficiency standard in determining whether the evidence is sufficient to support each element of a criminal offense that the State is required to prove beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013). Under this standard, we examine all the evidence adduced at trial in the

light most favorable to the verdict to determine whether a jury was rationally justified in finding guilt beyond a reasonable doubt. *Temple*, 390 S.W.3d at 360; *Criff v. State*, 438 S.W.3d 134, 136-37 (Tex. App.—Houston [14th Dist.] 2014, pet. ref'd). This standard applies to both direct and circumstantial evidence. *Criff*, 438 S.W.3d at 137. Accordingly, we will uphold the jury's verdict unless a rational fact finder must have had a reasonable doubt as to any essential element. *Laster v. State*, 275 S.W.3d 512, 518 (Tex. Crim. App. 2009); *West v. State*, 406 S.W.3d 748, 756 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd).

B. Allegedly Inconsistent Statements

First, in issue one, appellant contends the evidence is legally insufficient to support her convictions because "of the inconsistent and numerous versions of events presented by the victim both during the investigation and the trial." She does not challenge any of the individual elements of the offenses.

The jury, as the trier of fact, was the sole judge of the credibility of the witnesses and the weight to be given to their testimony. *See Temple*, 390 S.W.3d at 360; *see also Bautista v. State*, 474 S.W.3d 770, 776 (Tex. App.—Houston [14th Dist.] 2014, pet. ref'd) (even when complainant recants at trial, outcry statement provides legally sufficient evidence of sexual assault). Even if the student's statements were inconsistent,[1] the jury was entitled to resolve any conflicts against

[1] Our review of the record does not support appellant's contention that the student's statements were inconsistent. Instead, in both the LCPD and the CAC interviews, the student stated that: (1) he was a junior at Clear Creek High School; (2) he was involved in a sexual relationship with appellant; (3) he and appellant had engaged in kissing, hugging, and oral sex; (4) he and appellant had twice engaged in kissing outside of school; (5) all the sexual contact between the two occurred at school in the theater arts area; (6) he performed oral sex on appellant once and appellant performed oral sex on him four or five times; (7) he could not remember the details of the most recent sexual contact, which may have happened shortly before the interviews; and (8) the sexual contact happened the week of December 3, 2012, but kissing between the two had occurred before that week. Although he provided more detail in the second

appellant and to conclude that any inconsistencies in the student's statements were inconsequential. *See Curry v. State*, 30 S.W.3d 394, 406 (Tex. Crim. App. 2000) ("We resolve inconsistencies in the testimony in favor of the verdict."); *cf. Washington v. State*, 127 S.W.3d 197, 204 (Tex. App.—Houston [1st Dist.] 2003, pet. dism'd) ("Any inconsistency in [the complainant]'s testimony went to her credibility. The jury could have reasonably believed that [the complainant] was assaulted even if she failed to remember the specific details surrounding the assault or was otherwise inconsistent.").

In sum, the jury assessed the student's credibility and weighed his testimony accordingly. Any alleged inconsistencies in his statements went to his credibility and simply do not render the evidence legally insufficient to support appellant's convictions. *See Bautista*, 474 S.W.3d at 776.

For the foregoing reasons, we overrule appellant's first issue.

C. Enrollment

Next, in her second issue, appellant asserts that the evidence is insufficient to support her conviction for improper relationship between an educator and a student because the State "failed to prove the alleged victim was in fact enrolled" in school on the date of the charged offense. "Enrollment" is the only element of this offense that appellant challenges. An employee of a public secondary school commits an offense if the employee engages in sexual contact with a person who is enrolled in the school where the employee works. *See* Tex. Penal Code § 21.12(a)(1); *see also Parrish v. State*, 485 S.W.3d 86, 90 (Tex. App.—Houston [14th Dist.] 2015, pet. ref'd).

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interview, these basic factual statements were consistent. And, at trial, the student provided testimony that aligned with his statements in both interviews.

The indictment for an improper relationship alleged that the offense occurred "on or about" January 10, 2013. "It is well settled that the 'on or about' language of an indictment allows the State to prove a date other than the one alleged in the indictment as long as the date is anterior to the presentment of the indictment and within the statutory limitation period." *Sledge v. State*, 953 S.W.2d 253, 256 (Tex. Crim. App. 1997); *Carr v. State*, 477 S.W.3d 335, 341 (Tex. App.—Houston [14th Dist.] 2015, pet. ref'd).

In the present case, the student described the first sexual contact he had with appellant. He testified regarding an incident that he said occurred when he was a sixteen year-old junior at the school and appellant was his teacher. He stated that "oral sex" occurred in the prop room of the theater department. More specifically, he stated that appellant's mouth was on his penis, and he provided details concerning this specific incident and the surrounding circumstances. Finally, the student testified that the oral sex occurred in "late November and early December" of 2012.[2]

Based on this evidence, the jury was rationally justified in finding beyond a reasonable doubt that appellant engaged in sexual contact with a person who was enrolled in the school where she worked at the time of the charged offense. *See* Tex. Penal Code § 21.12(a)(1) (employee of public secondary school commits offense if employee engages in sexual contact with person enrolled in the school where employee works); *Temple*, 390 S.W.3d at 360; *Parrish*, 485 S.W.3d at 90. The evidence is legally sufficient to support appellant's conviction for an improper relationship between an educator and a student.

[2] This date is anterior to—i.e., before—the date alleged in the indictment and within the statutory limitation periods. *See* Tex. Code Crim. Proc. art. 12.01; *Sledge*, 953 S.W.2d at 256; *Carr*, 477 S.W.3d at 341.

We overrule appellant's second issue.

Cumulative-Error Argument

In her third issue, appellant asserts that various actions by the trial court cumulatively resulted in a violation of her right to due process. Appellant's argument under this issue is difficult to discern,[3] but it appears that appellant is asserting that: (1) the State attempted to shift the burden of proof to appellant; (2) several statements during voir dire and opening argument made by the State amounted to comments on her right not to testify; and (3) the trial court refused to strike a potential juror for cause and refused to provide appellant with an additional peremptory strike.

Multiple errors may be harmful in their cumulative effect on the defense even if each error would be harmless standing alone.[4] *Chamberlain v. State*, 998

[3] The State first responds that this issue is multifarious and should be overruled. A multifarious issue is one that embraces more than one specific ground. *Stults v. State*, 23 S.W.3d 198, 205 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd). We have discretion to "refuse to review a multifarious issue or we may elect to consider the issue if we are able to determine, with reasonable certainty, the alleged error about which the complaint is made." *Gilley v. State*, 418 S.W.3d 114, 119 n.19 (Tex. Crim. App. 2014); *see Davis v. State*, 329 S.W.3d 798, 803 (Tex. Crim. App. 2010). Having discerned appellant's argument with reasonable certainty, we exercise our discretion to consider it.

[4] Appellant did not discuss the standard of review for cumulative error in her brief. We note that, generally, an appellant raises cumulative error after briefing several other errors the appellant alleges accumulate to cause harm. *See, e.g.*, *Jenkins v. State*, 493 S.W.3d 583, 613 (Tex. Crim. App. 2016) ("In point of error five, appellant asserts, 'the *cumulative impact of the above errors* was so great that reversal is required. . . . *In his four preceding points of error*, appellant failed to show that the trial court erred." (emphasis added)); *Estrada v. State*, 313 S.W.3d 274, 311 (Tex. Crim. App. 2010) (overruling complaint of cumulative error when appellant asserted that he was entitled to reversal based on cumulative harm if the court found two or more of his previously discussed points of error harmless); *Chamberlain v. State*, 998 S.W.2d 230, 238 (Tex. Crim. App. 1999) ("In points of error fifteen and sixteen, appellant argues the cumulative effect *of all the above alleged errors* denied him due process and due course of law." (emphasis added)); *Cadoree v. State*, 331 S.W.3d 514, 530 (Tex. App.—Houston [14th Dist.] 2011, pet. ref'd) ("Finally, in his ninth issue, appellant contends that *all the errors combined deprived him of a fair trial.*" (emphasis added)). Breaking from traditional practice, appellant has failed to brief each alleged error individually or explain the legal bases for her

S.W.2d 230, 238 (Tex. Crim. App. 1999); *Linney v. State*, 401 S.W.3d 764, 782 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd). The mere existence of multiple errors does not warrant reversal unless they operated in concert to undermine the fundamental fairness of the proceedings. *Estrada v. State*, 313 S.W.3d 274, 311 (Tex. Crim. App. 2010). And, if an appellant's individual claims of error lack merit, then there is no possibility of cumulative error. *Gamboa v. State*, 296 S.W.3d 574, 585 (Tex. Crim. App. 2009); *Chamberlain*, 998 S.W.2d at 238. Thus, an appellant first must establish the errors before asserting that the cumulative effect of the errors cause harm.

As noted above, three purported errors appear to underlie appellant's overall claim of cumulative harm. Unfortunately, however, appellant's brief does not contain a "clear and concise argument for the contentions made, with appropriate citations to authorities and to the record." Tex. R. App. P. 38.1(i). Failure to provide substantive legal analysis—"to apply the law to the facts"—results in waiver of the issue. *Swearingen v. State*, 101 S.W.3d 89, 100 (Tex. Crim. App. 2003); *see also Linney*, 401 S.W.3d at 783 (statement that cumulative harm from appellant's first two issues resulted in fundamentally unfair trial was not adequately briefed). If the appealing party fails to meet her burden of adequately briefing the issues, we will not do so on the appellant's behalf. *See Swearingen*, 101 S.W.3d at 100; *see also Vuong v. State*, 830 S.W.2d 929, 940 (Tex. Crim. App. 1992) (appellant's issue inadequately briefed because he cited no legal authority to support his argument).

In the present case, appellant seemingly has delegated to this court the burden of "applying the law to the facts." *See Linney v. State*, 413 S.W.3d 766,

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claims of error and the degree of harm associated with each one. Instead, appellant posits she suffered a single aggregated harm resulting from a group of vaguely described incidents without identifying any specific or particular harm associated with each instance of alleged error.

767-68 (Tex. Crim. App. 2013) (Cochran, J., concurring in denial of petition for review). She has not, for example, identified any instances where she preserved the claimed errors with a timely request, objection, or motion. *See* Tex. R. App. P. 33.1(a); *Fuentes v. State*, 991 S.W.2d 267, 273 (Tex. Crim. App. 1999) (defendant waived complaint about trial court's explanation of reasonable-doubt standard during voir dire by failing to renew objection when trial court repeated explanation); *Marshall v. State*, 312 S.W.3d 741, 743 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd) (to preserve error for review, defendant must object to trial court's voir dire comments); *Moore v. State*, 907 S.W.2d 918, 923 (Tex. App.—Houston [1st Dist.] 1995, pet. ref'd) (appellant waived complaint about trial court's comment on weight of evidence during voir dire by failing to object). Neither has she cited legal authority germane to her arguments[5] or provided any substantive analysis of this issue in comprehensible language. *Linney*, 413 S.W.3d at 767-68; *Swearingen*, 101 S.W.3d 100; *Vuong*, 830 S.W.2d at 940; *Linney*, 401 S.W.3d at 783.

Under these circumstances, we conclude appellant's third issue is inadequately briefed, and therefore waived, and we overrule it.

[5] Appellant cites three cases and two articles of the Code of Criminal Procedure in this section of her brief. She references Texas Code of Criminal Procedure articles 39.14 and 37.07. Article 39.14 concerns discovery and article 37.07 section 4 concerns the penalty phase jury charge. *See* Tex. Code Crim. Proc. arts. 37.07, 39.14. Appellant provides no argument relevant to either of these sections of the Code of Criminal Procedure and neither article has any bearing on the arguments that we can discern. She simply has failed to apply the law to the facts of this case. *See Linney*, 413 S.W.3d at 767-68. Appellant also cites *Jaubert v. State*, 74 S.W.3d 1 (Tex. Crim. App. 2001), *Jimenez v. State*, 32 S.W.3d 233 (Tex. Crim. App. 2000), and *Owen v. State*, 656 S.W.2d 458 (Tex. Crim. App. 1983). But, again, she offers no argument based on these authorities. Appellant has thus failed to provide a "clear and concise argument for the contentions made, with appropriate citations to authorities and the record." Tex. R. App. P. 38.1(i).

Conclusion

Having overruled each of appellant's issues, we affirm the trial court's judgments.

/s/ Kevin Jewell
Justice

Panel consists of Chief Justice Frost and Justices Brown and Jewell.
Do Not Publish — Tex. R. App. P. 47.2(b).