Opinion issued October 20, 2011

In The

Court of Appeals

For The

First District of Texas

NO. 01-10-00547-CR

GENNY GRANADOS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 174th District Court
Harris County, Texas
Trial Court Case No. 1260935

MEMORANDUM OPINION

A jury found appellant, Genny Granados, guilty of the offense of felony murder.[1] The jury assessed appellant's punishment at 50 years in prison. In six issues, appellant asserts as follows: (1) the State improperly prosecuted her under the felony murder doctrine; (2) she was denied effective assistance of counsel at trial; and (3) the evidence is insufficient to support the judgment of conviction.

We affirm.

Background

On February 9, 2008, appellant called her neighbor, Oscar Lopez, complaining that she had stomach pain. After about three hours, Lopez drove appellant to Memorial Hermann Southwest Hospital. When they arrived, Lopez got a wheelchair from the hospital and took appellant into the emergency room. They were greeted by a hospital clerk, Sandra Richards. Richards commented that appellant was pregnant. Appellant responded that she was not pregnant. Richards then sent appellant to the waiting room. After a short time, appellant asked Lopez to take her to the restroom.

After 10 to 15 minutes, Lopez became concerned and knocked on the bathroom door. Appellant told Lopez to wait. After another five or ten minutes

[1] *See* TEX. PENAL CODE ANN. § 19.02(a)(3) (Vernon 2011).

had passed, appellant opened the door. Lopez saw blood on the bathroom floor, walls, and on appellant's clothing. Lopez became frightened and returned appellant to the waiting room.

The hospital housekeeper, Patricia James, was paged to clean the bathroom. It took James approximately 20 minutes to clean the blood from the walls, floor, and sink. James also emptied the bathroom's trash can. James then cleaned two other nearby restrooms.

James saw appellant near the restrooms. She noticed that there was a blood trail from the wheels of appellant's wheelchair.

James took the trash bags that she had collected from the restrooms to the hospital "soil room" to dispose of them. She noticed that the bag that she had collected from first bathroom felt heavy. She lifted the bag from the bottom and felt what she believed to be "little bones." James contacted another housekeeper to feel the bag as well. The women then contacted the emergency room charge nurse, Gwen Lantz. The nurse opened the trash bag and discovered a baby boy covered in bloody paper towels.

Nurse Lantz detected that the baby had a faint heartbeat. She took the baby to one of the emergency room doctors, who began resuscitation. The baby was transported to another hospital in the medical center for care.

A hospital employee, Carlos Rozan, who speaks fluent Spanish, was asked by medical personnel to speak to appellant, who is Spanish-speaking. Although she denied it initially, appellant admitted that she had given birth at the hospital. When Rozan inquired why appellant had not notified medical personnel that she was in labor, appellant replied that she already had two children, she did not want another child, and had no intention of keeping the baby.

Appellant was admitted to the hospital. An exam revealed that she had recently given birth.

Officer D. Morelli of the Houston Police Department was dispatched to the hospital and spoke with appellant. Appellant told Officer Morelli that she had given birth to a baby in the bathroom. She stated that she had cut the umbilical cord with scissors that she had in her purse. Appellant told the officer that she had grabbed the trash bag out of the trash can, removed all of the trash, put the baby in the bag, placed the trash on top of the baby, tied up the bag, and placed it back in the trash can.

The baby boy, named David, lived 10 days at the hospital before he died. An autopsy determined that the cause of his death was "complication of hypoxic encephalopathy due to hypovolemic shock with environmental exposure subsequent to neglect and abandonment afterward unassisted term delivery." The assistance medical examiner would testify at trial "that means that because the

baby had been unattended, the cord had been cut, and the baby had been left out with no care provided, as well as medical assessment, that the baby went into shock. And because of the shock, the brain lost oxygen and several of his organs failed and he contracted an infection which ultimately took his life." The assistant medical examiner agreed that, besides the effects of the neglect and abandonment, David appeared otherwise to be a normally developed, healthy baby. The doctor stated that the autopsy revealed no other medical condition or abnormality that would explain David's death.

Appellant was indicted for the offense of felony murder. The indictment alleged as follows:

> Genny Granados, hereafter styled the Defendant, heretofore on or about FEBRUARY 9, 2008, did then and there unlawfully, intentionally and knowingly commit and attempt to commit the felony offense of ABANDONING A CHILD by having care, custody and control of BABY BOY GRANADOS a.k.a. DAVID GRANADOS, a child younger than fifteen years of age and hereafter called the Complainant, and did intentionally abandon the Complainant in a TRASH RECEPTACLE under circumstances that exposed the Complainant to an unreasonable risk of harm and without the intent to return for the Complainant, and the Defendant did not voluntarily deliver the Complainant to a designated emergency infant care provider under Section 262.302 of the Texas Family Code and while in the course of and furtherance of the commission and attempted commission of the felony offense of ABANDONING A CHILD did commit an act clearly dangerous to human life, to wit: FAILING TO SEEK PROPER MEDICAL CARE FOR THE COMPLAINANT FOLLOWING THE COMPLAINAN'S BIRTH AND BY PLACING THE COMPLAINANT IN A TRASH RECEPTACLE FOLLOWING HIS BIRTH and did thereby cause the death of the Complainant.

The jury found appellant guilty as charged in the indictment and assessed punishment at 50 years in prison. This appeal followed.

Murder Predicated on Felony Offense of Abandoning a Child

In her first issue, appellant asserts, "The State cannot use the underlying offense of abandoning a child to 'bootstrap' its prosecution into one for felony murder . . . ." Appellant argues that the act forming the offense of abandoning a child—leaving newborn David in the trash can without medical care—is the same act relied on by the State to prove appellant's commission of "an act clearly dangerous to human life," a required element of felony murder. *See* TEX. PENAL CODE ANN. § 19.02(a)(3) (Vernon 2011). Appellant asserts, "There must be a showing of felonious criminal conduct and an act clearly dangerous to human life that causes the death of an individual." In short, appellant contends that the act constituting the underlying felony and the act "clearly dangerous to human life" cannot be the same act.[2]

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[2] In support of this argument, appellant relies on *Garrett v. State*, 573 S.W.2d 543 (Tex. Crim. App. 1978). The Court of Criminal Appeals later disavowed *Garrett* in *Johnson v. State* to the extent that *Garrett* stood for the proposition that, to prove felony murder, the State must show other felonious criminal conduct besides the underlying felony that caused the death. 4 S.W.3d 254, 258 (Tex. Crim. App. 1999). After *Johnson*, *Garrett* stands only for the proposition that a conviction for felony murder under Penal Code section 19.02(b)(3) cannot be based on the underlying felony of manslaughter or a lesser included offense of manslaughter. *Id*.; *see* TEX. PEN. CODE ANN. § 19.02(a)(3) (providing that a person commits the offense of felony murder if he "commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or

To preserve a complaint for our review, a party must have presented to the trial court a timely request, objection, or motion that states the specific grounds for the desired ruling if they are not apparent from the context of the request, objection, or motion. TEX. R. APP. P. 33.1(a)(1); *Layton v. State*, 280 S.W.3d 235, 238–39 (Tex. Crim. App. 2009). As the State points out, appellant did not object in the trial court that the offense of child abandonment cannot serve as the underlying offense for felony murder. Thus, the issue has not been preserved for our review. *See* TEX. R. APP. P. 33.1(a)(1). If an issue has not been preserved for appeal, we should not address it. *See Ford v. State*, 305 S.W.3d 530, 532 (Tex. Crim. App. 2009). Accordingly, we overrule appellant's first issue.

Ineffective Assistance of Counsel

In her second, third, and fourth issues, appellant contends that she received ineffective assistance of counsel at trial.

A. Applicable Legal Principles

The Sixth Amendment to the United States Constitution guarantees the right to reasonably effective assistance of counsel in criminal prosecutions. *See* U.S. CONST. amend. VI. To show ineffective assistance of counsel, a defendant must demonstrate both (1) that his counsel's performance fell below an objective

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attempts to commit an act clearly dangerous to human life that causes the death of an individual"). Appellant makes no assertion that the underlying felony in this case, child abandonment, is a lesser included offense of manslaughter.

standard of reasonableness and (2) that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687–88, 694, 104 S. Ct. 2052, 2064, 2068 (1984); *Andrews v. State*, 159 S.W.3d 98, 101–02 (Tex. Crim. App. 2005). A failure to make a showing under either prong defeats a claim of ineffective assistance of counsel. *Rylander v. State*, 101 S.W.3d 107, 110–11 (Tex. Crim. App. 2003).

An appellant bears the burden of proving by a preponderance of the evidence that his counsel was ineffective. *Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999). Any allegation of ineffectiveness must be firmly founded in the record, and the record must affirmatively demonstrate the alleged ineffectiveness. *Id*. at 814. We presume that a counsel's conduct falls within the wide range of reasonable professional assistance, and we will find a counsel's performance deficient only if the conduct is so outrageous that no competent attorney would have engaged in it. *Andrews*, 159 S.W.3d at 101.

B. Analysis

Here, the record shows that appellant's motion for new trial did not contain an ineffective assistance of counsel claim.

1. Mitigating Evidence

In her second issue, appellant first asserts that counsel was aware of "mitigating evidence" that he failed to develop and offer during the punishment phase of trial. Specifically, appellant contends that counsel should have offered evidence showing (1) she suffers from mental illness and (2) she appeared to be confused and mentally unstable on the night of the baby's birth. She points to two post-indictment competency evaluations performed by a psychiatrist and to her jailhouse medical records. The competency evaluations, which are contained in the clerk's record, indicate that appellant suffers from mental illness for which she takes medication.

Appellant also points to two *Brady* notices from the State disclosing that an attending doctor and a hospital employee has stated that appellant exhibited signs of mental instability on the night of the baby's birth. Appellant asserts that counsel should have subpeoned the psychiatrist, who performed the competency evaluations, and the witnesses identified in the *Brady* notices to testify regarding appellant's mental status. She contends that counsel's failure to develop and offer this "mitigating evidence" likely had had a negative effect on her sentencing.

The record is silent regarding (1) trial counsel's reasons for not calling the witnesses; (2) whether the witnesses were available; or (3) what the witnesses' testimony would have been. "Counsel's failure to call witnesses at the guilt-

innocence and punishment stages is irrelevant absent a showing that such witnesses were available and appellant would benefit from their testimony." *King v. State*, 649 S.W.2d 42, 44 (Tex. Crim. App. 1983). Appellant has not made such showing.

In short, appellant has not shown that trial counsel did not make a sound strategic decision to forego subpoenaing the mental health witnesses and offering her medical records. *See Lopez v. State*, 343 S.W.3d 137, 143–144 (Tex. Crim. App. 2011). We cannot conclude that counsel's performance was so outrageous that no competent counsel would have engaged in it. *See id.* Accordingly, we overrule appellant's second issue.

2. Appellant's Disruptive Conduct

Appellant contends that counsel failed to render effective assistance because he did not take appropriate action when she was disruptive during various stages of trial. During voir dire, appellant made an outburst in Spanish. At the request of defense counsel, the trial court instructed the venire to disregard appellant's outburst. Later, appellant "shot the finger" at one of the State's witnesses when the witness identified appellant. The record reflects that, following that incident, defense counsel told the trial court that he had admonished appellant not to engage in disruptive conduct. During the State's closing argument, appellant stated, "Fuck

you, fuck you" and continued to speak in Spanish, presumably in earshot of the jury. The record does not reflect that any objection was made to the outburst.

Appellant also points out that the record reflects that she removed her headphones, through which she was receiving a Spanish translation of the proceedings, for a portion of the trial. The record shows that a discussion regarding appellant's removal of her headphones was held outside the presence of the jury. The record reflects that trial counsel told appellant that it was important to wear the headphones.

Appellant asserts that her counsel should have moved to quash the jury panel after appellant's outburst during voir dire. She contends that trial counsel also should have requested the trial court to instruct the jury to disregard appellant's other disruptive courtroom behaviors and sought a mistrial based on the conduct.

Appellant has not shown that the trial court would have erred had it denied a request for an instruction to disregard or a motion for mistrial. *See Vaughn v. State*, 931 S.W.2d 564, 566 (Tex. Crim. App. 1996) (holding that, before court will sustain ineffective-assistance claim based on counsel's failure to make objection at trial, an appellant must show trial court would have erred by overruling objection); *see also Mooney v. State*, 817 S.W.2d 693, 698 (Tex. Crim. App. 1991) (stating, in effective-assistance context, that counsel is not required to file futile motions). Appellant's trial counsel may have been aware that a trial court is not required to

reward a defendant for engaging in disruptive behaviors during trial. *See Molina v. State*, 971 S.W.2d 676, 682 (Tex. App.—Houston [14th Dist.] 1998, pet. ref'd) (holding no error to deny mistrial when defendant made such repeated outbursts during voir dire that court ordered him bound and gagged); *see also Illinois v. Allen*, 397 U.S. 337, 346, 90 S. Ct. 1057, 1062 (1970) (holding that a defendant cannot be permitted by his disruptive conduct to avoid being tried on the charges brought against him).

The State posits that counsel may have made a strategic decision not to request an instruction to disregard or move for mistrial each time appellant misbehaved because he did not want to draw further attention to appellant's antics. In any event, the record is silent regarding why trial counsel handled appellant's disruptive behavior in the manner that he did. Because the record is not developed on this point, we conclude that appellant has not shown that trial counsel's performance fell below an objective standard of reasonableness. *See Strickland*, 466 U.S. at 687–88, 104 S. Ct. at 2064; *see also Lopez*, 343 S.W.3d at 143–44.

We overrule appellant's second issue.

3. Appointment of Expert Witnesses

Appellant also asserts that trial counsel "failed to request that the trial court appoint the defense necessary defense experts." Specifically, appellant contends that trial counsel should have sought appointment of experts to testify regarding

what the effect of appellant's blood loss and pain may have had on her mental state on the night that she gave birth.

The record was not developed in the trial court to show how the medical experts cited by appellant would have aided her defense. To establish ineffective assistance predicated on counsel's failure to present additional evidence, including expert testimony, appellant must show in the record what evidence was available and how it would benefit the appellant. *See King*, 649 S.W.2d at 44. We will not hold that counsel was ineffective for failing to request the appointment of an expert when the record does not demonstrate that the expert would have benefitted appellant's defense. *See Brown v. State*, 334 S.W.3d 789, 803 (Tex. App.—Tyler 2010, pet. ref'd) ("[T]he failure to request the appointment of an expert witness is not ineffective assistance in the absence of a showing that the expert would have testified in a manner that benefitted the defendant."); *Cate v. State*, 124 S.W.3d 922, 927 (Tex. App.—Amarillo 2004, pet. ref'd) (same); *see also Teixeira v. State*, 89 S.W.3d 190, 193–94 (Tex. App.—Texarkana 2002, pet. ref'd) (holding appellant did not prove ineffective assistance based on counsel's failure to call sexual assault expert to testify regarding likelihood of reoffending when there was no showing in the record that an expert would have testified to appellant's benefit).

Moreover, the record shows that trial counsel cross-examined two of the State's medical witnesses regarding the effect of pain and blood loss on a person's

ability to think clearly and rationally. One of these witnesses, the emergency room doctor on duty on the night of incident, testified that blood loss can affect a person's mental capacity and ability to reason. Trial counsel may have taken the strategic risk that testimony regarding the effects of blood loss and pain would be more powerful coming from the State's witnesses than from a hired defense expert.

"If counsel's reasons for his conduct do not appear in the record and there is at least the possibility that the conduct could have been legitimate trial strategy, we will defer to counsel's decisions and deny relief on an ineffective assistance claim on direct appeal." *Ortiz v. State*, 93 S.W.3d 79, 88–89 (Tex. Crim. App. 2002). Appellant has failed to present a record showing that the lack of defense experts was not the product of a legitimate strategic decision, and we cannot conclude that counsel's performance in this regard was so outrageous that no competent counsel would have engaged in it. *See Lopez*, 343 S.W.3d at 143–44.

We overrule appellant's fourth issue.

Sufficiency of the Evidence

In her fifth and sixth issues, appellant contends that the evidence was legally and factually insufficient to support her conviction for felony murder.

A. Standard of Review

This Court reviews sufficiency-of-the-evidence challenges applying the same standard of review, regardless of whether an appellant presents the challenge

as a legal or a factual sufficiency challenge.[3] *See Ervin v. State*, 331 S.W.3d 49, 53–54 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd) (construing majority holding of *Brooks v. State*, 323 S.W.3d 893 (Tex. Crim. App. 2010)). This standard of review is the standard enunciated in *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979). *See id*. Pursuant to this standard, evidence is insufficient to support a conviction if, considering all the record evidence in the light most favorable to the verdict, no rational fact finder could have found that each essential element of the charged offense was proven beyond a reasonable doubt. *See Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *In re Winship*, 397 U.S. 358, 361, 90 S. Ct. 1068, 1071 (1970); *Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009); *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). We can hold evidence to be insufficient under the *Jackson* standard in two circumstances: (1) the record contains no evidence, or merely a "modicum" of evidence, probative of an element of the offense, or (2) the evidence conclusively

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[3] Appellant asserts that this Court has exclusive jurisdiction pursuant to Article 5, section 6(a) of the Texas Constitution to review fact questions. *See* TEX. CONST. art. V, § 6(a). Appellant urges this court to "uphold its own constitutional powers and review factual sufficiency under the *Clewis* standards . . . ." As pointed out by the State, we addressed this issue in *Ervin v. State*, 331 S.W.3d 49, 53–54 (Tex. App.—Houston [1st Dist.] pet. ref'd). In *Ervin*, we held that as an intermediate court of appeals, we are bound to follow the precedent of the Court of Criminal Appeals. *See id.* As a result, we are bound under the Court of Criminal Appeals's decision in *Brooks v. State*, 323 S.W.3d 893 (Tex. Crim. App. 2010) to apply the standard of review enunciated in *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979), regardless of whether an appellant frames her issue as a legal or a factual sufficiency challenge. *See id.* Thus, that is the standard that we apply to appellant's challenges here.

establishes a reasonable doubt. *See Jackson*, 443 U.S. at 314, 318 n. 11, 320, 99 S. Ct. at 2786, 2789 n.11; *see also Laster*, 275 S.W.3d at 518; *Williams*, 235 S.W.3d at 750.

The sufficiency-of-the-evidence standard gives full play to the responsibility of the fact finder to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *See Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). An appellate court presumes that the fact finder resolved any conflicts in the evidence in favor of the verdict and defers to that resolution, provided that the resolution is rational. *See Jackson*, 443 U.S. at 326, 99 S. Ct. at 2793. In viewing the record, direct and circumstantial evidence are treated equally; circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt. *Clayton*, 235 S.W.3d at 778. Finally, the "cumulative force" of all the circumstantial evidence can be sufficient for a jury to find the accused guilty beyond a reasonable doubt. *See Powell v. State*, 194 S.W.3d 503, 507 (Tex. Crim. App. 2006).

B. Law of the Offense

Felony murder is an unintentional murder committed in the course of committing a felony. *Threadgill v. State*, 146 S.W.3d 654, 665 (Tex. Crim. App.

2004). More particularly, the Penal Code provides that a person commits the offense of murder if the person "commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual." *See* TEX. PENAL CODE ANN. § 19.02(a)(3) (Vernon 2011). Here, the indictment identified the act clearly dangerous to human life causing the complainant's death as "failing to seek proper medical care for the complainant following the complainant's birth and by placing the complainant in a trash receptacle following his birth and did thereby cause the death of the complainant."

To support the offense of felony murder, the State charged appellant with the underlying felony offense of abandoning a child. Under Penal Code section 22.041, a person commits the offense of abandoning a child "if having custody, care, or control of a child younger than 15 years, [she] intentionally abandons the child in any place under circumstances that expose the child to an unreasonable risk of harm. TEX. PENAL CODE ANN. § 22.041(b) (Vernon 2011). To abandon "means to leave a child in any place without providing the youth reasonable and necessary care, under circumstances which no reasonable, similarly situated adult would leave a child of that age and ability." *Id*. § 22.041(a). Penal Code section 22.041 does not apply when "the actor voluntarily delivered the child to a

designated emergency infant care provider under Section 262.302, Family Code." *Id*. § 22.041(h). The Family Code defines a hospital as "a designated emergency infant care provider." TEX. FAM. CODE ANN. §262.301 (Vernon 2008).

B. Analysis

In her fifth issue, appellant generally avers that the evidence was not sufficient to establish the predicate felony offense of abandoning a child or to establish that she committed or attempted to commit an act clearly dangerous to human life that caused David's death. In her sixth issue, appellant focuses her sufficiency challenge on the element of intent, which is necessary to prove the offense of abandoning a child.

To prove the offense of felony murder, the State must prove the elements of the underlying felony, including the culpable mental state for that felony, but no culpable mental state is required for the murder committed. *Lomax v. State*, 233 S.W.3d 302, 306–07 (Tex. Crim. App. 2007). Accordingly, in this case, the State was required to show that appellant intentionally abandoned David but was not required to show that appellant intentionally or knowingly caused his death. *See id*.; *see also Driver v. State*, No. 01–08–00522–CR, 2011 WL 2303871, at *6 (Tex. App.—Houston [1st Dist.] June 9, 2011, no pet h.). Appellant contends that the evidence was insufficient to show that she intentionally abandoned her baby. "Intent can be inferred from the acts, words, and conduct of the accused." *Patrick*

v. State, 906 S.W.2d 481, 487 (Tex. Crim. App. 1995). "A person acts intentionally, or with intent, with respect to the nature of [her] conduct or to a result of [her] conduct when it is [her] conscious objective or desire to engage in the conduct or cause the result." TEX. PENAL CODE ANN. § 6.03(a) (Vernon 2011).

At trial, the evidence showed that, on the night in question, appellant told her neighbor that she was in a lot of pain and asked him to take her to the hospital. However, she never told him that she was pregnant.

Once at the hospital, appellant did not tell hospital personnel that she was pregnant. When the front desk clerk made a statement to appellant indicating that she thought that appellant was pregnant, appellant yelled, "No, I'm not."

The evidence showed that appellant went into the hospital restroom where she stayed for 15 to 20 minutes. When her neighbor checked on her in the restroom, appellant told him to wait. Appellant gave birth to David in the bathroom. She used a scissors from her purse to cut the umbilical cord. After giving birth, appellant removed trash from the restroom trash can, placed the infant inside it, and put the trash on top of the baby.

The evidence showed that David remained in the waste can covered with trash while the restrooms were being cleaned. Although she remained at the hospital after giving birth, appellant did not notify anyone of David's presence. As

a result, the infant did not receive medical care until he was retrieved from the trash can.

The evidence showed that when the baby was found in the trash bag, he was toward the bottom of the bag and covered with paper towels. The emergency room charge nurse who helped remove the baby from the trash bag testified that paper towels were wrapped around the infant in a manner indicating that someone had made an effort to hide the baby.

When hospital employee Carlos Rozan began questioning her, appellant was not immediately forthcoming about whether she had given birth. On further questioning appellant admitted that she had given birth at the hospital. Rozan testified that, when asked why she had not told someone about the baby, appellant told him that she already had two children, she did not want another child, and had no intention of keeping the baby. The evidence also showed that appellant's husband had recently left her.

Officer Murillo, who spoke with appellant at the hospital, testified that appellant admitted to giving birth in the restroom and to cutting the umbilical cord with scissors she had in her purse. Appellant told the officer that she had taken the trash bag out of the trash can, removed all of the trash, placed the baby in the bag, covered the baby with trash, tied up the bag, and put the bag back in the trash can.

The assistant medical examiner testified regarding the cause of David's death. The doctor testified that "because the baby had been unattended, the cord had been cut, and the baby had been left out with no care provided, as well as medical assessment, that the baby went into shock. And because of the shock, the brain lost oxygen and several of his organs failed and he contracted an infection which ultimately took his life." The medical examiner did not find any other possible cause of death.

Appellant specifically argues that the evidence does not show that she intentionally abandoned David. Rather, she asserts that the evidence shows that she went to the hospital to give birth and to seek medical assistance. Appellant contends that it was the hospital's negligence that caused her to leave her baby in the trash can, which resulted in his death.

Appellant cites evidence showing that the clerk, Sandra Richards, working at the front desk of the hospital that night knew that appellant was in labor. The clerk gave a video-taped statement to police, which was admitted into evidence at trial. In the tape, the clerk stated that, when appellant arrived at the hospital, she knew that appellant was pregnant because she saw "something coming out" from between appellant's legs. The clerk stated that she could see that appellant was in labor and was delivering a baby. Nonetheless, the clerk sent appellant to the waiting room. Thereafter, appellant left the waiting room, went to the restroom,

gave birth, and left the baby in the trash can. Appellant contends that she was not thinking rationally because she had lost a lot of blood and was in a great deal of pain. She asserts that, had the hospital staff sent her immediately to the labor and delivery floor of the hospital, she would not have delivered her baby in the restroom and put him in the trash can.

While evidence of the clerk's actions aided in appellant's defense, ample evidence, as discussed *supra*, exists in the record to support the State's theory that appellant intentionally abandoned her baby in the trash can. The evidence shows that, through her words and her actions, appellant took affirmative steps to conceal her pregnancy and to conceal David once she placed him in the trash can. Although the evidence showed that appellant lost blood and reported being in pain that night, appellant cites no evidence in the record to establish that, at the time of the offense, her blood loss or pain caused her mental state to be so altered that she was incapable of forming the requisite intent. To the contrary, the charge nurse testified that, not long after appellant had given birth, appellant's vital signs were stable indicating that she had not lost a significant amount of blood.

It was the jury's responsibility to weigh the evidence pertinent to the element of intent and to draw reasonable inferences from that evidence. *Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789. We cannot conclude that the jury's implied

finding that appellant had the intent to abandon her baby is irrational. Rather, it is a reasonable inference that could have been drawn from the evidence.

Viewing all the evidence, direct and circumstantial, in the light most favorable to the jury verdict, we conclude that a rational fact finder could have found, beyond a reasonable doubt, all of the essential elements of the charged offense of felony murder. *See Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789. More precisely, the jury could have found, beyond a reasonable doubt, all of the elements of the offense of abandoning a child, including intent, and also found beyond a reasonable doubt that, while in the course of and in furtherance of the commission of the felony offense of abandoning a child, appellant committed an act clearly dangerous to human life that caused the David's death. [4] *See* TEX. PENAL CODE ANN. §§ 19.02(a)(3), 22.041(b). We hold that the evidence is sufficient to support the judgment of conviction.

We overrule appellant's fifth and sixth issues.

[4] Moreover, the evidence also supports the implied finding by the jury that appellant did not deliver David to a designated emergency infant care provider. *See* TEX. PENAL CODE ANN. § 22.041(h) (Vernon 2011) (providing that statute defining offense of abandoning a child does not apply when the child is delivered to a designated emergency infant care provider).

Conclusion

We affirm the judgment of the trial court.

Laura Carter Higley
Justice

Panel consists of Justices Keyes, Higley, and Massengale.

Do not publish. TEX. R. APP. P. 47.2(b).