



**NUMBER 13-19-00534-CR**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**TAWANA ROBERSON,**

**Appellant,**

**v.**

**THE STATE OF TEXAS,**

**Appellee.**

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**On appeal from the 36th District Court  
of San Patricio County, Texas.**

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**MEMORANDUM OPINION**

**Before Justices Hinojosa, Perkes, and Tijerina  
Memorandum Opinion by Justice Hinojosa**

After a bench trial, a trial court convicted appellant Tawana Roberson of four first-degree offenses: Count One for murder, by striking and failing to provide nourishment to a child; Count Two for intentionally and knowingly causing serious bodily injury by hitting a child; Count Three for intentionally and knowingly causing serious bodily injury by failing

to provide medical care; and Count Four for intentionally and knowingly causing serious bodily injury by failing to provide nourishment. See TEX. PENAL CODE ANN. §§ 19.02(b); 22.04(b), (e). The court assessed punishment at ninety-years for Count One, fifty years for Count Two, ninety-nine years for Count Three, and life imprisonment for Count Four. All sentences were to be served in the Texas Department of Criminal Justice—Institutional Division.

On appeal, Roberson argues that the evidence was legally insufficient to establish Count One, murder, and Count Four, intentionally and knowingly causing serious bodily injury by failing to provide nourishment. We affirm.

## I. BACKGROUND

Roberson was charged by indictment for four offenses, all of which stemmed from the death of her four-year-old son K.M.<sup>1</sup> The bench trial began on September 23, 2019.

Officer Wesley Shaw of the Portland Police Department testified that he was dispatched to a child welfare call at Northshore Emergency Center on February 19, 2019. When he arrived, he saw K.M., whom he described as “a very malnourished child with scars and bruising on his body and three fresh scratches across the side of his neck, spaced about as far [apart] as an adult’s fingers.” Shaw said healthcare workers were performing lifesaving measures on the child when he arrived. Shaw spoke with K.M.’s

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<sup>1</sup> We use initials to protect the child’s identity. See *Salazar v. State*, 562 S.W.3d 61, 63 n.1 (Tex. App.—Corpus Christi—Edinburg 2018, no pet.) (noting that the comment to Texas Rule of Appellate Procedure 9.8 does “not limit an appellate court’s authority to disguise parties’ identities in appropriate circumstances . . .”).

mother Roberson. He described Roberson, a mother of eight children, as “very stoic” and not showing “any emotion” despite K.M.’s condition.

Stanley Smith Jr. works as a registered nurse at Northshore Emergency Center. Smith testified that when K.M. arrived, the child was not breathing and had no pulse. Smith recalled that K.M. was “malnourished, very thin” and had “bruising on different areas of his body.” Smith immediately began an intravenous line to administer fluids. Health care workers elected to transport K.M. to Driscoll Children’s Hospital in Corpus Christi, Texas for a higher level of care.

Steven Krebel, M.D., a pediatric emergency medicine specialist at Driscoll Children’s Hospital, testified that K.M. was already “being actively coded” when he arrived at the emergency room, meaning he had been intubated and CPR was in progress. Dr. Krebel and his team tried to re-establish perfusion, or heart function, on K.M. to no avail. He recalled K.M.’s “impressive amount of injuries” and commented that “the degree of the spectrum of the injuries from early, meaning bruising and abrasions and oozing of blood, to the very full extent of the end of injuries, which is[] scarring, was most impressive” to him. He also noted that K.M. appeared to be malnourished, stating that K.M.’s weight was “markedly below normal for his age” and that the child “had essentially no fat. There was skin and there was bone.”

Julie Denney is a registered nurse with Driscoll Children’s Hospital with the Child Abuse Resource and Evaluation (CARE) team. She is a forensic nurse examiner who investigates suspected child abuse; her duties include “forensic photo documentation” and to annotate “any visible cutaneous injuries.” Emergency room personnel called

Denney when K.M. was brought in. Denney testified that when she arrived, K.M. was intubated and that emergency room staff were “doing chest compressions to keep his heart going.” Denney documented twenty-five injuries on K.M.’s body, several of which were patterned areas of multiple injuries which are “consistent with child abuse.” She testified that she saw both “fresh marks” and “old marks” on K.M.’s body. She opined that “the multitude of injuries that [K.M.] had were consistent with serious bodily injury.” Denney testified that she examined Roberson’s seven other children—a nine-month-old girl, two-year-old twin girls, five-year-old twin boys, a six-year-old boy, and a seven-year-old boy. All of them were of normal weight and none had any unusual marks or bruising on them like K.M. did. Notably, the nine-month-old weighed only two pounds less than four-year-old K.M. Based on her observations and experience, Denney surmised that K.M. was a victim of child abuse and neglect.

Ada Booth, M.D. is a pediatrician with the CARE team at Driscoll. She testified that she reviewed photographs and medical records in this case. She commented on the “patterned injuries” which appeared to be from “a looped, flexible object.” She noted overlapping injuries, such as bruises on top of one another, suggesting multiple strikes in the same area. She also found injuries in different stages of scarring. In addition, she opined that K.M. was malnourished. Her review of medical records showed that on February 8, 2018, K.M. weighed thirty-two point four pounds; on May 31, 2018, he weighed thirty-three pounds; on December 11, 2018, he weighed twenty-eight pounds; and on his day of death, he weighed nineteen pounds.

Ray Fernandez, M.D., the Nueces County medical examiner who performed the autopsy on K.M, testified that K.M.'s cause of death was severe malnutrition with a contributing condition of multiple cutaneous injuries. Dr. Fernandez testified that K.M. had U-shaped marks, or pattern injuries, behind his ears and on his head, chest, back, and legs. He opined that these marks were "from an object that . . . impacted that part of the body and left a pattern mark on it." He remarked that K.M.'s forehead had a bruise contusion that indicated this "part of the body impacted against a surface." Dr. Fernandez also commented that some of the bruises and recent scratches on K.M.'s body were not white or scarred but red, indicating they were recent. Dr. Fernandez further noted blunt trauma on the left side of K.M.'s head and ear, which meant they were "impacted by" or "against an object."

In addition, Dr. Fernandez found that K.M. was severely malnourished. The child weighed only nineteen pounds, when a normal four-year-old would weigh approximately thirty-five pounds; K.M. weighed in the fifth percentile of all children his age. Dr. Fernandez opined that K.M. was starving based on his overall body weight and his individual organ weights. He surmised that K.M. could not "be out running around normally like other children" and expected him to "be debilitated."

Juan Antonio Cano, Chief of Police for the City of Gregory, testified that he received a call from the Portland Police Department that a young boy had been brought to a clinic under "suspicious circumstances." When Cano arrived at Northshore, he spoke with Roberson. He recalled that Roberson told him that everyone got up that morning and that all the family walked to school to drop off her school-aged children. Per Roberson,

K.M. walked on his own and “was normal . . . [e]verything was okay.” K.M. started feeling weak, though, so when they returned to the home Roberson gave him a breakfast of cereal and string cheese. She described him as being sleepy and nodding off. He told his mother, “Momma, I’m tired” and went to his room to sleep. She stated that he “was not being able to hold himself up.” She told Cano that she had taken K.M. to the doctor a month prior because he was not eating.

After K.M. was transferred to Driscoll, Cano saw K.M.’s condition and immediately returned to Roberson for further questioning. He asked her directly, “What happened?” because he stated that there were injuries to the boy’s body and it “looked like he hadn’t eaten in quite some time.” Roberson said the injuries were from her former partner, Frederick, who lived in Phoenix, Arizona. She stated that Frederick beat K.M. because he did not think K.M. was his biological child, and he accused Roberson of having an affair. Roberson also changed her story and said she had taken K.M. to the doctor a week before (not a month before) and that the doctor had prescribed PediaSure. Regarding some of the scratches on K.M.’s body, Roberson suggested that perhaps some of his siblings had done that. She admitted to “disciplining” K.M. but in no way differently than she did her other children. She stated that she last “whooped” K.M. with a belt a few days prior. Cano obtained a search warrant to search Roberson’s home. He searched the home with Texas Ranger Samuel Cody Lankford. Cano said there appeared to be an adequate food supply for the family, but he did not see any PediaSure. He also took three belts into evidence and sent them to the Texas Rangers for DNA sampling. The results were not available at trial.

Texas Ranger Lankford testified that he assisted Cano with the police investigation of Roberson. He contacted the Phoenix, Arizona police department and requested all records regarding Roberson, Frederick, and/or K.M. Lankford stated that he found an assault charge for Frederick but that it had occurred before K.M. was born. There were no Child Protective Service (CPS) or police reports of abuse against K.M. by Frederick. Lankford confirmed that the crime lab still had not processed any DNA tests on the belts he and Cano had taken into evidence during their search.

Erica Rivera, a certified peace officer and special investigator for the Texas Department of Family and Protective Services, investigated this matter as well. She interviewed Roberson, observed Dr. Fernandez perform the autopsy, visited K.M.'s pediatrician, and reviewed photographs and medical records as part of her investigation. She also observed two interviews of K.M.'s older brothers at the Child Advocacy Center, where she learned that K.M. got "whoopings and [got] placed in the corner and ha[d] to stay there all day and doesn't eat if he doesn't use his words." Based on her investigation, she concluded that K.M.'s death "was a result of physical abuse and neglect."

Karen Meza is a nurse practitioner at Almoie Pediatrics. She testified that the only time she saw K.M. was for his physical in December of 2018, nearly three months before his death. She prescribed K.M. PediaSure because he was underweight. Meza saw old scratches on his body, but nothing new or remarkable. She advised Roberson to follow-up in a month to make sure K.M. was gaining weight.

Jammie Wright is the Director for the City of Beaumont Public Health Department's Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Wright

testified that when Roberson formerly lived in Beaumont, Roberson enrolled five of her eight children in the WIC program to receive benefits. To qualify for services, the children were required come in to have their height, weight, and hemoglobin regularly checked. Roberson did not register K.M., although he was qualified to be enrolled. Two of K.M.'s older brothers and his three younger sisters were enrolled in the program.

Elizabeth Adame works at the San Patricio County WIC office. She testified that she met Roberson when she transferred services from Beaumont County to San Patricio County when the family moved to south Texas. Adame stated that children under the age of five are eligible to receive WIC nutrition services. Adame confirmed that K.M.'s older brothers and younger sisters were registered for WIC benefits. K.M., however, was not registered.

Rebecca Burriss also works at the San Patricio WIC. She testified that Roberson came to the clinic with "two sets of twins and a little girl" along with another boy who appeared to be "maybe four or five years old." She recalled that one of Roberson's sons called the little boy "brother." When Burriss asked, "oh, is he your brother?", Roberson responded, "No. They are not brothers. He just likes to call him that."

Anna Madrigal worked at the Gregory Housing Authority, where Roberson lived with her children. Madrigal recalled K.M. because K.M. was very attached to Roberson. She remembered seeing K.M. with a "big knot on his forehead" and asked Roberson about it. Roberson confirmed they had gone to the E.R. and "he was being taken care of." Madrigal recalled trying to give K.M. a book once and noticed old scars. K.M. "did not



speak at all.” Once Madrigal asked a maintenance worker to give K.M. a bag of chips because he looked thin.

Christi Turrubiates volunteers at the First Baptist Church in Gregory, which the Robersons attended as a family. Turrubiates testified that the church gave the Roberson children school backpacks, food, and helped Roberson pay her rent and buy furniture. Turrubiates noticed that K.M. “was very small compared to the other children” and he “looked malnourished,” which was why the church kept donating groceries to Roberson. Turrubiates stated that on Sundays, all the children would go to Sunday school except for K.M., who would quietly sit with his mother. When the church delivered furniture to Roberson’s apartment, Turrubiates remembered that K.M. was crying because an older brother had hit him. Turrubiates lifted him up, told him she loved him and that he was going to be okay, and Roberson told her to “put that baby down. He is going to want to be babied all the time.” Another time at church, she picked up K.M. because he “had trouble walking” and “was very weak.” She lifted his shirt and saw “welts on his back. It looked like burn marks. But they were old.” Roberson said that her husband used to beat them and those marks were from that time period. Turrubiates visited the Roberson house every other week, and sometimes K.M. was locked in his room, crying. She testified that Roberson would not let him eat until he stopped crying.

Casandra Flores was also a member of the First Baptist Church. She went to the apartment to help clean. She once noticed K.M. being quiet and so weak that he could not stand up. When she went to pick him up, Roberson told her, “Girl, don’t do that. He just wants you to baby him.” Flores responded, “look how small he is for his age. It is not

right.” Flores stated that Roberson treated K.M. differently than her other children—he was “bruised,” “battered,” and “wouldn’t even talk.” When Roberson would put K.M. in the corner for bad behavior, Flores recalled he could not stand up. “As soon as he would fall down, she would hit him and make him stand back up.” Flores then told the church pastor that she would not help at the Roberson home anymore. She told him, “I can’t do this. I am out. I am not going to be a[] part of this. She is abusing them. Y’all are enabling it.”

Mary Gomez was a teacher at the children’s school. She once babysat for Roberson when Roberson was ill and had to go to the hospital. Gomez brought the children to her house. K.M. noticed some food and said, “uh, uh, uh,” motioning for the food. Gomez recalled that he ate until she told him to stop. He also had an old gash on his chest, and a “big old goose egg” on the back of his head. After dinner, while the other children watched cartoons, K.M. wrapped himself in a blanket and rolled into a ball. When Roberson arrived to pick up her children, Roberson hugged and kissed K.M., but K.M. ran to Gomez, grabbed her shirt, and told her in a faint voice that he wanted to stay at her house.

Moniefa Carter was Roberson’s neighbor. Carter acknowledged that she and Roberson had a falling out at one point when Roberson’s boyfriend and Carter’s son got into an argument. She testified that Roberson was a good mother but that she treated K.M. differently. Carter said Roberson would punish K.M. because he was not potty-trained yet. Sometimes Carter would hear K.M. say in a soft voice to his mother that he was hungry, but Roberson would not feed him.

Roberson presented one defense witness: Kathryn Soward, Ph.D., a clinical psychologist. By order of the court, Dr. Soward interviewed Roberson at San Patricio County Jail to assess her competency for trial. Dr. Soward found that Roberson was competent to stand trial. Dr. Soward testified, however, that Roberson's past history included poverty, domestic violence, and human trafficking and prostitution. These experiences, combined with Roberson's limited job skills and low intellect, led to a "high risk of poor decision-making and poor judgment."

The trial court found Roberson guilty of all four counts and assessed punishment at ninety-years for murder; fifty years for intentionally and knowingly causing serious bodily injury by hitting a child; ninety-nine years for intentionally and knowingly causing serious bodily injury by failing to provide medical care; and life imprisonment for intentionally and knowingly causing serious bodily injury by failing to provide nourishment. *See id.* §§ 19.02(b); 22.04(b), (e). Roberson appeals.

## **II. STANDARD OF REVIEW AND APPLICABLE LAW**

The Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution requires that a criminal conviction be supported by a rational trier of fact's findings that the accused is guilty of every essential element of a crime beyond a reasonable doubt. *Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009) (citing *Jackson v. Virginia*, 443 U.S. 307, 316 (1979)). This due process guarantee is safeguarded when a court reviews the legal sufficiency of the evidence. *Id.* Under this review, we consider all of the evidence in the light most favorable to the verdict and determine whether a rational fact finder could have found the essential elements of the

crime beyond a reasonable doubt based on the evidence and reasonable inferences from that evidence. *Whatley v. State*, 445 S.W.3d 159, 166 (Tex. Crim. App. 2014); *Jackson*, 443 U.S. at 319. Because the jury is the sole judge of the credibility of the witnesses and of the weight to be given to their testimony, we resolve any conflicts or inconsistencies in the evidence in favor of the verdict. *Ramsey v. State*, 473 S.W.3d 805, 808 (Tex. Crim. App. 2015); *Wesbrook v. State*, 29 S.W.3d 103, 111 (Tex. Crim. App. 2000).

“Circumstantial evidence is as probative as direct evidence in establishing guilt, and circumstantial evidence alone can be sufficient to establish guilt.” *Winfrey v. State*, 393 S.W.3d 763, 771 (Tex. Crim App. 2013) (citing *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007)). Juries are permitted “to draw reasonable inferences as long as each inference is supported by the evidence presented at trial. However, juries are not permitted to come to conclusions based on mere speculation or factually unsupported inferences or presumptions.” *Hooper*, 214 S.W.3d at 15.

We measure the legal sufficiency of the evidence against the elements of the offense as defined by a hypothetically correct jury charge for the case. *Byrd v. State*, 336 S.W.3d 242, 246 (Tex. Crim. App. 2011). Such a charge is one that accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State’s burden of proof or unnecessarily restrict the State’s theories of liability, and adequately describes the offense for which the defendant was tried. *Id.*

To establish murder in this case, the State had to prove that Roberson, with intent to cause serious bodily injury to K.M., committed an act clearly dangerous to human life that caused the death of K.M. by striking K.M. causing abrasions and contusions and

scars with an object and/or failing to feed or provide nourishment. See TEX. PENAL CODE ANN. § 19.02(b)(2). To prove the serious bodily injury for failing to feed offense, the State had to establish that Roberson intentionally and knowingly caused serious bodily injury or serious mental deficiency, impairment, or injury to K.M., a child fourteen years of age or younger, by failing to provide medical attention by failing to feed or provide nourishment which Roberson, as K.M.'s mother, had a statutory duty to do. See *id.* § 22.04(b), (e).

### III. ANALYSIS

#### A. Count One: Murder

By her first issue, Roberson challenges her murder conviction by arguing that “Texas courts have held that an act of ‘omission’ is not sufficient to prove felony murder and such convictions must be overturned.” She cites *Rodriguez v. State*, 454 S.W.3d 503 (Tex. Crim. App. 2015), a case that also dealt with a malnourished child, in support of this proposition. See *id.* As the *Rodriguez* Court explained, “[f]elony murder is, essentially, ‘an unintentional murder committed in the course of committing a felony.’” See *id.* at 507 (citing *Fuentes v. State*, 991 S.W.2d 267, 272 (Tex. Crim. App. 1999)). “More specifically, the Penal Code provides that felony murder is committed where a person ‘commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of 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 *id.* (citing TEX. PENAL CODE ANN. § 19.02(b)(3)). Roberson contends malnutrition is the result of an omission rather than an act; therefore, it cannot serve as a basis for felony murder. See *id.*; TEX. PENAL CODE ANN. § 1.07(a)(34) (defining an “omission” as a “failure to act.”).

Roberson's indictment alleged that she:

did then and there, with intent to cause serious bodily injury to an individual, namely [K.M.] hereafter styled the complainant, commit an act clearly dangerous to human life that caused the death of the complainant by striking the complainant causing abrasions and contusions and scars with an object unknown to the grand jury and/or failing to feed or provide nourishment.

*Rodriguez*, however, can be distinguished from the case at bar. In *Rodriguez*, the defendant mother was accused of starving her seven-week old son by providing him "with small, but not adequate amounts of food." 454 S.W.3d at 505. The Texas Court of Criminal Appeals held that Rodriguez's chronic underfeeding of her son showed an omission of action, rather than "any act clearly dangerous to human life, as required by the [felony murder] statute." *Id.* at 508. The Court further held that Rodriguez's conduct involved "*not* performing some act that was required of her, which forces each allegation squarely within the definition of an omission." *Id.* at 507 (emphasis in original) (citing TEX. PENAL CODE ANN. § 1.07(a)(34)).

Here, however, Roberson's mistreatment of her son extended to affirmative acts. See TEX. PENAL CODE ANN. § 1.07(a)(1) (defining "act" as a "bodily movement, whether voluntary or involuntary . . ."); see also *id.* § 19.02(b)(2) (providing that one commits murder when they commit an act clearly dangerous to human life that causes the death of an individual). Roberson's child K.M. was not a seven-week-old infant; he was four years old and able to feed himself. Turrubiates testified that Roberson deliberately locked K.M. in his room when he was crying, thus preventing him from accessing food or nourishment for himself. Investigator Rivera similarly reported that Roberson would put K.M. in the corner and not allow him to eat unless he "used his words." Further, both

Wright and Adame testified that Roberson failed to register K.M. for WIC public services which could have provided him the nutrition he needed, even though he was qualified for these services. Gomez relayed that K.M. told her in a faint voice that he wanted to stay at her house after eating his fill of food, but Roberson took him away from that safe space. These acts show the affirmative ways Roberson prevented K.M. from eating or accessing food on his own, and a reasonable jury could have found that these were acts clearly dangerous to human life and caused his death. See *Whatley*, 445 S.W.3d at 166; *Jackson*, 443 U.S. at 319; see also *Harrington v. State*, 547 S.W.2d 616 (Tex. Crim. App. 1977) (upholding the sufficiency of the evidence supporting a murder conviction where a mother starved her two-year-old daughter).

Furthermore, Roberson fails to acknowledge that the indictment was written in the disjunctive—the court could have found that she killed her son by striking K.M. “causing abrasions and contusions and scars with an object unknown to the grand jury. . . .” The record showed that Roberson was the sole adult caretaker of K.M. Although Roberson alleged that some of K.M.’s older injuries were from his father Frederick who lived in Phoenix, Arizona, the evidence shows that K.M. had not lived in Phoenix in over a year. Further, Ranger Lankford only found one assault charge for Frederick which had occurred before K.M. was born, and no CPS or police reports of abuse against K.M. by Frederick.

Officer Shaw, the first responding officer when K.M. was taken to the emergency room, witnessed scars, bruising, and three fresh scratches across the side of K.M.’s neck “spaced about as far [apart] as an adult’s fingers.” The medical examiner, Dr. Ray Fernandez, testified that K.M.’s cause of death was “severe malnutrition with a

contributing condition of multiple cutaneous injuries.” He also noted injuries “from an object” behind K.M.’s ears and on his head, chest, back, and legs. Several witnesses, such as Dr. Fernandez and Dr. Krebel, noticed that several of K.M.’s injuries were recent because they were red or oozing blood. Nurse Denney testified that she saw both “fresh” and “old” marks on K.M.’s body and opined that “the multitude of injuries that [K.M.] had were consistent with serious bodily injury.” And Dr. Booth commented on the “patterned injuries” on K.M. which appeared to be from “a looped, flexible object.” She also noticed overlapping injuries, such as bruises on top of one another, suggesting multiple strikes in the same area, and injuries in different stages of scarring.

Investigator Rivera learned that K.M. got “whoopings and [got] placed in the corner and ha[d] to stay there all day.” Flores testified that Roberson treated K.M. differently than her other children. She recalled K.M. as “bruised” and “battered” and that the child “wouldn’t even talk.” When Roberson would put K.M. in the corner for bad behavior, Flores recalled he could not stand up. “As soon as he would fall down, she would hit him and make him stand back up.” Flores told her pastor that she refused to help at the Roberson home anymore because she believed Roberson was abusing K.M. Lastly, Roberson admitted that she “whooped” K.M. as recently as a few days prior to his death.

Circumstantial evidence can be as probative as direct evidence in establishing guilt. *Winfrey*, 393 S.W.3d at 771; *Hooper*, 214 S.W.3d at 13. And fact-finders are permitted “to draw reasonable inferences as long as each inference is supported by the evidence presented at trial.” *Hooper*, 214 S.W.3d at 15. Viewing the evidence in the light most favorable to the verdict, we hold that a rational jury could have inferred that



Roberson committed acts “clearly dangerous to human life that caused the death of K.M. by striking K.M. causing abrasions and contusions and scars with an object unknown to the grand jury and/or failing to feed or provide nourishment.” See *Whatley*, 445 S.W.3d at 166; *Jackson*, 443 U.S. at 319. We conclude the evidence is sufficient to sustain Roberson’s murder conviction. We overrule her first issue.

**B. Count Four: Intentional or Knowing Infliction of Serious Bodily Injury by Failing to Feed**

By her second issue, Roberson argues that the evidence is insufficient to establish that she “intentionally or knowingly” caused serious bodily injury to her son by failing to feed him, a first-degree felony. See TEX. PENAL CODE ANN. § 22.04(a), (b). Instead, Roberson argues that she engaged in “reckless” behavior, which should reduce her alleged offense to a second-degree felony. See *id.* § 22.04(e). Accordingly, Roberson requests that her sentence be remanded for re-sentencing as a second-degree felony.

Texas Penal Code § 6.03 defines the different culpable states for committing crimes. See *id.* § 6.03. The statute provides that 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.” *Id.* § 6.03(a). A person acts knowingly, or with knowledge, with respect to the nature of her conduct or to circumstances surrounding her conduct when she is aware of the nature of her conduct or that the circumstances exist, and that her conduct is “reasonably certain to cause the result.” *Id.* § 6.03(b). Finally, a person acts recklessly when she is “aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur.” *Id.* § 6.03(c). “The risk must be of such a nature and degree that its

disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint." *Id.*

The record shows that Roberson was aware that K.M. was underweight. She told Cano that she had taken K.M. to the doctor a month prior to his death for "not eating" and was prescribed PediaSure; later, she changed her story and said she had taken him to the doctor a week prior to his death. Cano, however, did not find any PediaSure in the home when he and Ranger Lankford searched it. Meza, the nurse practitioner, testified that she last saw K.M. in December of 2018—three months before his death. Dr. Booth's testimony confirmed that her review of medical records showed that K.M. weighed twenty-eight pounds at the December check-up with Meza, and three months later weighed nineteen pounds when he died. Medical records showed that K.M. lost fourteen pounds in the span of a year. Dr. Krebel commented that K.M.'s weight was "markedly below normal for his age" and that the child "had essentially no fat. There was skin and there was bone." Dr. Fernandez confirmed that severe malnutrition was a cause of death, along with a contributing condition of multiple cutaneous injuries

Turrubiates testified that the church kept donating food because they noticed K.M.'s small figure. She, Carter, and Gomez all testified that K.M. looked underfed, was often hungry and weak, and that his mother did not often meet his requests for food. Investigator Rivera learned from K.M.'s siblings that K.M. was not allowed to eat until he used his words or stopped crying. And Wright and Adame confirmed that although Roberson knew K.M. qualified for WIC services because he was under the age of five, she did not register him for nutritional benefits.

“The fact finder may infer intent from the accused’s acts and words as well as the surrounding circumstances.” *Baldwin v. State*, 264 S.W.3d 237, 242–43 (Tex. App.—Houston [1st Dist.] 2008, pet. ref’d) (citing *Ledesma v. State*, 677 S.W.2d 529, 531 (Tex. Crim. App. 1984)); see also *Dorch v. State*, 596 S.W.3d 871, 877 (Tex. App.—San Antonio 2019, pet. ref’d) (where a defendant challenged his injury to a child by omission allegation). Viewing the evidence in the light most favorable to the verdict, we conclude that a factfinder could reasonably infer that Roberson intentionally or knowingly, not recklessly, failed to feed K.M. We overrule this issue.

#### IV. CONCLUSION

We affirm the trial court’s judgment.

LETICIA HINOJOSA  
Justice

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

Delivered and filed the  
27th day of August, 2020.