IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI,	)	
	)	
Respondent,	)	
	)	
v.	)	No. SC86306
	)	
BRANDY BURRELL,	)	
	)	
Appellant.	)	

APPEAL FROM THE CIRCUIT COURT OF BUCHANAN COUNTY, MISSOURI
FIFTH JUDICIAL CIRCUIT, DIVISION 3
THE HONORABLE PATRICK K. ROBB, JUDGE

RESPONDENT'S SUBSTITUTE STATEMENT, BRIEF AND ARGUMENT

Respectfully submitted,

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JURISDICTIONAL STATEMENT

This appeal is from convictions of endangering the welfare of a child, § 568.045, RSMo 2000, and murder in the second degree, § 565.021, RSMo 2000, obtained in the Circuit Court of Buchanan County, for which appellant was sentenced to seven years and life imprisonment, respectively, the sentences to run concurrently (Tr. 438-39, L.F. 51-53). After an opinion by the Court of Appeals, Western District, this Court took transfer of the case. Therefore, jurisdiction lies in the Supreme Court of Missouri. Mo.Const. Art. V, § 10 (as amended 1976).

STATEMENT OF FACTS

Appellant, Brandy Burrell, was charged by second amended information, as a prior offender, with endangering the welfare of a child in the first degree, § 568.045, RSMo 2000, and murder in the second degree (felony murder), § 565.021, RSMo 2000 (L.F. 15-18). Appellant waived her right to a jury (Tr. 71-74), and on August 20-22, 2002, the cause was tried before the Honorable Patrick K. Robb in the Circuit Court of Buchanan County (Tr. 69).

Appellant disputes the sufficiency of the evidence to support her convictions (App.Br. 20, 30). Viewed in the light most favorable to the verdicts, the following evidence was adduced.

Appellant began dating Isaiah Washington in 1998 (Tr. 342, State's Exhibit 26, pg 1). She and Mr. Washington had a son, also named Isaiah Washington (Tr. 155, 342).[1] In 1999, appellant was on probation, and she did not see Mr. Washington for a year (State's Exhibit 26, pg. 1). In April or May of 2000, appellant decided to start seeing Mr. Washington again (State's Exhibit 26, pg. 1). In October or November of 2000, when Isaiah was one year old, Mr. Washington began "beating on" Isaiah, and he would "whoop Isaiah hard on his butt" in appellant's presence (Tr. 350, State's Exhibit 26, pg. 2). Over the next year, Mr. Washington's beatings of Isaiah escalated to the point that he would kick and punch Isaiah

[1] To avoid confusion, appellant's boyfriend will be referred to as "Mr. Washington," and appellant's son will be referred to as "Isaiah."

(Tr. 350, State's Exhibit 26, pg. 2). These beatings were so severe that Mr. Washington fractured five of Isaiah's ribs and injured his liver (Tr. 249-50, 255).

The Division of Family Services came to appellant's house twice after Mr. Washington had beaten Isaiah, but Isaiah's injuries had healed by the time they came, and appellant did not report the abuse to them (Tr. 350-51, State's Exhibit 26, pg. 2). At times Mr. Washington's mother noticed bruises on Isaiah's face and back and asked appellant about them, but appellant just answered, "kids fall" (Tr. 163-65).

On October 26, 2001, appellant, Mr. Washington, and two-year-old Isaiah went to visit Mr. Washington's mother (Tr. 122-23, 155). Isaiah said a bad word, and Mr. Washington became angry and started screaming and yelling at Isaiah and calling him names (Tr. 123, State's Exhibit 26, pg. 3). Appellant nothing (Tr. 123). Then Mr. Washington kicked Isaiah so hard in the buttocks that Isaiah was thrown up a flight of stairs and landed on his stomach in the middle of the dining room (Tr. 124-25). Appellant saw the whole thing, but did nothing (Tr. 125, State's Exhibit 26, pg. 3). Then Mr. Washington ordered Isaiah to stand up, and when he stood up too slowly, Mr. Washington threw him to the ground, slamming his face on the floor, put his foot on Isaiah's head, and kicked him hard in the side (Tr. 126, 364, State's Exhibit 26 pg. 3).

During this beating, Mr. Washington's brother, William, asked appellant whether she was going to do anything, but appellant did not respond (Tr. 128). William told appellant to "keep [his] hands off that child," and Mr. Washington and William started fighting (Tr. 128).

Mr. Washington's mother called the police (Tr. 129). Mr. Washington, appellant,

and Isaiah left before the police arrived (Tr. 147, 162).

Appellant, Mr. Washington, and Isaiah then drove to the home of Mr. Washington's aunt, Trina Wilson, arriving between 2:40 p.m. and 3:00 p.m. (Tr. 177-78). Mr. Washington came in and used the bathroom, and several minutes later appellant and Isaiah came in (Tr. 178). Ms. Wilson immediately saw a large knot on Isaiah's head, and asked appellant what had happened (Tr. 178-79). Appellant said that Isaiah fell (Tr. 180). Ms. Wilson told appellant that she needed to take Isaiah to the hospital (Tr. 180). Appellant said that she was planning to take him when they got home (Tr. 180).

After about fifteen minutes, appellant, Mr. Washington, and Isaiah left (Tr. 180). They drove to appellant's home in Cameron, but did not go to the hospital (Tr. 353). Instead, appellant and Mr. Washington gave Isaiah some dinner, which he did not eat, and then put him to bed while they watched a movie (Tr. 353, State's Exhibit 26, pg. 4-5).

At about 11:00 p.m., appellant told Mr. Washington to wake Isaiah and take him to the bathroom (Tr. 353). Isaiah could not stand on his own, and his eyes rolled back in his head (Tr. 353). Appellant did not call 911 or take Isaiah to the hospital, but instead tried to revive him on her own (Tr. 354). Mr. Washington then kicked and slapped Isaiah (State's Exhibit 26, pg. 5).

After about half an hour, when Isaiah was still not breathing and appeared dead, appellant and Mr. Washington drove Isaiah to the emergency room (State's Exhibit 26, pg. 5). Isaiah was already dead when Mr. Washington brought him in at about midnight (Tr. 97), but medical personnel tried to revive him (Tr. 96). Isaiah was pronounced dead at 12:12

a.m., October 27, 2001 (Tr. 99). At the hospital, appellant and Mr. Washington told a nurse and later a police officer that Isaiah had fallen and hit his head on a coffee table at their home in Cameron (Tr. 111, 281-82).

Sometime later two female family members arrived, and they, Mr. Washington, and appellant were alone together in a room at the hospital (Tr. 301-302). An officer heard appellant yell, "I told the – f-word– police that the boy fell" and instruct someone in the room to "stick to the story" (Tr. 301-302). Mr. Washington's brother, William, told police about Mr. Washington's assault on Isaiah earlier in the day, and when police asked her about that, appellant put her head down and said nothing (Tr. 283-84).

An autopsy revealed that Isaiah had several injuries that were at least three weeks old, including tears to his liver, a large hematoma, and five fractured ribs, which were classic injuries for a child being kicked, and numerous scars on his chest, legs, and buttocks, which were not scars from normal childhood injuries (Tr. 240-41, 256). He had numerous injuries that had all occurred in the twenty-four hours before his death (Tr. 248). These injuries included two large bruises on his head, three tears to his lips and mouth, injuries to his jaw, cheek, eyebrow, neck, and arms, stretch marks in his groin area from his body being hyper-extended, blood in his lungs, five fractured ribs, a two-inch by three-inch area of deep tears to his liver, including tears that extended several inches deep, torn heart vessels, and several ripped and bleeding internal organs, including his adrenal gland, spleen, colon, intestines, and bowel (Tr. 227-247, 249-50, 252-56). Many of these injuries were classic injuries for a child being kicked, and other injuries were consistent with a child

being punched by a fist (Tr. 230-31, 256).

On October 29, 2001, police arrested Mr. Washington at appellant's house (Tr. 311). Appellant talked to police officer Scott Coates, and agreed to come to the police station the next day (Tr. 312-14).

On October 30, appellant came to the police station and waived her Miranda[2] rights (Tr. 314-19). She told Officer Coates that Isaiah had tripped on some carpet at her home in Cameron and hit his head on a coffee table (Tr. 319). She claimed Mr. Washington's assault consisted only of "lightly" kicking Isaiah in the "butt" and then placing him in a corner (Tr. 322). Officer Coates confronted appellant with the facts that Isaiah had internal injuries and injuries on his torso and that Ms. Wilson saw the bruise on Isaiah's head before appellant and Mr. Washington and Isaiah had returned home to Cameron, but appellant had no explanation for these facts (Tr. 325-26).

On November 6, 2001, appellant was arrested (Tr. 329). On November 9, 2001, appellant asked to talk to Officer Coates, but he refused to talk to her unless she made a written request (Tr. 329-30). Appellant made a written request to speak with him, and then he met with her (Tr. 330-31). Officer Coates asked appellant what was different from her last statement, and she said that she wanted to tell the truth, and wanted to know what would happen with her case (Tr. 331). Officer Coates told appellant that he could make her no guarantees whatsoever, and that only the prosecutor could make her any promises regarding

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[2] Miranda v. Arizona, 384 U.S. 436 (1966).

her case (Tr. 332). Appellant then told him that she had seen Mr. Washington hit Isaiah (Tr. 332).

Officer Coates called the prosecutor and asked if there could be any deal, and the prosecutor said not until they had evaluated the truth of appellant's statement (Tr. 340). Officer Coates gave this information to appellant (Tr. 341). Appellant said she still wanted to make a statement, and waived her Miranda rights (Tr. 341-42). She told Officer Coates that appellant had been beating Isaiah for about a year and that DFS had come to the house twice but had not discovered the abuse because the injuries had healed (Tr. 342, 348-51, State's Exhibit 26, pg 2).

She said that on October 26, 2001, Mr. Washington had kicked Isaiah to the ground, slammed him back on the ground when he tried to get up, and kicked him again when he was on the floor (Tr. 351, 364, State's Exhibit 26, pg. 3). She described how she lied to Ms. Wilson about the bump on Isaiah's head, put Isaiah to bed while she and Mr. Washington watched a movie, and then watched as Mr. Washington kicked and slapped Isaiah at her house an hour or so before they took Isaiah to the hospital (Tr. 352-54, 362-63, State's Exhibit 26, pg 3-5).

At the close of the evidence and arguments, the trial court found appellant guilty of both counts (Tr. 410-11). At the sentencing hearing, the trial court sentenced appellant to seven years of imprisonment for endangering the welfare of a child and life imprisonment for murder in the second degree, the sentences to run concurrently (Tr. 438-39, L.F. 51-53).

Appellant appealed, and on June 29, 2004, the Court of Appeals, Western District, reversed both of appellant's convictions, finding the evidence insufficient to show that she knew Mr. Washington would assault Isaiah on the charged date. State v. Burrell, No. WD62062 (Mo.App.W.D. June 29, 2004), slip op. at 11. The state sought transfer. On October 26, 2004, this Court granted the state's motion to transfer the case. This appeal follows.

POINT I

The trial court did not err in denying appellant's motion for a judgment of acquittal of the felony of endangering the welfare of a child because the evidence was sufficient to prove that appellant knowingly acted in a manner that created a substantial risk to the life, body, or health of Isaiah by putting him in contact with Mr. Washington, whom she knew to have severely beaten Isaiah on several prior occasions, the beatings escalating over the past year.

Appellant claims that the trial court erred in denying her motion for a judgment of acquittal (App.Br. 20). Appellant argues that in order to sustain a conviction for endangering the welfare of the child, the evidence had to show that appellant was "practically certain" that Mr. Washington would severely beat Isaiah on October 26, 2001 (App.Br. 20). But, contrary to appellant's assertion, the state was not required to prove that "harm" was "practically certain to occur by the contact alone" (App.Br. 20), but was required to prove only that a risk of harm was practically certain to occur. There was abundant evidence to prove that when appellant knowingly placed Isaiah in direct contact with Mr. Washington, she created a substantial risk to Isaiah's life, health, or body, and thus the evidence was sufficient to uphold her conviction.

1. Standard of review

In assessing whether there is sufficient evidence to support a conviction, the appellate court must accept as true all of the evidence and inferences favorable to the state, and disregard all evidence and inferences to the contrary. State v. Grim, 854 S.W.2d 403,

405 (Mo.banc 1993), cert. denied 510 U.S. 997 (1993), State v. Dulany, 781 S.W.2d 52, 55 (Mo.banc 1989). The review is limited to a determination of whether there is sufficient evidence from which a reasonable finder of fact could find the defendant guilty beyond a reasonable doubt. State v. Grim, 854 S.W.2d at 405, State v. Williams, 958 S.W.2d 87, 90 (Mo.App.E.D. 1997). A jury may believe or disbelieve all, part, or none of the testimony of any witness. State v. White, 847 S.W.2d 929, 933 (Mo.App.E.D. 1993).

2. Law on endangering the welfare of a child

Section 568.045, RSMo 2000, defines the crime of endangering the welfare of a child as follows:

> 1. A person commits the crime of endangering the welfare of a child in the first degree if:
>
> (1) The person knowingly acts in a manner that creates a substantial risk to the life, body, or health of a child less than seventeen years old . . . .

Section 562.016.3, RSMo 2000, defines the mental state of "knowingly" as follows:

> A person "acts knowingly", or with knowledge,
>
> (1) With respect to his conduct or to attendant circumstances when he is aware of the nature of his conduct or that those circumstances exist; or
>
> (2) With respect to a result of his conduct when he is aware that his conduct is practically certain to cause that result.

Appellant was charged with endangering the welfare of the child as follows:

> . . . the defendant knowingly acted in a manner that created a substantial risk to the

life and body and health of I.W., a child less than seventeen years of age, by placing the child I.W. in direct contact with [Isaiah] Washington who defendant has previously seen physically abuse I.W. and by so doing defendant allowed the child to be assaulted by Isaiah Washington.

The state was therefore required to prove that appellant knowingly placed Isaiah in direct contact with Mr. Washington, meaning that she was aware of the nature of her conduct when she did so, and that she was aware that her conduct was "practically certain" to create a substantial risk to Isaiah's life, body, and health from assault by Mr. Washington.[3]

The state was not required to prove that it would be "practically certain" that Mr. Washington would assault Isaiah on October 26, 2001. Rather, the state was required to prove that putting Isaiah in contact with Mr. Washington was "practically certain" to endanger Isaiah. In State v. Riggs, 2 S.W.3d 867, 873 (Mo.App.W.D. 2002), the defendant argued that she could not be convicted of endangering the welfare of a child because leaving her two-year-old unattended near an unfenced pond for forty-five minutes was not "practically certain" to result in his drowning. The court explained that this argument was legally flawed:

Reading the statutes together, the state need not prove Riggs was practically certain that Ben's death would occur as a result of her failure to provide supervision. Rather,

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[3] Because this was a court-tried case, there was no verdict director.

> for a charge of child endangerment, the state must prove Riggs knew her failure to provide proper supervision for her two-year-old child for some forty-five minutes was practically certain to endanger the child. Whether the outcome of this incident had been Ben's death, rescue from the water or his return home before ever reaching the pond, a charge of child endangerment could have been filed and the question would remain the same. That is, the question before the jury would be whether or not Riggs knowingly put the child in a position of substantial risk by her conduct.

Similarly, the state was not required to prove that it was practically certain that an assault on Isaiah would occur by appellant's placing him in direct contact with Mr. Washington on October 26, 2001. Instead, the state had to prove that appellant knew her placing Isaiah in direct contact with Mr. Washington was practically certain to endanger Isaiah.

3. The evidence was sufficient to establish that appellant knew placing Isaiah in direct contact with Mr. Washington would endanger Isaiah

The evidence at trial showed that at times Isaiah's grandmother saw bruises on Isaiah's face and back, and asked appellant about them (Tr. 163-65). Appellant told her that "kids fall" (Tr. 163-65). Isaiah only had these bruises when appellant and Mr. Washington were together (Tr. 163-65).

The autopsy showed that Isaiah had injuries that were at least three weeks old, including tears to his liver and fractured ribs from being kicked, and also had multiple scars on his chest, legs, and buttocks, which scars were not the result of normal childhood injuries (Tr. 240-41, 249-50, 255-56).

Also, appellant told police that, for about a year prior to Isaiah's death, she witnessed Mr. Washington beat Isaiah. She told police that Mr. Washington started abusing Isaiah in October or November of 2000 (Tr. 350, State's Exhibit 26, pg. 2). She said that Mr. Washington began by whipping Isaiah's buttocks hard, and that he progressed to hitting and kicking Isaiah (Tr. 350, State's Exhibit 26, pg. 2). She said that the Division of Family Services had come after two of the beatings, but that the injuries had healed by the time they came (Tr. 350-51, State's Exhibit 26, pg. 2).

This evidence established that appellant knew that Mr. Washington was in the habit of beating Isaiah so badly that it bruised him and left scars on him. Even if she did not know that his liver was torn and ribs were fractured, there is a reasonable inference that, as Isaiah's primary care giver, she would have noticed that Isaiah had pain in his stomach and chest from these injuries. Because appellant knew that Mr. Washington beat Isaiah so severely, and had done so on multiple occasions over a year's time, and that the beatings were getting harsher and harsher, she knew that putting Isaiah in direct contact with Mr. Washington created a substantial risk that Isaiah would be beaten. Her knowledge of the prior beatings, and her lies to family and her concealment from DFS workers, established that she knew that putting Isaiah in direct contact with Mr. Washington was practically certain to create this substantial risk.

Appellant appears to argue that because the charging document only charged one day of conduct, and she could not have known that Mr. Washington would beat Isaiah that day, she cannot be found guilty of endangering the welfare of Isaiah (App.Br. 27). But,

based on appellant's knowledge of Mr. Washington's beatings of Isaiah and that those beatings were serious and escalating, even if Mr. Washington had not assaulted Isaiah that day, there was still a substantial risk that he would do so.

And, contrary to appellant's assertion that the entire beating was over before appellant had time to act (App.Br. 26), the evidence actually showed that Mr. Washington first started screaming at Isaiah and calling him names, then kicked him up the stairs, then yelled at him to get up, then waited as Isaiah slowly got up, then slammed Isaiah's head back on the floor, then put his foot on his head, and then kicked him hard in the side (Tr. 123-26, 364, State's Exhibit 26, pg. 3). Appellant watched the whole incident in the dining room, and did absolutely nothing to prevent Mr. Washington from being in contact with Isaiah (Tr. 125, State's Exhibit 26, pg. 3). Then she left with Mr. Washington and eventually went to her house with him, where she witnessed Mr. Washington kick and slap Isaiah (State's Exhibit 26, pg. 5).

This last beating may have actually been the killing blow. The medical examiner testified that the acute injuries may have occurred at different times during the twenty-four-hour period prior to Isaiah's death (Tr. 263), and that it was possible that within one hour of the injuries Isaiah could have collapsed (Tr. 257-58). Thus, appellant not only put Isaiah at risk when she placed him in direct contact with Mr. Washington in the morning before the first beating, she also put him at risk during the first beating and after the first beating when

she took Isaiah and Mr. Washington to her house where Mr. Washington again beat Isaiah.[4]

Based on the prior history of beatings, appellant certainly would have known of the risk to Isaiah at the time Mr. Washington started yelling at him. It is absurd to argue that when the beating actually started that day she did not know that Isaiah was at risk from Mr. Washington. But after the first beating she continued to keep Isaiah in direct contact with Mr. Washington, allowing him to assault Isaiah again. There can be no question that after the beating occurred, appellant continued to place Isaiah in direct contact with Mr. Washington, and that this was practically certain to create a substantial risk that Mr. Washington would beat Isaiah. Therefore, there is no merit to appellant's argument that the evidence was insufficient to show a risk of endangerment from placing Isaiah in direct contact with Mr. Washington on October 26, 2001.

In a similar case, State v. Fuelling, 145 S.W.3d 464 (Mo.App.W.D. 2004), the defendant claimed the evidence was insufficient to sustain her conviction of endangering the welfare of a child. The evidence showed the defendant had learned that her husband did not like her son, would torment her son, her son had unusual and unexplained bruises on his face and buttocks after her husband was caring for her son, he had bitten her son hard enough to leave a mark, and he had shaken her son on more than one occasion. Id. at 469-

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[4] Respondent notes that all of appellant's conduct that day, in whatever county, was properly charged in Buchanan County. Section 541.033, RSMo 2000, State v. Seaton, 817 S.W.2d 535, 537-38 (Mo.App. E.D. 1991).

70. The court found this evidence showed actual knowledge on the defendant's part that abuse was occurring, and that she knew her conduct of leaving her son with her husband was practically certain to endanger her son. Id. at 470.

Similarly, in the case at bar, the evidence showed that appellant knew Mr. Washington severely beat her son on several occasions and that the beatings were getting worse, but she still put Isaiah in direct contact with Mr. Washington. This evidence showed appellant's actual knowledge that the beatings were occurring, and that she knew her conduct of putting Isaiah in direct contact with Mr. Washington was practically certain to create a substantial risk to endanger Isaiah.

In State v. Gaver, 944 S.W.2d 273, 277-78 (Mo.App.S.D. 1997), the defendant had been told that there was a possibility that someone was abusing her children and that their injuries were not accidental, and her children had obvious bruises and discomfort. The home she shared with her husband had thin walls, and she could hear what her husband did to her children. Id. at 276. This evidence was sufficient to show that she knowingly committed the offense of endangering the welfare of a child by failing to provide a safe environment for them. Similarly, in the case at bar, the evidence showed that appellant knew that Mr. Washington was beating Isaiah. But she placed Isaiah in direct contact with him anyway, which endangered him.

Appellant relies on State v. Carmons, 26 S.W.3d 382 (Mo.App.W.D. 2000) (App.Br. 20-22, 24-25). In that case, the defendant pleaded guilty to endangering the welfare of a child. Id. at 384-85. However, at the plea hearing, the only factual basis made was that the

child told the defendant his uncle had molested him, and the defendant did not keep the uncle from "coming around the house." Id. The court found this factual basis insufficient to show that the risk of abuse was practically certain, because there was no information about how the abuse had occurred in the past or under what circumstances the uncle was allowed to come "around the house." Id. at 385-86. The court reasoned that the uncle might not have been allowed contact with the child which would risk the abuse. Id. at 385.

In contrast, as shown above, in the case at bar there was a trial with ample evidence of the injuries Isaiah had suffered. Also, appellant admitted witnessing the prior beatings. She knew that Mr. Washington had a violent temper which could be set off by an insignificant matter (State's Exhibit 26 pg. 2)– he was essentially a walking time bomb, and appellant knew it. This evidence showed that by placing Isaiah in direct contact with Mr. Washington, it was practically certain that there was a substantial risk that Mr. Washington would abuse Isaiah. Further, appellant witnessed Mr. Washington beat Isaiah at Mr. Washington's mother's house, and then she took Mr. Washington and Isaiah to her own house, where appellant again assaulted Isaiah by kicking and slapping him (State's Exhibit 26, pg. 3-5). Appellant kept Isaiah in contact with Mr. Washington throughout the day, knowing full well the risk that Mr. Washington would assault him, and she even took him back to her home after the earlier assault where he was able to beat Isaiah again. This evidence abundantly showed that appellant knowingly created a substantial risk to Isaiah by putting him in contact with Mr. Washington throughout the day on October 26, 2001. Therefore, appellant's reliance on Carmons is misplaced.

Appellant also argues that it is bad public policy to find the evidence sufficient, because it "would require any parent, with knowledge of prior abuse, to seek a restraining order or violate a visitation order, rather than allow contact" (App.Br. 28). But parents do have a duty to protect their children. State v. Riggs, 2 S.W.3d at 870. If a parent has knowledge of abuse, that parent should seek a restraining order or a modification of the visitation agreement rather than allow her child to be physically or sexually abused. The parent could at least make a telephone call to DFS to report the abuse. There was no evidence in the case at bar that appellant felt compelled to comply with some order of visitation. Instead, the prosecutor said at the sentencing hearing that appellant was, at all times, under an order to have no contact with Mr. Washington, but that the order was not enforced when the probation officer learned that she had a child with Mr. Washington (Tr. 424). Appellant even went further to violate her probation by having Mr. Washington live with her (Tr. 424, State's Exhibit 26, pg. 2-3). To find appellant guilty is required under the law, is supportive of the public policy of requiring parents to protect their children, and puts no onerous burden on anyone. Therefore, appellant's argument has no merit.

Because the evidence was sufficient to uphold appellant's conviction of endangering the welfare of a child, there is no merit to appellant's claim that both that conviction and her conviction of felony murder must be overturned. Therefore, her point must fail.

POINT II

The trial court did not err in denying appellant's motion for a judgment of acquittal on felony murder because Mr. Washington's acts of beating Isaiah were not an intervening cause but a natural consequence of appellant's putting Isaiah in direct contact with him in that appellant knew Mr. Washington to be a violent abuser whose abuse of Isaiah was escalating.

Appellant claims the trial court erred in denying her motion for a judgment of acquittal on the charge of felony murder, claiming that Mr. Washington's acts of beating Isaiah were so astounding and unexpected that they qualify as an intervening cause of Isaiah's death (App.Br. 30). But, considering appellant's knowledge of the frequency and severity of the prior beatings, Isaiah's being severely beaten by Mr. Washington and dying as a result was a foreseeable consequence of appellant's placing Isaiah in contact with him all day on October 26, 2001.

1. Standard of review

In assessing whether there is sufficient evidence to support a conviction, the appellate court must accept as true all of the evidence and inferences favorable to the state, and disregard all evidence and inferences to the contrary. State v. Grim, 854 S.W.2d 403, 405 (Mo.banc 1993), cert. denied 510 U.S. 997 (1993), State v. Dulany, 781 S.W.2d 52, 55 (Mo.banc 1989). The review is limited to a determination of whether there is sufficient evidence from which a reasonable finder of fact could find the defendant guilty beyond a reasonable doubt. State v. Grim, 854 S.W.2d at 405, State v. Williams, 958 S.W.2d 87, 90

(Mo.App.E.D. 1997). A jury may believe or disbelieve all, part, or none of the testimony of any witness. State v. White, 847 S.W.2d 929, 933 (Mo.App.E.D. 1993).

2. The evidence was sufficient

Section 565.021, RSMo 2000, defines the crime of felony murder as follows:

> 1. A person commits the crime of murder in the second degree if he:
>
> (2) Commits or attempts to commit any felony, and, in the perpetration or the attempted perpetration of such felony or in the flight from the perpetration or attempted perpetration of such felony, another person is killed as a result of the perpetration or attempted perpetration of such felony or immediate flight from the perpetration of such felony or attempted perpetration of such felony.

Under Missouri law, a defendant is responsible for any deaths that are the natural and proximate result of the defendant's felony. State v. Black, 50 S.W.3d 778, 785 (Mo.banc 2001); State v. Blunt, 863 S.W.2d 370, 371 (Mo.App.E.D. 1993). However, an independent intervening cause can relieve a defendant from criminal responsibility for the killing. State v. Moore, 607 S.W.2d 153, 156 (Mo.banc 1980); State v. O'Dell, 684 S.W.2d 453, 461 (Mo.App. S.D. 1984), *see* Shaffer v. Bess, 822 S.W.2d 871, 877 (Mo.App. E.D. 1991) ("An intervening cause is a new and independent force which so interrupts the chain of events as to become the responsible, direct, proximate and immediate cause of the injury, rendering any prior [conduct] too remote to operate as the proximate cause. . . . Moreover, it may not be one which is itself a forseeable and natural result of the original [conduct].").

As shown in Respondent's Point I, appellant committed the felony of endangering

the welfare of a child by putting Isaiah in direct contact with Mr. Washington. Appellant knew that Mr. Washington had repeatedly beaten Isaiah (Tr. 350, State's Exhibit 26, pg. 2). She knew the beatings were getting progressively worse over the past year (Tr. 350, State's Exhibit 26, pg. 2). The beatings were so severe that they tore Isaiah's liver and fractured his ribs, in addition to bruising him and putting scars on his chest, legs, and buttocks (Tr. 240-41, 249-50, 256). Because appellant placed Isaiah in direct contact with his known abuser, Isaiah was severely beaten and died from his injuries. His death was the foreseeable and proximate result of appellant's act of placing him in direct contact with his abuser.

Appellant argues that such a "heinous assault on a child is not a natural and ordinary course of conduct resulting from merely being in contact with a child" (App.Br. 37). But such a heinous assault is a natural result of putting a child in contact with the child's abuser, especially when the past attacks of the abuser were so severe as to cause internal bleeding, liver tears, fractured ribs, bruises, and scars. The deadly beating was the proximate result of appellant's putting Isaiah in direct contact with his abuser.

Appellant relies on Bonhart v. United States, 691 A.2d 160 (D.C. 1997) and State v. Leopold, 147 A. 118 (1929) (App.Br. 35-36). However, in both of those cases the court found that the actions of the victims in going back into a burning building after a dog and property were foreseeable. Similarly, a known abuser's act of severely beating the same child he had been beating for the past year is also foreseeable, as is the result that the child would die from the severe beating. Accordingly, appellant's claim has no merit, and her point must fail.

CONCLUSION

In view of the foregoing, respondent submits that appellant's convictions and sentence should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06(b) and contains 5,939 words, excluding the cover, this certification and the appendix, as determined by WordPerfect 9 software; and

2. That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free; and

3. That a true and correct copy of the attached brief, and a floppy disk containing a copy of this brief, were mailed, postage prepaid, this ___ day of _____, 2005, to:

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APPENDIX