

1 {2} Defendant maintains the evidence was insufficient to support his conviction.
2 He notes that the jury was instructed that they must find that Defendant “drove off
3 the edges of [the] road striking trees and bushes and drove his truck into the river.”
4 [MIO 1-2; CN 2; RP 186 ¶ 1] He points out that this instruction did not require the
5 jury to find that Defendant drove fast, that he was intoxicated, or that he was even
6 drinking. [MIO 2] Citing *State v. Clemonts*, 2006-NMCA-031, 139 N.M. 147, 130
7 P.3d 208, Defendant argues that commission of misdemeanor traffic infractions,
8 other than driving while intoxicated (DWI), does not generally warrant conviction
9 for felony child abuse. [MIO 2-3] Defendant argues that, since he was not charged
10 with DWI or any other traffic infraction—not even a misdemeanor traffic
11 infraction—there was insufficient evidence to support his conviction. [MIO 3]

12 {3} We disagree that this Court’s decision in *Clemonts* supports reversal of
13 Defendant’s conviction. In addition to finding that Defendant drove off the edges of
14 the road, into bushes and trees and into the river, the jury in this case was instructed
15 that they had to find that Defendant acted with reckless disregard. [RP 186 ¶ 3] To
16 find reckless disregard, the jury was required to find that Defendant caused a
17 substantial and unjustifiable risk of serious risk of harm to Child’s safety or health.
18 [*Id.*] In *Clemonts*, this Court reversed a child abuse conviction where the defendant
19 was acquitted of DWI and there was no evidence that the misdemeanor traffic
20 offenses of which he was convicted, including speeding, caused a substantial risk to

1 the health or safety of his child passengers. 2006-NMCA-031, ¶ 16. The decision in
2 *Clemonts* was not based on the misdemeanor nature of the underlying conduct, but
3 instead on the lack of evidence that the conduct posed a substantial risk to the
4 children’s safety and health. *See id.* ¶¶ 16, 17.

5 {4} In Defendant’s case, however, there was ample evidence that his actions
6 created a substantial and unjustifiable risk to Child’s health and safety. There was
7 evidence that Defendant drank as many as five beers, then drove for fifteen minutes
8 very fast on a bumpy dirt road next to the river; it was nighttime; he was swerving;
9 he hit trees and bushes; he then drove off the road and slammed into the river; Child
10 was scared and; when Child exited the truck, he was crying. [6-23-25 CD 1:51:54,
11 1:52:50-55, 1:53:53-54:00, 1:54:29-55:17, 1:56:38, 3:52:23-55:51, 3:59:38-51]
12 “[V]iew[ing] the evidence in the light most favorable to the guilty verdict, indulging
13 all reasonable inferences and resolving all conflicts in the evidence in favor of the
14 verdict,” *State v. Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176,
15 we conclude that there was sufficient evidence for a rational jury to find the essential
16 elements of child abuse by endangerment beyond a reasonable doubt.

17 {5} Defendant also contends there was evidence to show the truck was not in the
18 water, but stuck in the mud and not touching water, and that Child was seat belted.
19 [MIO 1] There was also testimony, however, from which the jury could find the
20 truck was half in the river and half out and that the passenger side door was in or

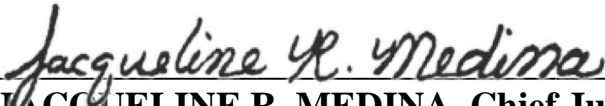
1 over the water, such that Mother and Child had to exit from the driver-side door. [6-
2 23-25 CD 1:55:04-18, 3:31:40-32:21, 3:55:41-51; 6-24-25 CD 9:58:07-17] There
3 was testimony from which the jury could find the Child was not wearing a seat belt.
4 [6-23-25 CD 1:50:56-51:03] To the extent Defendant is asking this Court to reweigh
5 this testimony, we decline to do so. *See State v. Trujillo*, 2012-NMCA-092, ¶ 5, 287
6 P.3d 344 (“We will not substitute our judgment for that of the fact[-]finder, nor will
7 we reweigh the evidence.”). Moreover, even had the jury found Child to be seat
8 belted and the truck stuck in the mud, rather than in the water, sufficient other
9 evidence existed for the jury to find Defendant showed reckless disregard for the
10 safety or health of Child.

11 {6} Defendant does not respond to our proposed conclusion that he has not
12 established a prima facie case of ineffective assistance of counsel, and that any such
13 claim would be more appropriately adjudicated in a habeas corpus proceeding.
14 [CN 6] As a result, we deem that issue abandoned. *See State v. Salenas*, 1991-
15 NMCA-056, ¶ 2, 112 N.M. 268, 814 P.2d 136 (explaining that where a party has not
16 responded to this Court’s proposed disposition of an issue, that issue is deemed
17 abandoned).

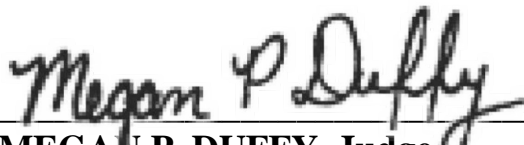
18 {7} Based on the above, we conclude that Defendant has not demonstrated error
19 in our proposed disposition. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124
20 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly held that, in summary calendar

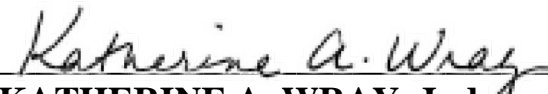
1 cases, the burden is on the party opposing the proposed disposition to clearly point
2 out errors in fact or law.”). Accordingly, we affirm for the reasons stated in our
3 notice of proposed disposition.

4 {8} **IT IS SO ORDERED.**

5 
6 **JACQUELINE R. MEDINA, Chief Judge**

7 **WE CONCUR:**

8 
9 **MEGAN P. DUFFY, Judge**

10 
11 **KATHERINE A. WRAY, Judge**