IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JOSHUA DANIEL LELEVIER,
Appellant.

No. 2 CA-CR 2019-0041
Filed October 9, 2020

Appeal from the Superior Court in Pima County
No. CR20172987001
The Honorable Michael J. Butler, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Michael T. O'Toole, Chief Counsel
By Tanja K. Kelly, Assistant Attorney General, Tucson
Counsel for Appellee

Emily Danies, Tucson
Counsel for Appellant

OPINION

Judge Eckerstrom authored the opinion of the Court, in which Presiding Judge Eppich and Judge Espinosa concurred.

E C K E R S T R O M, Judge:

¶1 Joshua Lelevier appeals from his convictions and sentences for first-degree murder; abandonment or concealment of a dead body; sexual exploitation of a minor under fifteen years of age; surreptitious photographing, videotaping, filming, or digitally recording or viewing; and voyeurism. He argues the trial court made a series of erroneous evidentiary rulings and erred in denying his motion for acquittal under Rule 20, Ariz. R. Crim. P. For the reasons that follow, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the jury's verdicts, resolving all reasonable inferences against Lelevier. *State v. Payne*, 233 Ariz. 484, ¶¶ 76, 93 & n.1 (2013). Around 2:30 a.m. on May 11, 2017, Lelevier, thirteen-year-old J.G.'s stepfather, woke up her mother, J.O., to tell her that J.G. was "missing." Because J.G. had left the house without permission on multiple occasions about a year earlier, J.O. and Lelevier discussed that J.G. had perhaps done so again that night. Therefore, instead of immediately calling the police, J.O. waited at home to see if J.G. would return, and Lelevier drove around, purportedly to look for J.G. When J.G. had not returned by around 6:00 a.m., J.O. called the police.

¶3 After speaking with police, J.O. noticed that none of J.G.'s shoes were missing and there was no indication on J.G.'s laptop that she had planned to venture out that night. J.O. eventually went to J.G.'s room and saw that a lock she had installed to prevent J.G.'s window from fully opening was still in place, and the window was cracked open only about an inch. Later, J.O. noticed that the sweatshirt Lelevier had been wearing the night J.G. disappeared had plant material on it.

¶4 Later that same morning, a 9-1-1 caller reported finding a body at a construction site in the desert. Officers identified the body as J.G.'s. She was barefoot, but her feet showed no marks consistent with having walked barefoot in the desert. She had bruising underneath her right eye, blood inside and around her nose, upper lip, and one cheek, and a ligature mark on the left side of her neck.

¶5 Detectives noted shoe impressions in the dirt near J.G.'s feet. They also noted tire prints near her body "that could be consistent with" the Chevrolet Traverse belonging to her family. Male DNA found on J.G.'s sweatshirt could not be definitively identified, but Lelevier's DNA could not be excluded from that sample.

¶6 On May 12, Lelevier told police he had searched for J.G. only in a specific neighborhood, not the neighborhood where J.G.'s body was discovered. However, video surveillance at the construction site where J.G.'s body was found showed that, shortly before 3:00 a.m. on the morning J.G.'s body was discovered, a car "that could be consistent to that of the [vehicle] that [Lelevier] drove" had driven past the site of J.G.'s body.

¶7 During that same interview, police photographed the tires on the Traverse while "clearly within [Lelevier's] line of sight." Less than a week later, Lelevier reported he had found keys—the spare keys to the Traverse—buried in a bush in the family's front yard. The detective testified that the keys were extremely hard to find and he had to "get down where [his] ear was almost on the ground" to see them. Police took the Traverse into evidence. In the rear compartment, police found J.G.'s blood, which someone had attempted to clean up.

¶8 J.G. did not take her laptop to school with her. However, while J.G. was at school in early May, an internet search was conducted on her laptop regarding methods of committing suicide. The following day, also while J.G. was in school, a document was created on the laptop entitled "Everyone Is Against Me All The Time." According to J.O., it contained material that "didn't sound like" her daughter, but rather "sounded like stuff [Lelevier] would say." The document was deleted at 2:15 a.m. on May 11, just before Lelevier awoke J.O. to report J.G. was missing.

¶9 A search of Lelevier's computer revealed that he had purchased a variety of video surveillance equipment in April 2017, which he had used to take and edit photos and videos of J.G. in her bathroom. Lelevier deleted the video editing application from his computer two days after J.G.'s body was found.

¶10 The state indicted Lelevier, charging him with first-degree murder; abandonment or concealment of a dead body; and two counts each of sexual exploitation of a minor under fifteen years of age; surreptitious photographing, videotaping, filming, or digitally recording or viewing; and voyeurism. After a twelve-day trial, a jury found him guilty on all counts. The trial court sentenced him to natural life in prison, as well as consecutive and concurrent terms of imprisonment for the remaining counts. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A).

Evidence Admitted Under Rule 404(b)

¶11 Lelevier first argues the trial court erred in admitting evidence that, in March 2017, J.G. caught him taking a photo of her while she was partially dressed in her bathroom. The evidence took the form of a texted conversation in which J.G. told her friend she was "terrified" because she had seen Lelevier's "phone slide under the door and take a picture." We review for abuse of discretion the court's admission of other-act evidence. *State v. Van Adams*, 194 Ariz. 408, ¶ 20 (1999).

¶12 At a hearing on the state's motion to admit this evidence, a Tucson Police Department officer testified that Lelevier had purchased camera equipment, including an endoscope camera and another "mini hidden spy camera with motion detection," in April 2017. Images recovered from Lelevier's computer showed that he had set up the camera equipment angled to record various positions inside a bathroom J.G. frequented, which required him to drill holes in a wall connecting the bathroom to the room where he kept his computer. Police recovered several photos, videos, and video stills of J.G. in the bathroom from Lelevier's computer. They also recovered at least one photo taken in late April from underneath the bathroom door. The investigation of Lelevier's electronics also showed he had opened and manipulated the video files taken from the cameras in a variety of ways.

¶13 The trial court reasoned that the evidence showing Lelevier took the March 2017 photo went to his motive and intent to kill J.G. and supported his knowledge, plan, and lack of mistake when engaging in the April 2017 conduct leading to the charges of voyeurism, sexual exploitation of a minor, and surreptitious photographing. Lelevier argues the court erred in concluding that clear and convincing evidence suggested he had committed this other act, as required by Rule 404(b), Ariz. R. Evid. *See State v. Terrazas*, 189 Ariz. 580, 582 (1997). He further argues the prejudicial effect of the evidence outweighed its probative value.

¶14 Even had the trial court erred in admitting this evidence, any error was harmless given the overwhelming evidence of Lelevier's other surreptitious surveillance. *See State v. Henderson*, 210 Ariz. 561, ¶ 18 (2005) (error harmless if, beyond reasonable doubt, it "did not contribute to or affect the verdict or sentence"). At trial, the same investigator repeated the pertinent details regarding Lelevier's recordings and his manipulation of those recordings in the weeks leading up to J.G.'s murder. Thus, even without the other-act evidence, the trial evidence sufficiently established Lelevier's potential motive to murder J.G. and that he planned and executed

the surveillance over the course of several weeks. Therefore, any evidence suggesting Lelevier also attempted to photograph J.G. in her bathroom in March was undoubtedly not the persuasive factor upon which the jury's guilty verdicts relied.

Other Evidentiary Rulings

¶15 Lelevier also argues the trial court erred in making four evidentiary rulings: (1) suppressing certain details of J.G.'s other acts about a year before her death; (2) admitting witness testimony describing J.G.'s demeanor in the days before her murder; (3) admitting crime scene photographs of J.G.'s face and body post-mortem; and (4) admitting evidence of an alleged assault on Lelevier approximately two weeks after J.G.'s death. We review the trial court's rulings on the admissibility of evidence for abuse of discretion, *State v. Buccheri-Bianca*, 233 Ariz. 324, ¶ 7 (App. 2013), and we find no reversible error in any of the challenged rulings.

Suppression of J.G.'s Other Acts

¶16 Lelevier argues the trial court erred in suppressing evidence that J.G. "had a history of sneaking out of her house to spend time with other kids known to engage in drugs, alcohol and sexual activity, had a history of skipping school, and had bottles of alcohol found in her room," which he claims was relevant to his "potential defenses." Specifically, he suggests this evidence could have supported his defense that he made the recordings for "child safety reasons."

¶17 However, the trial court admitted sufficient evidence of J.G.'s behavior to allow Lelevier to squarely raise his "potential defenses" at trial. The court originally allowed only evidence that J.G. had ventured out of the house at night in the summer of 2016. Mid-trial, however, the court amended its ruling, and Lelevier was permitted to testify that J.G.'s demeanor had changed in the months before she died and that he had been concerned she was drinking alcohol because he had found empty beer bottles in J.G.'s bathroom trash can on "numerous occasions." The court also allowed testimony from one of J.G.'s friends that J.G. had tried alcohol, as well as testimony from a police detective that a small amount of alcohol had been found in a shoebox in J.G.'s closet and an empty bottle of alcohol had been found in the trash can in her bathroom. Also, Lelevier testified that he had installed the surveillance equipment in J.G.'s bathroom to "catch [her] drinking" so he and J.O. "could get somewhere with her," but he had uninstalled the equipment when he realized that he was capturing

nude images of J.G. Lelevier's counsel highlighted this defense during closing argument.

¶18 Thus, of the evidence Lelevier complains was improperly precluded, the trial court admitted everything other than Lelevier's unsupported speculation that J.G. had used drugs and inadmissible hearsay evidence regarding J.G.'s activities with her friends about a year before her death. *See* Ariz. R. Evid. 801(c), 802. Lelevier has not explained why the latter evidence was not properly precluded as hearsay, nor did he make any offer of proof to substantiate his basis for believing J.G. had used drugs. *State v. Towery*, 186 Ariz. 168, 178-79 (1996) (at minimum, "offer of proof stating with reasonable specificity what the evidence would have shown is required" to demonstrate defendant prejudiced by trial court's preclusion of testimony); *see also State v. Dixon*, 226 Ariz. 545, ¶ 44 (2011) (affirming exclusion of evidence when, among other things, defendant made no offer of proof, giving appellate court "no basis for determining precisely what evidence was excluded"). We therefore find no error in the preclusion of these items.[1]

Admission of Photographs

¶19 Lelevier argues the trial court improperly admitted two post-mortem photographs of J.G. because the photos were marginally relevant, were more prejudicial than probative, and were highly likely to inflame the jury. The first contested photo depicted J.G.'s body, excluding her face, at the crime scene. The state presented this photo to assist the detective's description of how investigators handled the on-scene forensic examination, particularly with regard to whether J.G. had been sexually assaulted. The second photo depicted J.G.'s face and was offered to show the extent of injuries she sustained that might have contributed to blood found in the Traverse.

¶20 We find no abuse of discretion in the admission of this evidence. *See State v. Goudeau*, 239 Ariz. 421, ¶ 150 (2016). "The admission of photographs requires a three-part inquiry: (1) relevance; (2) tendency to incite passion or inflame the jury; and (3) probative value versus potential to cause unfair prejudice." *State v. Stokley*, 182 Ariz. 505, 515 (1995). The photographs were relevant to corroborate the detective's testimony regarding the manner of J.G.'s death and the on-scene investigative

[1]Because we find no error, we need not address Lelevier's argument that the trial court should have balanced the evidence's probative value against its potential to prejudice the jury against J.G.

process.[2] *See* Ariz. R. Evid. 401; *Goudeau*, 239 Ariz. 421, ¶¶ 154-55 (fact and cause of death always relevant in murder prosecution, even when uncontested).

¶21 As the state points out, it is unclear whether the photograph of J.G.'s body was ever shown to the jury. The photograph showing J.G.'s face was displayed during relevant testimony by the detective, then taken down. In any event, neither photograph is unduly gruesome or inflammatory. *See Goudeau*, 239 Ariz. 421, ¶¶ 151, 156 (photograph of victim showing trajectory of gunshot wound, with some blood apparent, not unduly inflammatory); *Stokley*, 182 Ariz. at 515 (photographs of child victims' injuries, including "stomp marks," bruises, and lacerations "not gruesome enough to be inflammatory"). Considering the other photographs admitted into evidence without objection, particularly those depicting the ligature marks on J.G's neck, these additional photos were unlikely to have any further inflammatory effect. *See Stokley*, 182 Ariz. at 515 (no error in admission of photographs showing manner of murder victims' death when photographs could not meaningfully increase jurors' repugnance after hearing testimony regarding crime). Thus, any potential prejudicial effect of the photographs did not outweigh their probative value. *See State v. Wagner*, 194 Ariz. 1, ¶ 43 (App. 1998), *approved in relevant part, vacated in part on other grounds*, 194 Ariz. 310 (1999) (photographs "have probative value if they tend to corroborate state witnesses, illustrate or explain testimony, or determine the degree of the crime").

¶22 In any event, any error in the admission of these two photographs would have been harmless beyond a reasonable doubt, given the substantial body of unchallenged evidence demonstrating Lelevier's guilt. *See Henderson*, 210 Ariz. 561, ¶ 18.

Other Admitted Evidence

¶23 Lelevier also argues the trial court improperly admitted a variety of evidence he deems irrelevant. Specifically, he objects to the admission of evidence that although he typically paid for purchases with a debit card, the day after J.G.'s death, he withdrew cash from an ATM outside of a store and used that cash to purchase new shoes. He also challenges the court's admission of testimony regarding J.G.'s demeanor in

[2]Lelevier complains that the photo of J.G.'s entire body was never expressly discussed during the detective's testimony. However, the testimony explained why the investigators chose to move J.G.'s body to preserve certain evidence, making that photograph relevant.

the days leading up to her death, as well as evidence of an alleged assault against Lelevier eleven days after J.G.'s murder.

¶24 The trial court did not abuse its discretion in admitting this evidence. *See Buccheri-Bianca*, 233 Ariz. 324, ¶ 7. Evidence is relevant when, as here, it has the tendency to make any fact more or less probable than it would have been without the evidence. Ariz. R. Evid. 401(a); *see also State v. Fulminante*, 193 Ariz. 485, ¶ 57 (1999).

¶25 The evidence of Lelevier's shoe purchase was relevant to the state's theory that shoe prints found in the dirt near J.G.'s body belonged to Lelevier and that he attempted to divert suspicion away from himself after killing J.G. J.O. testified that she ordinarily purchased all of Lelevier's clothes, and that after J.G.'s death, she noticed two pairs of Lelevier's shoes were missing and he was wearing shoes she had not seen before. Evidence that Lelevier uncharacteristically used cash to purchase new shoes the day after J.G.'s death was clearly relevant to the state's theory, and its probative value outweighed any danger of unfair prejudice. *See* Ariz. R. Evid. 403.

¶26 Similarly, evidence regarding J.G.'s demeanor in the days leading to her murder was relevant to the state's theory that Lelevier had intended to frame her death as a suicide but abandoned the plan after killing her when he realized the story was implausible. The jurors heard testimony that in the time leading up to J.G.'s murder, her behavior was normal, energetic, and happy. They also heard evidence that someone created a purported suicide note on J.G.'s laptop during a time when she was in school and did not have her computer, and that shortly after her murder, that document was deleted.

¶27 Lelevier argues that, because it was undisputed J.G. had not committed suicide, evidence of her demeanor was irrelevant and unnecessarily inflammatory. However, the evidence of J.G.'s demeanor helped support the state's theory that Lelevier, not J.G., had created and destroyed the note. This evidence thus went toward proving Lelevier's intent to murder J.G., as well as to his stated defense that changes in J.G.'s demeanor aroused his suspicion that she had been drinking. Furthermore, even had the trial court erred in admitting this evidence, it was harmless given the substantial evidence of Lelevier's guilt. *See Henderson*, 210 Ariz. 561, ¶ 18.

¶28 Finally, it was not error to admit evidence of the alleged assault against Lelevier eleven days after J.G.'s death. Lelevier sought to preclude evidence of his report he had been assaulted and strangled with a

ligature in a manner similar to J.G.'s death—even though police had not yet informed J.G.'s family that J.G. had been strangled with a ligature. Police testified extensively that the physical evidence of the alleged assault did not fully comport with Lelevier's narrative of the attack.

¶29 Lelevier argues the assault evidence was irrelevant, that the state did not establish by clear and convincing evidence he had lied about the attack, and that it was unduly prejudicial. We disagree. The allegation of the attack, as well as its inconsistencies, were clearly relevant to the state's principal case because it showed Lelevier's efforts to divert the attention of police away from himself and toward a third party. Lelevier's affirmative attempts to divert investigators from suspecting him were relevant to show his consciousness of his guilt. *See State v. Williams*, 183 Ariz. 368, 375 (1995) ("Evidence that a criminal defendant sought to suppress evidence adversely affecting him is relevant to show a consciousness of guilt."); *State v. Loftis*, 89 Ariz. 403, 407 (1961) ("Facts tending to show that the defendant manufactured or fabricated evidence is not only admissible, but is also reliable as showing a consciousness of guilt."). The jury could have reasonably inferred from this evidence that Lelevier had manufactured the assault, which in turn tended to make it more probable he had committed the murder. Thus, the report of the alleged assault was clearly relevant.[3]

¶30 As to prejudice under Rule 403, Ariz. R. Evid., the trial court correctly noted that evidence of the alleged assault had the potential to be either exculpatory, in the event the jury believed the attack occurred, or to be directly inculpatory as to Lelevier's consciousness of guilt. Thus, any possible prejudice introduced by this evidence was limited to the threat that the jury would be more likely to find Lelevier guilty of the charged crimes, which is not forbidden by Rule 403.

Kidnapping as a Predicate Offense for Felony Murder

¶31 Finally, Lelevier argues the trial court erred in denying his Rule 20 motion for acquittal on the state's theory of felony murder. Lelevier was charged with unspecified first-degree murder. The state requested that a felony murder instruction appear in the jury instructions and on the verdict forms. Partway through trial, Lelevier moved for a judgment of acquittal on the felony murder theory, pursuant to Rule 20. His argument

[3] Because the trial court did not admit the evidence under Rule 404(b), we do not address Lelevier's arguments regarding its admissibility under that rule's standards.

there, as here, was that "kidnapping cannot be a predicate offense" to felony murder "under the facts of this case" because the evidence supported only that a single act—strangulation—had occurred that could satisfy either kidnapping or murder. Reasoning that no Arizona case law supported the argument that kidnapping merged with murder by strangulation, the court denied the motion. The jury found Lelevier guilty of both premeditated murder and felony murder. We review a trial court's denial of a motion for a judgment of acquittal for abuse of discretion. *State v. McCurdy*, 216 Ariz. 567, ¶ 14 (App. 2007).

¶32 As an initial matter, because the jury unanimously found Lelevier guilty of premeditated murder under A.R.S. § 13-1105(A)(1), any error in refusing to set aside the alternative felony murder verdict was harmless. *See State v. Tucker*, 205 Ariz. 157, ¶¶ 49-51 (2003) (jury's non-unanimous felony murder finding "a moot point" given unanimous finding of guilt on premeditated murder charge).

¶33 In addition, we find no abuse of discretion in the trial court's denial of Lelevier's motion for acquittal given Arizona's felony murder jurisprudence. A judgment of acquittal is appropriate "if there is no substantial evidence to support a conviction." Ariz. R. Crim. P. 20(a)(1). Evidence is substantial if reasonable jurors "could accept [it] as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *State v. Edwards*, 136 Ariz. 177, 186 (1983). And, "an acquittal should not be directed if the evidence is such that reasonable minds may differ on the inferences to be drawn therefrom." *State v. Herrera*, 176 Ariz. 21, 27 (1993).

¶34 Arizona's criminal statutes define kidnapping to include "knowingly restraining another person with the intent to . . . [i]nflict death [or] physical injury . . . on the victim." A.R.S. § 13-1304(A)(3). Arizona's felony murder statute expressly enumerates kidnapping as a predicate offense for felony murder. A.R.S. § 13-1105(A)(2). Our supreme court has also found that kidnapping may operate as a predicate to felony murder. *See, e.g.*, *State v. Hardy*, 230 Ariz. 281, ¶ 26 (2012) (felony murder statute applies when "the predicate offense is kidnapping based on intent to aid in committing a murder"). And our supreme court has reasoned it is not necessary for a "predicate offense to be separate or independent from the homicide." *State v. Moore*, 222 Ariz. 1, ¶ 62 (2009) (analyzing burglary as a predicate offense for murder).

¶35 We recognize that other states reject the applicability of the felony murder doctrine when the very act of killing can be readily

characterized as a predicate felony: a characterization that can hypothetically relieve the state of proving the defendant's mental state in many homicide cases.[4] And we acknowledge that our legislature has placed great weight on the nature of a killer's mental state when articulating the comparative gravity of a homicide offense. *Compare* A.R.S. § 13-704, providing sentencing range of four to sixteen years for negligent homicide as defined by § 13-1102, *with* A.R.S. §§ 13-751 and 13-752, providing that first-degree murder under A.R.S. § 13-1105 is punishable by "death or life imprisonment." Our legislature has expressed that focus by setting forth five distinct sentencing categories based on level of intent. *Compare* A.R.S. §§ 13-1102(C) (negligent homicide a class four felony), *with* 13-1103(C) (manslaughter a class two felony), *and* 13-1104(C) (second-degree murder a class one felony punishable by imprisonment ranging from ten years to life depending on victim and circumstances, pursuant to §§ 13-705(B), (C), 13-706(A), (F)(1)(b), or 13-710, *and* 13-1105(D) (first-degree murder a class one felony punishable by life imprisonment or death). We recognize the risk that the felony murder doctrine, if applied too broadly, can eviscerate

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[4] *See, e.g.*, *State v. Heemstra*, 721 N.W.2d 549, 558 (Iowa 2006) (if "act causing willful injury is the same act that causes the victim's death, the former is merged into the murder and therefore cannot serve as the predicate felony for felony-murder purposes"); *State v. Sanchez*, 144 P.3d 718, 726 (Kan. 2006) (recognizing merger for certain predicate felonies that state legislature statutorily required "to be so distinct from the homicide as not to be an ingredient of the homicide"); *Commonwealth v. Connors*, 120 N.E.3d 743, 749-50 (Mass. App. Ct. 2019) (merger doctrine applicable unless underlying predicate felony has intent, purpose, or conduct that is separate and distinct from act causing homicide); *State v. Jones*, 155 A.3d 492, 500 (Md. 2017) (in first-degree assault case, expressly adopting merger doctrine for second-degree felony murder); *State v. Marquez*, 376 P.3d 815, ¶¶ 15, 24 (N.M. 2016) (collateral felony doctrine intended to limit application of felony murder charges to cases in which predicate felony's purpose is independent of or collateral to homicide). *See also* Model Penal Code § 210.2 note on § 210.0-210.6 (1985) (Am. L. Inst., Proposed Official Draft 2009) ("The final innovation of Section 210.2 is its departure from the traditional rule of felony murder" in that it "establishes a presumption that the requisite recklessness and indifference to the value of human life exist when a homicide is committed during the course of certain enumerated felonies," which "has the effect of abandoning the strict liability aspects of the traditional felony-murder doctrine but at the same time recognizing the probative significance of the concurrence of homicide and a violent felony.").

such a statutory scheme. *See, e.g.*, *Marquez*, 376 P.3d 815, ¶¶ 15, 24 (collateral-felony doctrine—which requires predicate felony act to have felonious purpose independent from endangering victim—"derived from our concern that the prosecution may be able to elevate improperly the vast majority of second-degree murders to first-degree murders by charging the underlying assaultive act as a predicate felony for felony murder").

¶36 Lelevier logically argues that a merger occurs when the single act of strangulation supports both the kidnapping and the felony murder theories. But we are not at liberty to reverse on this ground because jurisprudence, controlling on this court, does not recognize a merger theory. *See Moore*, 222 Ariz. 1, ¶ 62; *State v. Lopez*, 174 Ariz. 131, 142-43 (1992) (rejecting application of merger doctrine with respect to child abuse as a predicate felony for first-degree murder). The *Lopez* court further reasoned that "whatever the virtue or lack thereof of the merger doctrine, it applies to lesser-included offenses, and child abuse is not a lesser-included offense of murder." 174 Ariz. at 142-43. Similarly, kidnapping is not a lesser-included offense of murder.

¶37 Given this jurisprudence and the plain language of the relevant statutes, *see State v. Chandler*, 244 Ariz. 336, ¶ 4 (App. 2017), we conclude the trial court did not err when denying Lelevier's motion for a judgment of acquittal even if the evidence supported only a single act—specifically, strangulation—that constituted both restraint and homicide. The jury heard ample evidence that Lelevier restrained J.G. at least for the amount of time necessary to strangle her to death. In other words, Lelevier knowingly restrained J.G. by strangling her with the intent to kill her. While accomplishing this kidnapping, he did actually kill J.G.

¶38 Moreover, even if our statutory scheme did not provide for a single act to serve as the predicate for a felony murder conviction, here the jury heard substantial evidence to support a theory that Lelevier kidnapped J.G. prior to strangling her to death in the Traverse. Specifically, investigators noted that before her death, J.G. had sustained abrasion injuries to her face and body that resulted in some bleeding. And, a detective noted that blood found on J.G.'s nose, upper lip, and cheek were consistent with strangulation. Although police found evidence of blood in the back of the Traverse, they found no evidence of blood in J.G.'s room. Thus, a reasonable juror could have found beyond a reasonable doubt that Lelevier forcibly moved J.G. into the vehicle while still alive.[5] Under this

[5]Admittedly, the evidence does not compel this finding such that no reasonable juror could conclude J.G. was killed prior to being moved. The

conclusion, the predicate kidnapping would have occurred prior to the act constituting murder. We therefore find no abuse of discretion in the trial court's denial of Lelevier's Rule 20 motion.

Disposition

¶39 For the reasons stated above, we affirm Lelevier's sentences and convictions.

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testimony of investigators suggested J.G.'s bleeding was not substantial, and it was difficult to locate the blood in the car. Thus, a reasonable juror could also have concluded that Lelevier strangled J.G. in the house, but that she bled very little and no blood fell until her body was placed in the car. However, our standard of review does not require us to determine that the jurors must necessarily have found J.G. was killed after being kidnapped; it only requires that a reasonable juror *could* have so concluded beyond a reasonable doubt.