

No. 1-11-2995

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 02 CR 31134
	)	
JOSE LUERA,	)	Honorable
	)	Joseph M. Claps,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

**O R D E R**

¶ 1 **Held:** Defendant's convictions of the first degree murders of two victims, aggravated kidnapping and aggravated vehicular hijacking are affirmed over defendant's contentions that (1) the evidence was not sufficient to prove either (a) his accountability for the codefendant's actions or (b) defendant's intent to commit the predicate offense—aggravated kidnapping—of the felony murder charge, and (2) his constitutional right to confrontation was violated by the introduction of evidence regarding autopsy reports.

¶ 2 After a jury trial, defendant Jose Luera was found guilty of the intentional first degree murders of Roberto Villalobos and Alejandra Ramirez, the felony murder of Ramirez, the aggravated kidnapping of Ramirez, and the aggravated vehicular hijacking involving Villalobos. Defendant was sentenced to life imprisonment on the first degree murder convictions and 30 years' imprisonment on each of the aggravated kidnapping and aggravated vehicular hijacking charges, to run consecutive to the murder convictions.

¶ 3 On appeal, defendant contends the State failed to prove his guilt because the evidence did not show that (1) he was accountable for the codefendant's actions, and (2) he and the codefendant intended to commit aggravated kidnapping, which served as the predicate offense in the felony murder conviction. Defendant also contends he was deprived of his constitutional right to confrontation where the State's medical expert testified to autopsies performed by another doctor who was not subject to cross-examination at trial and the autopsy reports were admitted into evidence and provided to the jury during deliberations.

¶ 4 For the reasons that follow, we affirm defendant's convictions.

¶ 5 I. BACKGROUND

¶ 6 Defendant, Jose Luera, and codefendant, Pierre Montanez, were charged with several counts of the August 28, 2002 first degree murders of Roberto Villalobos and Alejandra Ramirez, along with other related counts of aggravated vehicular hijacking, aggravated kidnapping, vehicular invasion, arson, aggravated battery, and aggravated unlawful restraint. Codefendant Montanez's appeal was pending before this court in case No. 1-12-2369.

¶ 7 At the jury trial in April 2011, Claudia Negrete testified that on the evening of August 27, 2002, she and her friend Anna Ortiz were at defendant's home with defendant and codefendant Montanez, drinking alcohol. Negrete was 17 years old at the time and had to be home by her midnight curfew. Before midnight, Villalobos arrived driving a four-door grey Chevrolet Caprice. Ramirez was in the front passenger seat. Negrete asked defendant to see if she could get a ride home. When she heard a whistle, she got in the backseat with Ortiz, defendant and codefendant. Defendant sat by the driver's-side backdoor, and codefendant sat by the passenger-side backdoor. Villalobos said he had to drop Ramirez off, but defendant told Villalobos to drop off Negrete and Ortiz first. At about midnight, Villalobos dropped off Negrete and Ortiz at 84th Street and Tripp Avenue in Chicago. Villalobos drove away with defendant (with his shirt on) and codefendant in the backseat and Ramirez in the front passenger seat. There were no arguments or displays of aggression by anyone in the car.

¶ 8 John McDonnell testified that near midnight on August 28, 2002, he was standing on the porch of his home at 7952 South Kolin Avenue, which was several blocks away from 84th and Tripp. He was going through his mail and noticed a four-door grey Chevrolet parked across the street. He saw Villalobos exit the car through the open back driver's-side window. Villalobos was wearing a white shirt and was trying to pull his pants up because they were down. Then McDonnell saw defendant exit the same window of the car. Defendant was not wearing a shirt. Defendant, using his right hand, hit Villalobos in the face, and Villalobos, who was trying to hold up his pants with his elbow and protect his face with his other hand, staggered backward. Defendant hit Villalobos again and knocked him down onto his back. Defendant sat on

Villalobos's stomach and hit him in his face many times. Defendant hit Villalobos about 40 times.

¶9 McDonnell testified that he walked toward them and told defendant to get off of Villalobos and leave. Defendant ignored McDonnell and continued to hit Villalobos. Both defendant and Villalobos were covered in blood. As McDonnell got ready to kick defendant, McDonnell noticed a light coming from the Chevrolet and was concerned that someone else might exit the car. No one did. Defendant continued striking Villalobos, who asked McDonnell to help him. As McDonnell prepared again to kick defendant, defendant got off Villalobos. Villalobos staggered behind McDonnell, grabbed him, and asked him to help him. McDonnell and Villalobos backed up into McDonnell's driveway and defendant followed them. McDonnell told defendant to leave, and defendant then showed him the 12 inch knife defendant was holding by his side with his left hand.

¶ 10 McDonnell testified that he ran to his backyard and retrieved a two-by-four. When he returned less than a minute later, he saw the car drive away quickly with the inside light on and the front passenger door open. The door was closed as the car sped away. Villalobos was on the ground in McDonnell's driveway and had been stabbed multiple times. McDonnell briefly checked to ensure that defendant was not hiding in the bushes and then went over to Villalobos, who asked for help. McDonnell went inside his house and called 911. Villalobos was later pronounced dead. McDonnell estimated that the attack lasted 15 minutes. During the course of the attack, McDonnell never saw Villalobos hit defendant. When McDonnell met with the police the following day, he identified defendant in a photo array.

¶ 11 Ghassan Samhan testified that shortly after midnight on the date in question, he was driving east on 79th Street. As he approached the green light at Tripp Avenue, which were three streets east from McDonnell's house, a grey Chevrolet Caprice with temporary plates and its lights off "blew" the red light at Tripp as it travelled northbound. Samhan had to swerve out of the way to avoid a collision with the Chevrolet. Samhan saw a male, whom he thought was Hispanic, driving the car while another male in the backseat was choking a woman, whom Samhan also thought was Hispanic and was later identified to be the victim, Ramirez. Ramirez's head was outside the driver's-side back window, which was down. She was crying, screaming and bleeding as the man in the backseat choked her against the window. Samhan also noticed blood on the driver's-side car door. Samhan called 911 and saw the car speed east towards Pulaski Road and make a left turn near a street with a gas station.

¶ 12 George Hoyt testified that on August 28, 2012, he was working at a gas station at 67th Place and Pulaski Road in Chicago. At about 1:45 a.m., codefendant Montanez walked into the gas station and purchased two one-gallon cans of gasoline. Hoyt noticed scratches on codefendant's neck. Police arrived later and questioned Hoyt about the man who had purchased the cans of gasoline. Hoyt identified codefendant Montanez in a photo array.

¶ 13 Chicago police officer Joseph William Dunigan, Jr. testified that he processed the crime scene at 7952 South Kolin Avenue. Villalobos's body was lying face down and was covered with a white sheet. Villalobos wore a white bloody t-shirt and pants pulled down below his knees. In the middle of the street, there was a bloody, white, mesh jersey with linear holes. There were pools of blood by Villalobos in the driveway and in the street, and Officer Dunigan

took samples of the blood. He then went to 3710 West 69th Street where he observed a grey four-door Chevrolet which had fire damage and smelled strongly of gasoline. Ramirez's body was in the backseat of the car. Her body was bloody, had wounds on it and was burned. There was blood on the interior and exterior of the car. Officer Dunigan collected blood samples from the car. After Ramirez's body was removed from the car, bags were placed over her hands to protect any possible evidence.

¶14 Retired Chicago police detective Robert Linehan testified that he interviewed the witnesses, Claudia Negrete, Anna Ortiz, and family members of the victims and the suspects. Detective Linehan inspected Villalobos's towed car and recovered a hammer from the backseat and cannabis from the ashtray of the car. Detective Linehan obtained an arrest warrant for defendant, who was eventually taken into custody in California in November of 2002. Codefendant Montanez, who had turned himself in to police, and defendant were place in line-ups. McDonnell identified defendant in the line-up, and Hoyt identified codefendant.

¶15 Cook County deputy medical examiner Dr. James Filkins testified as an expert in the field of pathology. Dr. Filkins testified that he did not perform the autopsies of the victims but had reviewed the reports and related materials of the autopsy performed by former Cook County assistant medical examiner Dr. Aldo Fusaro. Dr. Filkins opined that Villalobos's death was homicide caused by multiple stab and incised wounds (41 in total, 15 to the head and neck). Dr. Filkins also opined that Ramirez's death was homicide caused by 14 stab wounds with strangulation as a significant contributing factor.

¶16 By way of stipulation, Dr. Fusaro testified that he performed the autopsies of both victims in this case, collected blood and fingernail clipping samples from both victims, and would identify the autopsy photos of the victims as true and accurately depicting their bodies at the time of the autopsy.

¶17 By way of stipulation, forensic scientist Marla Kaplan testified as an expert in forensic biology. She received the victims' blood standards; examined a white jersey and found the presence of blood on it; received swabs from the front driver's seat of the car and found that blood was indicated; received swabs from the rear interior armrest of the car and determined that blood was indicated; received swabs from the rear passenger seat of the car and found that blood was indicated; received swabs from the front left side mirror and front left door handle of the car and found that blood was indicated; and received the fingernail clippings of Ramirez and found that blood was indicated. The proper chain of custody was maintained over the evidence at all times and it was forwarded to the DNA unit of the State's police forensic crime lab.

¶ 18 By way of stipulation, forensic scientist Amy Rehnstrom, Ph.D., testified as an expert on forensic DNA analysis and statistical interpretation of DNA profiles. She received the blood cards prepared from the blood standards of Villalobos and Ramirez, the biological material obtained from Ramirez's fingernail clippings, and the buccal swab standards taken from defendant and codefendant Montanez. Rehnstrom performed all the generally accepted methods of testing on those five samples and developed DNA profiles of Villalobos, Ramirez, defendant and codefendant. Rehnstrom compared the DNA samples from the crime scene to the standards provided by each individual to determine who could or could not have contributed to the samples

from the crime scene.

¶ 19 Rehnstrom identified a mixture of DNA profiles in Ramirez's right hand fingernail clippings that was consistent with originating from at least three people; Ramirez, Villalobos and codefendant could not be excluded from contributing to that mixture, but defendant could be excluded from contributing to that mixture. The mixture of DNA profiles found in Ramirez's left hand fingernail clippings was consistent with originating from two people; assuming Ramirez was one contributor, codefendant would be the other contributor based on the astronomical statistical probabilities, and Villalobos and defendant could be excluded from contributing to that mixture.

¶ 20 Rehnstrom testified that the stains on Villalobos's jersey matched his DNA profile, but did not match the profiles of Ramirez, defendant or codefendant. The DNA profile obtained from the swabs of the front driver's seat of the car matched defendant's profile and did not match the profiles of Villalobos, Ramirez or codefendant. The DNA profiles obtained from the swabs of the rear interior armrest of the car was a mixture originating from two people; Villalobos and Ramirez could not be excluded as contributors to that mixture, but defendant and codefendant could be excluded as contributors. The DNA profile obtained from the swabs of the rear passenger seat of the car matched the profile of Ramirez but not Villalobos, defendant or codefendant. The mixture of DNA profiles obtained from the swabs of the left front side mirror of the car originated from two people; defendant was one contributor based on astronomical statistical probabilities. Although Villalobos could not be excluded as the other contributor, Ramirez and codefendant could be excluded. The DNA profile obtained from the swabs of the



left front door handle of the car matched defendant's profile and did not match the profiles of Villalobos, Ramirez or codefendant. Furthermore, the DNA on the driver's headrest was consistent with Ramirez's profile.

¶ 21 During jury deliberations, the jury requested the autopsy protocol, and the trial court, over defendant's objection, permitted the protocol to be sent back to the jury. The jury found defendant: guilty of the intentional first degree murder of Villalobos, not guilty of the felony murder of Villalobos, guilty of the intentional first degree murder and felony murder of Ramirez, guilty of the aggravated kidnapping of Ramirez, and guilty of the aggravated vehicular hijacking involving Villalobos.

¶ 22 The trial court denied defendant's posttrial motion and sentenced him to natural life imprisonment for the first degree murders of Villalobos and Ramirez, and 30 years' imprisonment for the aggravated vehicular hijacking and aggravated kidnapping convictions, to run consecutive to the natural life sentence. Defendant's motion to reconsider his sentence was denied, and he appealed his convictions.

¶ 23 II. ANALYSIS

¶ 24 On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he was guilty of the death and kidnapping of Ramirez. Defendant also contends his right to confront the witnesses against him was violated when the trial court allowed one doctor to present to the jury the contents of another doctor's certified autopsy reports and allowed the jury to have those reports during deliberations.

¶25 A. Sufficient Proof of Guilt for the Murder of Ramirez

¶26 Defendant contends the State failed to prove beyond a reasonable doubt that he was accountable for the murder of Ramirez where the evidence established that she died as a result of the multiple stabbings and strangulation perpetrated by codefendant Montanez. Defendant argues there was no evidence the he aided or abetted codefendant Montanez in furtherance of a common plan or design or that he was even in the car when codefendant killed Ramirez. Specifically, defendant argues there was no direct evidence as to what happened in that car and, although his blood was found on the exterior driver's-side door handle and in the driver's seat of Villalobos's car, those blood stains do not indicate that defendant got back in the car after attacking Villalobos and drove it away from the scene while codefendant murdered Ramirez in the back seat. According to defendant, the blood stain in the driver's seat could have been made when the fight between defendant and Villalobos initially started in the car. Furthermore, defendant maintains that he could have bled on the exterior driver's-side door handle when he climbed out of the rear driver's-side window in pursuit of Villalobos.

¶27 The defendant bears the burden to show that the evidence, viewed in the light most favorable to the State, was "so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt." *People v. Jones*, 295 Ill. App. 3d 444, 452 (1998). The reviewing court may not substitute its judgment for that of the trier of fact on questions such as weight of the evidence, credibility of witnesses or resolution of conflicting testimony. *Id.* Furthermore, the reviewing court will not overturn a conviction where any trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261

(1985).

¶28 Section 5-2(c) of the Criminal Code of 1961 provides that a person is legally accountable for the criminal conduct of another if “[e]ither before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense.” 720 ILCS 5/5-2(c) (West 2002). See also *People v. Terry*, 99 Ill. 2d 508, 515 (1984) (the underlying intent of this statute is to incorporate the principle of the common-design rule). “[T]o prove that a defendant possessed the intent to promote or facilitate the crime, the State may present evidence that either (1) the defendant shared the criminal intent of the principal, or (2) there was a common criminal design.” *People v. Fernandez*, 2014 IL 115527, ¶ 13. “Under the common-design rule, if ‘two or more persons engage in a common criminal design or agreement, any acts in the furtherance of that common design committed by one party are considered to be the acts of all parties to the design or agreement and all are equally responsible for the consequences of the further acts.’ ” *Id.* (quoting *In re W.C.*, 167 Ill. 2d 307, 337 (1995)). “ ‘Evidence that a defendant voluntarily attached himself to a group bent on illegal acts with knowledge of its design supports an inference that he shared the common purpose and will sustain his conviction for an offense committed by another.’ ” *Id.* (quoting *In re W.C.*, 167 Ill. 2d at 338).

¶29 “Intent may be inferred from the character of defendant’s acts as well as the circumstances surrounding the commission of the offense.” *People v. Perez*, 189 Ill. 2d 254, 267 (2000). “[W]ords of agreement are not necessary to establish a common purpose to commit a crime.” *Id.* “Active participation has never been a requirement for the imposition of criminal

guilt upon the theory of accountability.” *People v. Ruiz*, 94 Ill. 2d 245, 254 (1982). “In determining a defendant’s legal accountability, the trier of fact may consider the defendant’s presence during the commission of the offense, the defendant’s continued close affiliation with other offenders after the commission of the crime, the defendant’s failure to report the incident, and the defendant’s flight from the scene.” *People v. Batchelor*, 171 Ill. 2d 367, 376 (1996).

¶30 A review of the circumstances surrounding the commission of the murder of Ramirez, who was an up-close eyewitness to defendant’s brutal murder of Villalobos, establishes beyond a reasonable doubt that defendant played an important and instrumental role in Ramirez’s kidnapping and murder. Negrete testified that Ramirez was in the front passenger seat of Villalobos’s car when the group dropped Negrete off. Shortly thereafter, Ramirez and McDonnell witnessed defendant’s vicious attack on Villalobos, where defendant beat him and stabbed him 41 times. McDonnell was able to run behind his house to retrieve a two-by-four, but Ramirez was trapped in Villalobos’s car with codefendant. Unlike McDonnell, Ramirez knew both defendant and codefendant and could readily inform the police of the identity of the culprits of Villalobos’s murder. When McDonnell returned to the front of his house, he saw the car speed away, with the front passenger door open. As the car sped away, the front passenger door was closed, and defendant was not on the scene. Then, about only three streets east of McDonnell’s block, witness Samhan nearly collided with Villalobos’s speeding car, and saw that it was being driven by a Hispanic male while another male in the backseat choked Ramirez. Her head was hanging outside the driver’s-side back window. She was crying, screaming and bleeding. There is no way the driver of that car could not have known Ramirez was being killed

in the backseat, and defendant's DNA, which was found on the driver's-side door handle, driver's-side mirror, and in the driver's seat established that he was the get-away driver. About one-and-a-half hours after the attack on Villalobos, codefendant purchased two one-gallon cans of gasoline from Hoyt, who noticed that codefendant had scratches on his neck. Villalobos's burned car was later found, and Ramirez's stabbed, strangled and burned body was found in the backseat.

¶31 The evidence established defendant's legal accountability for Ramirez's murder because (1) he was present during her murder and actively participated in her aggravated kidnapping and murder by driving the car around while codefendant restrained her, strangled her, and ultimately stabbed her to death; (2) defendant was in close affiliation with codefendant during the commission of those crimes; (3) defendant did not report the incident to the police; and (4) he fled both the first crime scene of Villalobos's death by driving the car away from McDonnell's house and the second crime scene where Ramirez's body was found in the burned car by going to California, where he was located and arrested two months after the crime. The law allows a conviction to be sustained on circumstantial evidence, provided the elements of the crime have been proven beyond a reasonable doubt (*People v. Milka*, 211 Ill. 2d 150, 178 (2004)), and the trier of fact is "not required to search out a series of potential explanations compatible with innocence and elevate them to the status of reasonable doubt" (*People v. Arndt*, 50 Ill. 2d 390, 396 (1972)).

¶32 The evidence, when viewed in the light most favorable to the State, established that defendant and codefendant had the common plan and purpose to dispose of Ramirez, their

acquaintance who had just witnessed defendant's murder of Villalobos. In order to accomplish her murder, codefendant and defendant prevented Ramirez from leaving the car and drove her away from the interfering eyewitness McDonnell. Defendant asserts that an attempt to flee the murder crime scene of Villalobos should not be confused with an attempt to kidnap Ramirez. However, contrary to defendant's argument on appeal, the evidence supports defendant's conviction of aggravated kidnapping where, by either force or the threat of imminent force, he and codefendant carried Ramirez from one place to another with the intent to secretly confine her against her will, and, in so doing, inflicted great bodily harm on her, other than by the discharge of a firearm, or kidnapped her while armed with a dangerous weapon other than a firearm. See 720 ILCS 5/10-2(a)(3), (a)(5) (West 2002).

¶33 B. Felony-Murder of Ramirez

¶34 In addition to being found guilty of the intentional first degree murder of Ramirez based on the theory of accountability, defendant was also found guilty of felony murder on the theory that he and codefendant killed Ramirez during the commission of an aggravated kidnapping. On appeal, defendant argues the predicate felony—aggravated kidnapping—arose from and was inherent in the act of killing itself. Defendant argues the State had to prove more than simply the elements of aggravated kidnapping—it had to prove he committed the aggravated kidnapping with a purpose independent from the act of killing Ramirez.

¶35 To support his claim of error, defendant cites *People v. Morgan*, 197 Ill. 2d 404 (2001), where the 14-year-old defendant was convicted of felony murder after he shot his grandmother in the back as she was fleeing her home. He attempted to shoot her again as she was lying on the

ground in the front yard, but the gun jammed. Our supreme court held that the trial court erred in instructing the jury on felony murder because the acts in that case that constituted the forcible felonies—aggravated battery and aggravated discharge of a firearm—arose from and were inherent in the act of murder itself and, thus, could not serve as predicate felonies for a charge of felony murder. *Id.* at 447-48. The court noted that “every shooting necessarily encompasses conduct constituting aggravated battery, *i.e.*, great bodily harm, as well as conduct constituting aggravated discharge of a firearm, *i.e.*, discharging a firearm in the direction of another.” *Id.* at 447. The court observed that if all fatal shootings could be charged as felony murder based upon aggravated battery or aggravated discharge of a firearm, then the second degree murder statute would effectively be eliminated and the State would not have to prove an intentional or knowing killing in most murder cases. *Id.* Nevertheless, the court found that the trial court’s erroneous instruction to the jury on felony murder did not constitute reversible error because the defendant was charged with intentional, knowing, and felony murder, and the jury returned a general verdict finding him guilty of murder, which raised a presumption that the jury found the defendant had committed the most serious crime charged, intentional or knowing murder. *Id.* at 448.

¶36 The State responds that, first, defendant has forfeited his *Morgan* argument by failing to both raise it in the trial court when the felony-murder instruction was discussed and given to the jury and include it in his posttrial motion. Second, the State argues this issue is moot because no judgment or sentence was entered on the felony-murder count since it merged into the more serious intentional murder count, of which defendant was also found guilty. Third, the State

argues that aggravated kidnapping was a proper predicate felony for the felony-murder charge and the subject at issue in *Morgan* and its progeny is not applicable to the facts in the instant case.

¶37 In his reply, defendant argues that he does not challenge the jury instructions as improper but, rather, challenges the sufficiency of the State’s evidence to prove he committed the predicate felony with a felonious purpose independent of the killing. Defendant argues that such a claim is preserved irrespective of whether an objection was made at trial and included in a posttrial motion. See *In re Dione J.*, 2013 IL App (1st) 110700, ¶79 (quoting *People v. Woods*, 214 Ill. 2d 455, 470 (2005), for the proposition that “[w]hen a defendant makes a challenge to the sufficiency of the evidence, his or her claim is not subject to the waiver rule and may be raised for the first time on direct appeal.”). Defendant also contends his claim is not moot because if, on appeal, he is granted relief on his challenge to his murder conviction under the accountability theory, then he would be subject to sentencing on the felony-murder conviction. See *People v. Aguilar*, 2013 IL 112116, ¶7 (even though the defendant’s unlawful possession of a firearm conviction had merged into his aggravated unlawful use of a weapon conviction, the court addressed his challenges to both convictions on the merits).

¶38 We find that defendant’s argument is preserved for review and is not moot, but we do not find it persuasive. Because this issue involves solely a question of law, we review it *de novo*. *People v. Davison*, 236 Ill. 2d 232, 239 (2010). An individual commits felony murder if while “attempting or committing a forcible felony other than second degree murder,” a death occurs. 720 ILCS 5/9-1(a)(3) (West 2002). Aggravated kidnapping is considered a forcible felony and



can serve as a predicate offense for felony murder. 720 ILCS 5/2-8 (West 2002). To sustain the felony murder charge, the State had to prove that defendant or codefendant performed the acts which caused Ramirez's death and that, when defendant or codefendant did so, defendant or codefendant was committing the offense of aggravated kidnapping. See 720 ILCS 5/9-1(a)(3) (West 2002). A person commits the offense of kidnapping when he knowingly and by force or by threat of imminent force carries another person from one place to another with the intent secretly to confine that person against his will. 720 ILCS 5/10-1(2) (West 2002). A person who kidnaps another commits the offense of aggravated kidnapping when he inflicts great bodily harm upon the victim, other than by the discharge of a firearm, or he kidnaps the victim while armed with a dangerous weapon, other than a firearm. 720 ILCS 5/10-2(a)(3), (a)(5) (West 2002).

¶39 After reviewing the evidence presented at trial, we conclude that defendant and codefendant's aggravated kidnapping conduct was not an act inherent in Ramirez's murder. After defendant stabbed Villalobos multiple times with a knife in McDonnell's driveway, he returned to the car and got in the driver's seat. The open front passenger door indicated that Ramirez tried to escape, but was prevented from fleeing by codefendant, who had remained in the car, and defendant who sped away from the scene and any interference from eyewitness McDonnell. The front passenger door was closed as the car sped away. The stab wounds later inflicted upon Ramirez established that defendant, codefendant, or both of them were armed with a knife when they carried Ramirez, against her will, away from the scene of Villalobos's murder and any potential assistance from McDonnell. Furthermore, Samhan's eyewitness testimony and

the evidence that codefendant's DNA was recovered from Ramirez's nail clippings established that she was still alive and struggling against her kidnappers while codefendant choked her in the backseat of the car as defendant intentionally sped through traffic to secret her away. Later, when Ramirez's body was found in the burned car, it was determined that she had died as a result of 14 stab wounds with strangulation as a significant contributing factor.

¶40 To convict defendant of the aggravated kidnapping of Ramirez, it was not necessary to prove that he or codefendant stabbed or strangled her to death. Moreover, unlike the single gunshot wound to the victim in *Morgan*, the evidence here established that Ramirez sustained multiple stab wounds before she died, bore the marks of strangulation to her neck area, and was observed alive but bleeding by an eyewitness while defendant drove her to another location while she was confined in the car. Thus, there were other acts, besides a single stabbing, that constituted the infliction of great bodily harm. Consequently, the same evidence was not used to prove both the predicate felony of aggravated kidnapping and the murder, and defendant and codefendant had completed the predicate felony of aggravated kidnapping before the end of the stabbing and strangulation that eventually resulted in Ramirez's death. See *Davison*, 236 Ill. 2d at 242 (affirming the defendant's felony murder conviction based on mob action where the predicate felony of mob action was completed before the end of the aggression that resulted in the victim's death). Thus, the predicate felony involved conduct with a felonious purpose other than the conduct that killed Ramirez, and the aggravated kidnapping properly served as the predicate felony for defendant's felony murder conviction.

¶41 C. Autopsy Report and Right to Confrontation

¶42 Defendant argues he was deprived of his constitutional right of confrontation because the State's medical expert, Dr. Filkins, testified about the autopsies performed by Dr. Fusaro, who was not subject to cross-examination at trial, and the trial court allowed the jury to view the autopsy reports during deliberations. Defendant argues that the autopsy reports were testimonial because the reports included Dr. Fusaro's signed and dated certification of his opinion that, based upon his investigation, the deaths of Villalobos and Ramirez were homicides and Dr. Fusaro could reasonably have expected that he was making a solemn statement that was likely to be used to prove facts at a criminal proceeding. The Illinois supreme court, however, recently held otherwise in *People v. Leach*, 2012 IL 111534.

¶43 Defendant has a constitutional right to confront the witnesses against him. U.S. Const., amend. VI ("[i]n all criminal prosecutions, the accused shall enjoy the right \*\*\* to be confronted with the witnesses against him."). Moreover, in *Crawford v. Washington*, 541 U.S. 36, 59 (2004), the United States Supreme Court held that the confrontation clause prohibits the introduction of any hearsay statements against the accused if they are deemed testimonial in nature, unless the declarant is unavailable for trial and the defendant has had a prior opportunity to cross-examine that declarant.

¶44 In *Leach*, the supreme court stated that it is possible in some circumstances that a medical examiner's autopsy report could be testimonial in nature (perhaps when the police play a direct role by arranging for the exhumation of a body to reopen a "cold case" and the purpose of the autopsy is clearly to provide evidence for the State). *Leach*, 2012 IL 111534, ¶¶133, 136.

Nevertheless, the court concluded that “autopsy reports prepared by the medical examiner’s office in the normal course of its duties are nontestimonial.” *Id.* at ¶136. Accordingly, a defendant’s right to confrontation is not violated by the introduction of either autopsy reports prepared in the normal course of a medical examiner’s duties or testimony regarding the contents of such autopsy reports by a medical examiner who did not prepare the reports. *Id.* ¶¶57, 137. Although, Dr. Fusaro’s report was signed and certified, it was not “ ‘the equivalent of affidavits made for the purpose of proving the guilt of a particular criminal defendant at trial.’ ” *Id.* ¶137 (quoting *Williams v. Illinois*, 567 U.S. \_\_\_, 132 S. Ct. 2221, 2243, 183 L. Ed. 2d 89 (2012)). Like the circumstances in *Leach*, the record here indicates that the autopsies of Villalobos and Ramirez were prepared by the Cook County medical examiner’s office in the normal course of its duties. This court is bound by our supreme court’s decision in *Leach*. Because the autopsy reports at issue here were clearly nontestimonial pursuant to the *Leach* decision, we must follow our supreme court’s lead and similarly reject the confrontation clause argument raised by defendant in this case.

¶45

### III. CONCLUSION

¶46 In light of the forgoing, we affirm the judgment of the circuit court of Cook County.

¶47 Affirmed.