OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI,	)	No. ED107425
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of St. Louis County
vs.	)	
	)	Hon. John D. Warner, Jr.
VINCENT L. JONES,	)	
	)	Filed:
Appellant.	)	February 25, 2020

Vincent Jones ("Defendant") appeals from the judgment entered on his convictions stemming from the severe beating death of a 21-month-old child. He was found guilty after a jury trial of abuse of a child resulting in death and second-degree felony-murder predicated on the child abuse. Defendant argues that the out-of-court statement of the victim's five-year-old brother—indicating that he heard Defendant hitting the child the morning he died—lacked sufficient indicia of reliability to be admissible. Defendant also argues that abuse of child resulting in death cannot be used as the underlying felony in a felony-murder case because the abuse is the act that itself caused victim's death, which violates the merger doctrine, the second-degree felony-murder statute and the double jeopardy clause.

AFFIRMED.

Division One holds:

(1) The trial court did not abuse its discretion in determining that the statements of the victim's five-year-old brother were, under the totality of the circumstances, reliable and admissible under Section 491.075.

(2) The merger doctrine—which historically prohibited using as a predicate to felony-murder any felony that was itself the act that caused the death—has been abrogated by subsequent legislation. Under the current version of the second-degree felony-murder statute in Section 565.021, any felony—meaning *all* felonies—except murder or manslaughter can be used to predicate felony-murder. Under that statute, the court is expressly permitted to sentence a defendant for felony-murder in addition to the sentence imposed for the predicate felony, which does not violate the double jeopardy clause.

Abuse of a child resulting in death is a felony and is not murder or manslaughter. Therefore, the trial court did not plainly err in instructing the jury to find Defendant guilty of second-degree murder based on the

underlying felony of child abuse, in entering judgment on the jury's guilty verdicts for both of those crimes, nor in sentencing Defendant to life imprisonment for the felony-murder in addition to the twenty-year term of imprisonment imposed for the child abuse.

Opinion by: Robert G. Dowd, Jr., J.
Robert M. Clayton III, P.J. and Roy L. Richter, J., concur.

Attorney for Appellant:	James C. Egan
Attorney for Respondent:	Daniel N. McPherson

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.