

# Order

Michigan Supreme Court  
Lansing, Michigan

December 26, 2024

Elizabeth T. Clement,  
Chief Justice

167341

Brian K. Zahra  
David F. Viviano  
Richard H. Bernstein  
Megan K. Cavanagh  
Elizabeth M. Welch  
Kyra H. Bolden,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 167341  
COA: 363129  
Wayne CC: 19-005635-FC

FARAJ MORRIS,  
Defendant-Appellant.

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On order of the Court, the application for leave to appeal the May 23, 2024 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

WELCH, J. (*concurring*).

I agree with the Court of Appeals that under *People v Oros*, 502 Mich 229, 242 (2018), there was sufficient evidence of premeditation and deliberation to sustain defendant's conviction for first-degree murder. The evidence presented to the jury established that defendant drew a gun, aimed it at his intended target, and fired once. Defendant missed the intended target and hit a bystander who was standing near the intended target. Defendant then lowered the gun, paused for a several seconds, raised the gun again and fired two to three more times, hitting the intended target in the chest. This evidence allowed the jury to reasonably infer not only that defendant had the time to take a second look and formulate premeditated and deliberate homicidal intent, but also that he formulated such intent and executed it by continuing to shoot after having shot an unintended target and paused afterwards. See *Oros*, 502 Mich at 242; MCL 750.316(1)(a). Significantly, the record in this case also suggests that defendant had exited a bistro and was lying in wait for the intended target to exit the same bistro prior to ambushing the victims and initiating the shooting, which is arguably an independent basis on which to sustain a first-degree murder conviction. See MCL 750.316(1)(a) (defining first-degree murder to include "[m]urder perpetrated by means of poison, lying in wait, or any other willful, deliberate, and premeditated killing").

Application of settled law to the facts in this case is more straightforward than in *Oros*, where the victim had been stabbed to death and there was no surveillance footage or

eyewitness testimony other than the defendant's. The evidence in *Oros* was based on forensic analysis of the crime scene and the victim's body as well as the defendant's testimony, through which he claimed that while he intended to kill the victim, it was not premeditated. That evidence included an alleged scuffle over a kitchen knife, evidence of defendant striking the victim in the head with a coffee mug, evidence of defendant punching the victim in the face, and evidence of 29 stab wounds, 19 of which were inflicted while the victim was still alive. *Id.* at 235. In *Oros*, the Court essentially held that there was sufficient evidence of premeditation because the jury could infer from the overall facts and the location and nature of the wounds that the defendant had *the opportunity to pause to take a second look* and form premeditative and deliberate homicidal intent at some point during the interactions or between the lethal and nonlethal stab wounds. *Id.* at 244-249.

However, because I share many of the concerns raised by Justice MCCORMACK's dissenting opinion in *Oros*, which Justice VIVIANO joined, I would be open to taking a renewed look at the "second look" doctrine in the right case. The existence of premeditation and deliberation is the factor that elevates an intentional killing that would be second-degree murder to first-degree murder. A premeditated and deliberate killing is one that the perpetrator thought about beforehand and carried out after engaging in some deliberative weighing of the options. See *id.* at 240 (MCCORMACK, J., dissenting), citing *People v Bass*, 317 Mich App 241, 266 (2016). While having the time to take a second look and consider options is relevant, I too am concerned that if the mere "possibility that [a defendant] could have premeditated and deliberated is all that's required," then the distinction between first- and second-degree murder has been collapsed beyond workability. *Id.* at 251 (MCCORMACK, J., dissenting). I agree with Justice MCCORMACK, who noted that a better understanding of the law would require the prosecution to present evidence establishing that the defendant had sufficient time to take a second look before killing the victim *and* that the defendant did, in fact, make a deliberative decision to kill the victim that goes beyond mere intent to kill. *Id.* at 253-255, 257-258. The evidence can be direct, circumstantial, or both, but more must be proven than the possibility of taking a second look based on the mere passage of time. If *Oros* is being applied by courts to effectively establish a rebuttable presumption of premeditation based merely on sufficient time to take a second look, then *Oros* impermissibly shifted the burden of proof away from the People and onto the accused. *Id.* at 255.

But this defendant has not asked the Court to overrule *Oros* and instead merely contests its application to the facts of his case. It does not appear that any refinement of the standard articulated in *Oros* would be outcome determinative here. Accordingly, I concur in the Court's order denying leave to appeal.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 26, 2024

Clerk