

Appendix A

Washtenaw County Circuit Court order denying Motion for Relief from Judgment  
(Case No. 11-001321-FC, December 13, 2024)

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW  
CRIMINAL DIVISION

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 11-001321-FC

v

Hon. ARIANNE E. SLAY

SHANE ROSCOE,

Defendant.

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OPINION AND ORDER DENYING DEFENDANT'S  
MOTION FOR RELIEF FROM JUDGMENT

At a session of the Court held in the  
Washtenaw County Courthouse in  
The City of Ann Arbor on

December 29, 2023

Before this Court is Defendant's third Motion for Relief from Judgment filed on May 9, 2023. Defendant also filed a Motion for Evidentiary Hearing. On May 10, 2023, this Court ordered Plaintiff to respond to Defendant's Motion for Relief from Judgment within 56 days of that order. Plaintiff subsequently filed its response on June 16, 2023. Defendant then filed a Reply to Plaintiff's Response on July 12, 2023.

**Factual Background**

As stated by the Court of Appeals in docket number 311851, this case arises out of a breaking and entering at Jim Bradley's Pontiac dealership in Ann Arbor that resulted in the death of one of the employees. It was alleged that Defendant and his cousin, Jonathon Aiden, broke into the dealership, where they had previously worked, and stole paint and chemical hardeners. In the process, one of the night workers discovered the two men, and as a result, they hit him in the head twice with a blunt object and then ran him over with his own vehicle.

### Procedural History

Defendant was subsequently charged with (1) Homicide – Open Murder – Statutory Short Form, (2) Safe Breaking, (3) Breaking & Entering – A Building with Intent, and (4) two counts of Police Officer – Assaulting/Resisting/Obstructing. A jury trial was held on June 4-8, 2012, and Defendant was found guilty of First-Degree Murder, Safe Breaking, Breaking and Entering a Building with Intent, and one count of Assaulting/Resisting/Obstructing a Police Officer. On July 18, 2012, Defendant was sentenced as a Habitual Offender – Fourth Offense to the Michigan Department of Corrections for life without parole with credit for 309 days for the First-Degree Murder conviction. He was also sentenced to 19 to 50 years imprisonment for the Safe Breaking conviction, 152 to 240 months' imprisonment for the Breaking and Entering conviction, and one to two years' imprisonment for the Assaulting/Resisting/Obstructing a Police Officer conviction.

Defendant filed an appeal with the Court of Appeals (COA). On appeal Defendant argued that (1) that the trial court abused its discretion by admitting the victim's hearsay statement pursuant to the forfeiture-by-wrongdoing rule, (2) that trial counsel was ineffective for failing to object to the admission of the victim's statement, (3) that the trial court violated the rules of evidence and due process of law by improperly admitting other acts evidence, and several Standard 4 issues. The COA affirmed Defendant's conviction and sentence in a published opinion issued on January 14, 2014 (docket number 311851).

Defendant filed his first motion for relief from Judgment on September 25, 2015. Defendant argued (1) that trial counsel was ineffective due to a conflict of interest, and (2) the trial court erred by failing to make an inquiry of the conflict of interest when the court knew or should have known of the conflict. In a written opinion dated July 18, 2016, the Hon. Archie C.

Brown denied Defendant's motion. The Court of Appeals denied Defendant's Application for Leave to Appeal the Court's Motion for Relief from Judgment order on December 28, 2016 (docket number 334281). The Michigan Supreme Court denied Defendant's Application for Leave to Appeal the Court's Motion for Relief from Judgment order on November 29, 2017 (MSC 155346).

Defendant filed his second motion for relief from judgment on July 16, 2019. In this motion Defendant argued (1) that the Prosecution withheld exculpatory evidence, (2) the Prosecution's introduction of false testimony rendered the trial to be fundamentally unfair, and (3) that he is innocent. In a written opinion dated August 5, 2019, the Hon. Archie C. Brown denied Defendant's motion.

#### Opinion and Order

In this third Motion for Relief from Judgment Defendant argues (1) that his right to be free from double jeopardy was violated when he was sentenced to life in prison for first degree murder after the jury acquitted him of that offense, (2) that his right to be free from double jeopardy was violated when he was convicted and sentenced for both first degree felony murder and the underlying felonies of safe breaking and breaking & entering a building with intent, (3) that his right to a jury was violated when the trial court presented the jury with a defective jury form, (4) that trial counsel was ineffective by failing to object to the double jeopardy issues and the verdict form, and (5) appellate counsel was ineffective by failing to investigate the entire case and present the obvious issues of double jeopardy and the jury verdict form. Defendant is requesting this Court to set aside his conviction and sentence for Felony Murder and to set aside the convictions and sentences for Safe Breaking and Breaking & Entering a Building with Intent. Defendant is also requesting an evidentiary hearing for issues three, four, and five. The Court notes that Defendant filed a Motion for Relief from Judgment with these same arguments on August 1, 2022.

Regarding Defendant's first two arguments, it is this Court's finding that these arguments lack merit because the jury's verdict did not violate the Double Jeopardy clause of the U.S. and Michigan Constitutions. Count one of the Information charged Defendant with Homicide – Open Murder – Statutory Short Form, contrary to MCL 750.316. At the time of Defendant being charged MCL 750.316(1)(a) and (b) stated:

A person who commits any of the following is guilty of first-degree murder and shall be punished by imprisonment for life:

- (a) Murder perpetrated by means of poison, lying in wait, or any other willful, deliberate, and premeditated killing.
- (b) Murder committed in the perpetration of, or attempt to perpetrate, arson, criminal sexual conduct in the first, second, or third degree, child abuse in the first degree, a major controlled substance offense, robbery, carjacking, breaking and entering of a dwelling, home invasion in the first or second degree, larceny of any kind, extortion, kidnapping, vulnerable adult abuse in the first and second degree under section 145n, torture under section 85, or aggravated stalking under section 411i.

Paragraph (b) of the MCL 750.316(1) is commonly referred to as felony murder. As explained by the Court of Appeals, "[t]he crime of murder is defined by statute in Michigan and may be first-degree deliberate and premeditated murder, second-degree murder, or felony-murder. All three of these forms of murder require proof of some form of criminal intent. First-degree murder is a specific intent crime, which requires proof that the defendant had an intent to kill. Second-degree murder is a general intent crime, which mandates proof that the killing was "done with an intent to kill, an intent to inflict great bodily harm, or an intent to create a very high risk of death with the knowledge that the act probably will cause death or great bodily harm." Felony-murder is also a general intent crime, requiring evidence of one of the three intents necessary to prove second-degree murder." *People v. Herndon*, 246 Mich. App. 371, 386 (2001). "Thus, MCL 750.316(1)(b) operates only to elevate a second-degree murder to first-degree murder if it was committed in the commission of one of the enumerated felonies." *People v. Reichard*, 505 Mich. 81, 87 (2020).

Contrary to Defendant's argument, first degree premeditated murder and first-degree felony murder are not one in the same. As pointed out by Defendant in his brief, premeditated murder and felony murder are terms that describe alternative means of committing the crime of first-degree murder. They are two different theories of first-degree murder with separate and distinct elements that must be proven by the prosecution. For example, Michigan Model Criminal Jury Instruction 16.1 (first-degree premeditated murder) has the following elements:

- First, that the defendant caused the death of [*name deceased*], that is, that [*name deceased*] died as a result of [*state alleged act causing death*].
- Second, that the defendant intended to kill [*name deceased*].
- Third, that this intent to kill was premeditated, that is, thought out beforehand.
- Fourth, that the killing was deliberate, which means that the defendant considered the pros and cons of the killing and thought about and chose [*his / her*] actions before [*he / she*] did it. There must have been real and substantial reflection for long enough to give a reasonable person a chance to think twice about the intent to kill. The law does not say how much time is needed. It is for you to decide if enough time passed under the circumstances of this case. The killing cannot be the result of a sudden impulse without thought or reflection.
- Fifth, that the killing was not justified, excused, or done under circumstances that reduce it to a lesser crime.

In contrast, Michigan Model Criminal Jury Instruction 16.4 (first-degree felony murder) has the following elements:

- First, that the defendant caused the death of [*name deceased*], that is, that [*name deceased*] died as a result of [*state alleged act causing death*].
- Second, that the defendant had one of these three states of mind: [*he / she*] intended to kill, or [*he / she*] intended to do great bodily harm to [*name deceased*], or [*he / she*] knowingly created a very high risk of death or great bodily harm knowing that death or such harm would be the likely result of [*his / her*] actions.
- Third, that when [*he / she*] did the act that caused the death of [*name deceased*], the defendant was committing [(or) attempting to commit / (or) helping someone else commit] the crime of [*state felony*]. For the crime of [*state felony*], the prosecutor must prove each of the following elements beyond a reasonable doubt: [*state elements of felony*].
- Fourth, that the killing was not justified, excused, or done under circumstances that reduce it to a lesser crime.

Clearly the elements of first-degree premeditated murder and first-degree felony murder are quite different from one another. Thus, they are not one in the same, they are two theories of first-

degree murder with distinct elements that are clearly defined in the jury instructions as well as MCL 750.316(1)(a) and (b).

At the conclusion of Defendant's jury trial, the Court read the following jury instructions to the jury:

So, as to the five counts, Count 1: The defendant is charged with the crime of first-degree premeditated murder, and to prove this charge, the prosecutor must prove each of the following five elements beyond a reasonable doubt:

First, that the defendant caused the death of William Samuel Kenney, the victim. That is, that the victim died as a result of a pulmonary thromboembolism or blood clots brought on after medical treatment necessary to treat the injuries inflicted from an assault that occurred on August 18<sup>th</sup> of 2006.

Second, that the defendant intended to kill William Samuel Kenney.

Third, that this intent to kill was premeditated; that is, thought out beforehand.

Fourth, that the killing was deliberate, which means that the defendant considered the pros and cons of the killing and thought about and chose his actions before he did it. There must have been real and substantial reflection for long enough to give a reasonable person a chance to think twice about the intent to kill. The law does not say how much time is needed. It is for you to decide if enough time passed under the circumstances of this case. The killing cannot be the result of a sudden impulse, without thought or reflection.

And, fifth, that the killing was not justified, excused, or done under circumstances that reduce it to a lesser crime....

The defendant is also charged with first degree felony murder, and to prove this charge, the prosecutor must prove each of the following four elements beyond a reasonable doubt:

First, that the defendant caused the death of William Samuel Kenney, the victim. That is, that the victim died as a result of a pulmonary thromboembolism or blood clots brought on after medical treatment necessary to treat the injuries inflicted from an assault that occurred on August 18<sup>th</sup>, 2006.

Second, that the defendant had one of these three states of mind: He intended to kill, or he intended to do great bodily harm to William Samuel Kenney, or he knowingly created a very high risk of death or great bodily harm, knowing that death or such harm would be the likely result of his actions.

Third, that when he did the act that caused the death of William Samuel Kenney, the defendant was committing or attempting to commit and/or helping someone else commit the crime of safe-breaking or breaking and entering with intent....

Fourth, that the killing was not justified, excused, or done under circumstances that reduce it to a lesser crime.

See Trial Tr. 257:21-25, 258:1-24, 259:16-25, and 260:1-11, June 8, 2012. Accordingly, the jury was properly instructed regarding count 1 (open murder).

Defendant's reliance on *People v. Aaron*, is misplaced and misunderstood. In *Aaron* the Supreme Court addressed whether the mental aspect of felony murder (malice) can be satisfied by proving the intention to commit the underlying felony or whether malice also must be proven regarding the defendant's intent to kill the deceased. The *Aaron* court specifically stated, "[i]n these cases, we must decide whether Michigan has a felony murder rule which allows the element of malice required for murder to be satisfied by the intent to commit the underlying felony or whether malice must be otherwise found by the trier of fact. We must also determine what is the mens rea required to support a conviction under Michigan's first-degree murder statute." *People v. Aaron*, 409 Mich. 672, 686-687 (1980). In fact, the *Aaron* court set forth the statutory framework of first-degree felony murder that exists today and existed when Defendant was charged. Notable, the *Aaron* court held "[w]e conclude that Michigan has no statutory felony-murder rule which allows the mental element of murder to be satisfied by proof of the intention to commit the underlying felony. Today we exercise our role in the development of the common law by abrogating the common-law felony-murder rule. We hold that in order to convict a defendant of murder, as that term is defined by Michigan case law, it must be shown that he acted with intent to kill or to inflict great bodily harm or with a wanton and willful disregard of the likelihood that the natural tendency of his behavior is to cause death or great bodily harm. We further hold that the issue of malice must always be submitted to the jury. *Id.* at 733. This is precisely what is enumerated in MCL 750.316(1)(b), and the jury instruction that was provided to the jury at the conclusion of Defendant's jury trial.

By being charged with open murder Defendant was placed on notice that he must defend against both first-degree premeditated murder and first-degree felony murder. As summarized by the Court of Appeals in *People v. McKirney*, "[i]t has long been recognized that a charge

of open murder gives notice to the defendant that he must defend against first-degree murder and second-degree murder. *People v. Treichel*, 229 Mich. 303; 200 NW 950 (1924); *People v. Spalla*, 83 Mich.App 661, 664-665; 269 NW2d 259 (1978), rev'd on other grounds 408 Mich. 876 (1980). It has also long been recognized that a charge of open murder includes first-degree felony murder. *People v. McKinney*, 65 Mich.App 131, 133-136; 237 NW2d 215 (1975). Michigan courts have long recognized the propriety of the open charge of murder. *Brownell v. People*, 38 Mich. 732 (1878); *Cargen v. People*, 39 Mich. 549 (1878); *People v. Davis*, 343 Mich. 348, 72 N.W.2d 269 (1965). The courts have also held that a person may properly be charged with and convicted of first-degree murder under a theory of premeditation and deliberation, where such a charge has been made in the statutory short form language." *People v. Collins*, 216 Mich. 541, 185 N.W. 850 (1921); *People v. Brown*, 23 Mich.App. 528, 179 N.W.2d 58 (1970). The same rule applies when the defendant is convicted of first-degree murder on a felony-murder theory, as is demonstrated in *People v. Page*, 198 Mich. 524, 165 N.W. 755 (1917). *People v. McKinney*, 65 Mich. App. 131, 135-136 (1975). In this matter the jury found Defendant not guilty of first-degree premeditated murder, but guilty of first-degree felony murder. This was a proper verdict and was not a violation of the Double Jeopardy clause of the U.S. Constitution.

Regarding Defendant's third, fourth, and fifth arguments, it is this Court's finding that Defendant does not satisfy the requirements of MCR 6.502(G), which states:

- (1) Except as provided in subrule (G)(2), regardless of whether a defendant has previously filed a motion for relief from judgment, after August 1, 1995, one and only one motion for relief from judgment may be filed with regard to a conviction.
- (2) A defendant may file a second or subsequent motion based on any of the following:
  - (a) a retroactive change in law that occurred after the first motion for relief from judgment was filed,
  - (b) a claim of new evidence that was not discovered before the first such motion was filed, or

(c) a final court order vacating one or more of the defendant's convictions either described in the judgment from which the defendant is seeking relief or upon which the judgment was based.

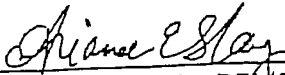
Neither one of these arguments is based on a retroactive change in law that occurred after Defendant's first motion for relief from judgment, and neither one is based on new evidence that was not discovered before the first such motion was filed by Defendant. The Court notes that Defendant has previously argued ineffective assistance of trial counsel in his direct appeal of his convictions/sentences as well as in his first motion for relief from judgment, and those arguments failed. Accordingly, Defendant fails to meet the necessary requirements of filing a successive motion for relief from judgment as outlined in MCR 6.502(G). Even if Defendant met the requirements of filing a successive motion for relief of judgment, for the reasons stated above regarding Defendant's double jeopardy argument, Defendant would fail to meet his burden of establishing entitlement to the relief being requested as outlined in MCR 6.508(D).

For the above reasons, Defendant's Motion for Relief from Judgment is DENIED. Defendant's conviction for first-degree felony murder was not a violation of the Double Jeopardy Clause of the U.S. and Michigan Constitutions, and Defendant's remaining arguments failed to meet the requirements of MCR 6.502(G) in filing successive motions for relief from judgment. Defendant's motion for an evidentiary hearing is also DENIED.

Additionally, Defendant's Motion for Relief from Judgment filed on August 1, 2022, is also DENIED.

IT IS SO ORDERED.

Dated: 12/29/23

  
Hon. Arianne E. Slay P70432  
Circuit Court Judge

Appendix B

Michigan Court of Appeals Order denying leave to appeal Case No. 371422

Court of Appeals, State of Michigan

ORDER

PEOPLE OF MI V SHANE NOEL ROSCOE

Docket No. 371422

LC No. 11-001321-FC

Michael J. Riordan  
Presiding Judge

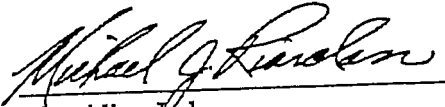
Noah P. Hood

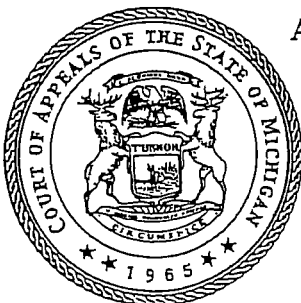
Randy J. Wallace  
Judges

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The motion to waive fees is GRANTED for this case only.

The delayed application for leave to appeal is DENIED because defendant has failed to establish that the trial court erred in denying the successive motion for relief from judgment. MCR 6.502(G).

  
Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

November 8, 2024

Date

  
Chief Clerk

Appendix C

Michigan Supreme Court Order denying Leave to Appeal (Case No. 167970) Dated May 22,  
2025

# Order

Michigan Supreme Court  
Lansing, Michigan

May 22, 2025

167970

Megan K. Cavanagh,  
Chief Justice

Brian K. Zahra  
Richard H. Bernstein  
Elizabeth M. Welch  
Kyra H. Bolden  
Kimberly A. Thomas,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 167970  
COA: 371422  
Washtenaw CC: 11-001321-FC

SHANE NOEL ROSCOE,  
Defendant-Appellant.

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On order of the Court, the application for leave to appeal the November 8, 2024 order of the Court of Appeals is considered, and it is DENIED, because the defendant has failed to meet the burden of establishing entitlement to relief under MCR 6.508(D).



t0519

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.

May 22, 2025

A handwritten signature in black ink, appearing to read "Larry S. Royster", written over a horizontal line.

Clerk

**Additional material  
from this filing is  
available in the  
Clerk's Office.**