

# Court of Appeals, State of Michigan

## ORDER

People of MI v Aaron Richard Fluker

Docket No. 330437

LC No. 15-006200-FC

Cynthia Diane Stephens  
Presiding Judge

Kirsten Frank Kelly

Karen M. Fort Hood  
Judges

Pursuant to MCR 7.205(E)(2), in lieu of granting leave to appeal, the Court orders that the Wayne Circuit Court's November 6, 2015 order reducing the charge of first-degree murder, MCL 600.316, to second-degree murder, MCL 600.317, is REVERSED. Considering the time lapse between when the victim insulted defendant's mother and when defendant returned with the knife, it is reasonable to infer that defendant formed the intent to kill the victim before coming outside with a knife. Further, even if defendant did not "rush" at the victim, the fact that defendant had difficulty removing the knife from the victim's neck shows the time between the first and second stabbings was not instantaneous. From this, it is reasonable to infer that defendant had time for a second look before deciding to stab the victim a second time. See *People v Conklin*, 118 Mich App 90, 93; 324 NW2d 537 (1982), ("A sufficient time lapse to provide an opportunity for a 'second look' may be merely seconds . . . dependent on the totality of the circumstances surrounding the killing"), overruled on other grounds by *People v Williams*, 422 Mich 381, 392; 373 NW2d 567 (1985). Further buttressing these inferences are defendant's comments both before and after the fight, when he said "watch this," and "y'all thought I was playing." From such comments, a reasonable juror could infer that defendant meant to signal to the other witnesses that his actions were deliberate and intentional, rather than merely an attempt to scare the victim as defendant later told police. Accordingly, because the evidence minimally supports an inference that defendant intentionally and deliberately planned to kill King with sufficient time for a second look, the district court's decision to bindover defendant on a charge of first-degree murder was reasonable. The circuit court erred in holding otherwise.

This order is to have immediate effect. MCR 7.215(F)(2).

This Court retains no further jurisdiction.



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

MAR 29 2016

Date

  
Chief Clerk