

# Order

Michigan Supreme Court  
Lansing, Michigan

June 5, 2020

Bridget M. McCormack,  
Chief Justice

153828 (80)

David F. Viviano,  
Chief Justice Pro Tem

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

Stephen J. Markman  
Brian K. Zahra  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh,  
Justices

v

SC: 153828  
COA: 324018  
Wayne CC: 14-000152-FC

THEODORE PAUL WAFER,  
Defendant-Appellant.

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By order of April 26, 2019, the motion for reconsideration of this Court's March 9, 2018 order was held in abeyance for *People v Price* (Docket No. 156180). On the Court's own motion, the motion for reconsideration of this Court's March 9, 2018 order is again considered, and it is GRANTED with respect to the defendant's double jeopardy issue. We AMEND this Court's March 9, 2018 order to read as follows:

On October 12, 2017, the Court heard oral argument on the application for leave to appeal the April 5, 2016 judgment of the Court of Appeals. On order of the Court, the application for leave to appeal is again considered, and it is DENIED, with respect to the defendant's jury instruction and prosecutorial misconduct issues, because we are not persuaded that those questions presented should be reviewed by this Court. That part of the application for leave to appeal raising a double jeopardy issue remains pending.

We further order that Justice MARKMAN's accompanying dissenting statement to the Court's March 9, 2018 order remains unchanged.

We direct the Clerk to schedule oral argument on that part of the defendant's application for leave to appeal addressing double jeopardy. MCR 7.305(H)(1). The appellant shall file a supplemental brief within 42 days of the date of this order addressing whether the defendant's convictions for second-degree murder, MCL 750.317, and statutory manslaughter, MCL 750.329(1), violate constitutional prohibitions against double jeopardy. See *People v Miller*, 498 Mich 13 (2015). In addition to the brief, the appellant shall electronically file an appendix conforming to MCR 7.312(D)(2). In the brief, citations to the record must provide the appendix page numbers as required by MCR 7.312(B)(1). The appellee shall file a supplemental brief within 21 days of being served with the appellant's brief. The appellee shall also electronically file an appendix, or in the alternative, stipulate to the use of the appendix filed by the appellant. A reply, if

any, must be filed by the appellant within 14 days of being served with the appellee's brief. The parties should not submit mere restatements of their application papers.

We direct the Clerk to schedule the oral argument in this case for the same future session of the Court when it will hear oral argument in *People v Davis* (Docket No. 160775).

The Prosecuting Attorneys Association of Michigan and the Criminal Defense Attorneys of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issue presented in this case may move the Court for permission to file briefs amicus curiae.



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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.

June 5, 2020

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

Clerk