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LOWER COURT Kalamazoo County Circuit Court	Electronically Filed BRIEF COVER PAGE	CASE NO. Lower Court 14-1711 FC Court of Appeals 329046

(Short title of case)
Case Name: **People v. Christopher Allan Oros**

1. Brief Type (select one):
   ☒ APPELLANT(S) ☐ APPELLEE(S) ☐ REPLY
   ☐ CROSS-APPELLANT(S) ☐ CROSS-APPELLEE(S) ☐ AMICUS
   ☐ OTHER [identify]:

2. This brief is filed by or on behalf of [insert party name(s)]: **Christopher Allan Oros**

3. ☐ This brief is in response to a brief filed on by .

4. ORAL ARGUMENT: ☒ REQUESTED ☐ NOT REQUESTED

5. ☐ THE APPEAL INVOLVES A RULING THAT A PROVISION OF THE CONSTITUTION, A STATUTE, RULE OR REGULATION, OR OTHER STATE GOVERNMENTAL ACTION IS INVALID.
   [See MCR 7.212(C)(12) to determine if this applies.]

6. As required by MCR 7.212(C), this brief contains, in the following order: [check applicable boxes to verify]
   - ☒ Table of Contents [MCR 7.212(C)(2)]
   - ☒ Index of Authorities [MCR 7.212(C)(3)]
   - ☒ Jurisdictional Statement [MCR 7.212(C)(4)]
   - ☒ Statement of Questions [MCR 7.212(C)(5)]
   - ☒ Statement of Facts (with citation to the record) [MCR 7.212(C)(6)]
   - ☒ Arguments (with applicable standard of review) [MCR 7.212(C)(7)]
   - ☒ Relief Requested [MCR 7.212(C)(9)]
   - ☒ Signature [MCR 7.212(C)(9)]

7. This brief is signed by [type name]: **Desiree M. Ferguson**
   Signing Attorney's Bar No. [if any]: **(P34904)**

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STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN

Supreme Court No. 156241

Court of Appeals No. 329046

Lower Court No. 14-1711 FC

Plaintiff-Appellant,

-vs-

CHRISTOPHER ALLAN OROS

Defendant-Appellee
_____/

KALAMAZOO COUNTY PROSECUTOR
Attorney for Plaintiff-Appellant
_____

DESIREE M. FERGUSON (P34904)
Attorney for Defendant-Appellee
_____

DEFENDANT-APPELLEE'S SUPPLEMENTAL BRIEF IN RESPONSE TO APPLICATION FOR LEAVE TO APPEAL

STATE APPELLATE DEFENDER OFFICE

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JUDGMENT APPEALED FROM AND RELIEF SOUGHT

Defendant-Appellee Christopher Oros was convicted, *inter alia*, of First-Degree Premeditated Murder and First Degree Felony Murder.

In a published decision issued June 8, 2017, the Court of Appeals vacated these two convictions and remanded for retrial.

The prosecution filed an Application for Leave to Appeal to this Honorable Court, challenging only the Court of Appeals' decision with regard to the Premeditated Murder conviction.

This Court entered an Order on October 5, 2017, ordering the parties to submit supplemental briefing.

The Court of Appeals' decision was correct and sound, and should not be disturbed. Therefore, Mr. Oros prays that this Court deny the application.

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STATEMENT OF QUESTION PRESENTED

I. DID THE COURT OF APPEALS CORRECTLY VACATE MR. OROS' CONVICTION FOR PREMEDITATED MURDER, BECAUSE THERE WAS NO EVIDENCE OF PREMEDITATION OR DELIBERATION?

Court of Appeals answered, "Yes."

Defendant-Appellant answers, "Yes".

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I. THE COURT OF APPEALS CORRECTLY VACATED MR. OROS' CONVICTION FOR PREMEDITATED MURDER, BECAUSE THERE WAS NO EVIDENCE OF PREMEDITATION OR DELIBERATION.

Mr. Oros was convicted of first degree premeditated murder for the death of Marie McMillan. That conviction cannot stand, however, because there was no evidence of premeditation and deliberation, which are both essential elements of the offense.

The Court of Appeals below carefully navigated the authorities prosecution offered in support of its proposition and soundly concluded that evidence adduced at Mr. Oros' trial was insufficient to prove beyond a reasonable doubt that Mr. Oros acted with premeditation and deliberation.

The Court below found no proof of premeditation based on Mr. Oros' actions before his fateful encounter with the decedent. *People v Oros,* 320 Mich App 146; ___ NW2d ___ (2017)(Slip Op at *4). They had never met before, and had established rapport involving threats or fear.

Nor did the Court below find any basis for premeditation in Mr. Oros' actions after the killing, including washing the knife and leaving it in the sink, and returning later to burn her already deceased body. *People v Oros,* 320 Mich App 146; ___ NW2d ___ (2017)(Slip Op at *4). These actions did nothing to illuminate Mr. Oros' state of mind *before* the killing.

The prosecution claims that the Court of Appeals looked only to the number of wounds and failed to consider the entire body of evidence in concluding that evidence was insufficient to prove premeditation. But the prosecution searches in vain for any evidence proving premeditation and deliberation, vital elements for demonstrating premeditated murder.

For example, the prosecution states the Court below failed to consider that Mr. Oros was apparently seeking money for drugs (Appellant's Brief, pp 4, 7), but it fails to indicate how that

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inquiry would tend to prove premeditation to kill rather than some motive simply to steal money. As noted by the Court below, evidence of Mr. Oros' conduct of trying to obtain money from the decedent's neighbors, even if for drugs, served no purpose toward establishing that he premeditated the decedent's death. *People v Oros*, 320 Mich App 146; ___ NW2d ___ (2017)(Slip Op at *4).

The prosecution relies on Mr. Oros' confession that "instinct took over and I was trying to kill her" (Appellant's Brief, p 8 , as though that remark shows premeditation rather than the impulsive, frenzied response in self-defense that Mr. Oros described to police.

The prosecution contends that the Court below failed to consider "how Defendant gained possession of [the knife]" (Appellant's Brief, p 4), but it does not point to any evidence concerning how Mr. Oros accessed the knife, nor does it suggest how that information sheds light on the question of whether Mr. Oros thought in advance before crime occurred. The prosecution argues that the jury could have inferred that Mr. Oros had time to think while he retrieved the knife from the sink (Appellant's Brief, p 8), but ignores that there was absolutely no evidence upon which such an inference could reasonably have been based.

The prosecution cites evidence of "Defendant's own claim that the two struggled with another" (Appellant's Brief, p 4) but again fails indicate how this evidence informs the question of premeditation, rather than supporting Mr. Oros' self-defense explanation.

The prosecution mentions "the nature of the wounds and the order and manner in which they were inflicted" (Appellant's Brief, p 4), but says nothing about how this inquiry aids in demonstrating that there was premeditation. The prosecution claims the medical examiner found that two stab wounds "evidenced calculated and deliberate action on Defendant's part" (Appellant's Brief, p 8), but conspicuously fails to cite any portion of the record where the

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medical examiner rendered such an opinion. And even still, the witness' opinion in this regard would not be dispositive as a matter of law. It is true that, in describing one wound in particular, the medical examiner stated that withdrawal of the knife would have taken some force. (Exh 72a-73a) But force used to *withdraw* a weapon reveals nothing about whether premeditation was used in *inserting* it. Likewise, the fact that the knife blade was bent (Appellant's Brief, p 9) disclosing nothing about when and how the blade was bent (i.e. upon insertion, withdrawal, or by some other means), and whether such a fact pertains to premeditation.

The prosecution cites to the number of wounds as evidence of premeditation (Appellant's Brief, p 8), yet the evidence does not reveal whether indeed the decedent may have died after incurring the very first wound. In the event that Mr. Oros delivered the first wound in self-defense, and that wound happened to be the one that caused the decedent's death, then whatever level of intent related to the delivery of all of the subsequent wounds is superfluous and immaterial. Similarly, the prosecution points to indications that Mr. Oros also punched the deceased and hit her with a coffee mug (Appellant's Brief, p 7), but again, these are not fatal wounds and they reveal nothing about the level of intent or planning that manifest *before* causing injury that led to death.

Such evidence was lacking in *Hoffmeister*, where evidence merely proved that the defendant and the victim had had a brief encounter, which left the victim with multiple stab wounds. Evidence of premeditation and deliberation was likewise absent from Mr. Oros' trial, where all that was shown was that he entered the decedent's apartment and left her with multiple stab wounds.

In order to sustain Mr. Oros' conviction for premeditated murder, due process requires that the prosecution prove the core element of premeditation, beyond all reasonable doubt. *In Re*

Winship, 397 US 358, 364; 90 S Ct 1068; 25 L Ed 2d 368 (1970). As noted by the Court below, evidence of these critical elements is no more present in this case than it was in *People v Hoffmeister*, 394 Mich 155, 158 (1975). *People v Oros*, 320 Mich App 146; ___ NW2d ___ (2017)(Slip Op at *4). There, as here, the prosecution relied solely on the fact that the victim died of multiple stab wounds. But this Court held in *Hoffmeister* that, to prove premeditation and deliberation, "[s]ome time span between initial homicidal intent and ultimate action is necessary." *Hoffmeister*, 394 Mich at 161. "The mere fact that the killing was attended by much violence or that a great many wounds were inflicted is not *relevant* (on the issue of premeditation and deliberation), as such a killing is just as likely (or perhaps more likely) to have been on impulse." *Hoffmeister*, 394 Mich at 159, quoting LaFave & Scott, Criminal Law, § 73, p 565 (emphasis added).

In sum, the Court of Appeals correctly held that the prosecution failed to introduce sufficient evidence to prove beyond a reasonable doubt that Mr. Oros' premeditated – i.e. decided in advance -- to kill the deceased. Therefore, the Court of Appeals correctly vacated Mr. Oros' conviction for premeditated murder.

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SUMMARY AND RELIEF

WHEREFORE, for the foregoing reasons, Defendant-Appellee asks that this Honorable Court deny the Plaintiff-Appellant's Application for Leave to Appeal.

Respectfully submitted,

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