

Bowman's apartment complex and agreed to fight at a place nearby. Harrison called four more friends, including Aaron King, to "have his back so he didn't get jumped." They came, but before the fight could start, someone said the police were coming and Harrison's group took off.

The police came, talked with Bowman's group, and left; then the two groups exchanged more phone calls about a new place to fight. Defendant also was invited to fight on Bowman's side, and he brought his gun.

The groups agreed to meet at a specific parking lot and eventually did so. Defendant rushed toward King's car, pulling his gun from about 15 feet away. Harrison fled in his vehicle.

Defendant approached King's car and pointed the gun at King. Everyone put up their hands and shrunk from the weapon, which was inside the car window near King's neck, so close that King, also with hands up, backed against the front passenger and asked Defendant not to shoot.

Defendant asked the men what their problem was. They said they had no problem, and asked him not to shoot. Defendant repeated his question, then said, "You got a problem now," and fired. The shot severed King's carotid artery, mortally wounding him.

Sufficiency of Deliberation Evidence

Defendant concedes his guilt for second-degree murder, but drawing somewhat upon treatises and non-Missouri cases, he claims there was insufficient proof of the "deliberation" necessary for first-degree murder. We disagree.

Section 565.020.1 makes it first-degree murder to knowingly cause another's death after "deliberation," which means "cool reflection for any length of time no matter how brief." § 565.002(3). Deliberation need be only momentary. *State v. Clark*, 913 S.W.2d 399, 404 (Mo. App. 1996)(overruled in other respects by *Deck v. State*, 68 S.W.3d 418 (Mo. banc 2002)); *State v. Davis*, 905 S.W.2d 921, 923 (Mo. App. 1995). It is enough if the evidence shows that the defendant considered taking another's life in a deliberate state of mind. *Clark*, 913 S.W.2d at 404.²

A jury could conclude from the record that Defendant brought this gun to the fight; pulled it from 15 feet away as he approached King's car; pointed it at King's neck through the open car window; taunted the car's occupants while they cowered, hands-up and begging him not to shoot; then killed King with a point-blank shot -- a record of deliberation tantamount to those found adequate in *Clark*, *Davis*, *State v. Bridges*, 810 S.W.2d 682, 684 (Mo. App. 1991), and *State v. Clemmons*, 753 S.W.2d 901, 906 (Mo. banc 1988). We deny Defendant's point,³ and affirm the judgment.

Daniel E. Scott, Chief Judge

RAHMEYER, J. – CONCURS

LYNCH, P.J. – CONCURS

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² Thus, Judge Blackmar reiterated that while some jurors might construe MAI's "cool reflection" reference "in a manner more favorable to the defendant than the law strictly requires," reflection "need be only momentary to establish deliberation." *Davis*, 905 S.W.2d at 923-24.

³ This moots Defendant's secondary argument that his armed criminal action conviction must be reversed if his first-degree murder conviction was in error.