

Order

Michigan Supreme Court
Lansing, Michigan

October 25, 2017

Stephen J. Markman,
Chief Justice

156412

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Joan L. Larsen
Kurtis T. Wilder,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 156412
COA: 338953
Jackson CC: 16-004815-FH

DEMARCUS JOHNQUEZ SMITH,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the August 23, 2017 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

We note, however, that the Jackson Circuit Court's order, from which the defendant appeals, only denied the defendant's motion for preliminary jury instructions. That order did not rule on any request for final instructions. Therefore, the order does not prohibit the defendant from presenting evidence at trial and requesting final jury instructions on affirmative defenses. Before closing arguments, the trial court must evaluate whether the defendant has produced "some evidence from which the jury can conclude that the essential elements" of affirmative defenses are present and determine if the jury must be instructed on the defenses. *People v Lemons*, 454 Mich 234, 246 (1997); see also MCR 2.512(D)(2) and MCR 2.513(N)(1).



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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.

October 25, 2017

Clerk