Order

Michigan Supreme Court
Lansing, Michigan

October 30, 2026

Megan K. Cavanagh,
Chief Justice

Brian K. Zahra
Richard H. Bernstein
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas
Noah P. Hood,
Justices

SC: 163090
COA: 352532
Muskegon CC: 18-002506-FC

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

KAHLEK AMERE-RAHSHEE MCPHERSON,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the May 13, 2021 judgment 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.

CAVANAGH, C.J. (*concurring*).

I concur with the Court's order denying defendant's application for leave to appeal. Both in the Court of Appeals and in this Court, defendant raised a cursory Sixth Amendment claim, asserting that he was denied an impartial jury drawn from a fair cross section of the community in Muskegon County. See *People v Bryant*, 491 Mich 575 (2012). In *People v Jackson*, 507 Mich 889 (2021), another defendant who was also tried in Muskegon County similarly argued that his Sixth Amendment rights were violated on the same basis. In that case, we remanded to the trial court for an evidentiary hearing.[1] I write to explain why it is not inconsistent for this Court to deny leave in this case, while remanding for an evidentiary hearing in *Jackson*.

The procedural posture of these two cases is materially distinct as to preservation, the record made at the trial court level, and the applicable standard of review. In *Jackson*, an objection was lodged as to the racial makeup of the jury venire before jury selection

[1] To date, however, that hearing has not taken place.

took place. Accordingly, the issue was preserved and, if proven, the error would be subject to a less onerous standard of review.[2] This objection also meant that the defendant in that case made a record, demonstrating that the venire contained only one person of color among 40 possible jurors. In contrast, in this case, no objection was lodged; thus, the issue is unpreserved and, if an error was proven, it would be subject to plain-error review. See *People v Carines*, 460 Mich 750, 764 (1999). The lack of objection also means that there is no record evidence concerning the racial makeup of defendant's jury venire or whether the makeup would be comparable to "the larger picture of venires or jury pools" in Muskegon County. *Bryant*, 491 Mich at 601-602.

In sum, while the claims are similar on their face, defendant's claims are unpreserved and unsupported. Such bare allegations are insufficient to warrant a remand for an evidentiary hearing. Therefore, I agree with the Court's order denying leave to appeal and note that the denial is without prejudice to defendant filing a future motion for relief from judgment in accordance with the rules and procedures set forth in MCR 6.501 *et seq*.

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[2] Neither this Court nor the United States Supreme Court has held that a fair-cross-section violation is a structural error that entitles a defendant to automatic reversal. But an analogy between fair-cross-section discrimination and grand-jury discrimination would appear to support the conclusion that a fair-cross-section violation is a structural error. See *Vasquez v Hillery*, 474 US 254, 263-264 (1986) ("[D]iscrimination in the grand jury undermines the structural integrity of the criminal tribunal itself, and is not amenable to harmless-error review."). Even if the error is not structural, the prosecutor would be held to meet the demanding standard that applies to preserved constitutional violations. See *People v Anderson (After Remand)*, 446 Mich 392, 406 (1994) (explaining that the harmless-error standard requires the prosecution "to prove . . . beyond a reasonable doubt that there is no reasonable possibility that the evidence complained of might have contributed to the conviction") (quotation marks and citation omitted).

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I, Elizabeth Kingston-Miller, 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 30, 2026

Clerk

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