

Order

Michigan Supreme Court
Lansing, Michigan

April 5, 2017

154784

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

BRANDON OSCARLEROY BENSON,
Defendant-Appellant.

SC: 154784
COA: 333084
Wayne CC: 16-001056-FC

Stephen J. Markman,
Chief Justice

Robert P. Young, Jr.
Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Joan L. Larsen,
Justices

On order of the Court, the application for leave to appeal the October 12, 2016 order of the Court of Appeals is considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE that part of the Court of Appeals order holding that the investigative subpoena testimony of Bre'Ascia Dixon and Sierra Lattimore was properly admitted under MRE 801, and we REMAND this case to that court for reconsideration of the issue. The Court of Appeals erred in its analysis of MRE 801(d)(1)(A) by considering whether the witnesses were unavailable, rather than whether their prior statements were inconsistent. The unavailability of a witness is relevant for admission under MRE 804, not MRE 801. In all other respects, leave to appeal is DENIED.

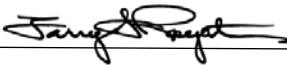
We do not retain jurisdiction.



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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.

April 5, 2017


Clerk