

# Order

Michigan Supreme Court  
Lansing, Michigan

July 3, 2013

Robert P. Young, Jr.,  
Chief Justice

146652

Michael F. Cavanagh  
Stephen J. Markman  
Mary Beth Kelly  
Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 146652  
COA: 306868  
Kalamazoo CC: 2007-000165-FC

ERVINE LEE DAVENPORT,  
Defendant-Appellant.

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On order of the Court, the application for leave to appeal the December 13, 2012 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court. While the Court of Appeals erroneously failed to consider defendant's claim in light of the United States Supreme Court decision in *Holbrook v Flynn*, 475 US 560, 570; 106 S Ct 1340; 89 L Ed 2d 525 (1986) ("the question must be not whether jurors actually articulated a consciousness of some prejudicial effect, but rather whether 'an unacceptable risk is presented of impermissible factors coming into play'"), citing *Estelle v Williams*, 425 US 501, 505; 96 S Ct 1691; 48 L Ed 2d 126 (1976), the error was harmless under the facts of this case. Given the substantial evidence of guilt presented at trial, we cannot conclude that there was an unacceptable risk of impermissible factors coming into play.



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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.

July 3, 2013

  
Clerk