

Order

Michigan Supreme Court
Lansing, Michigan

October 19, 2018

Stephen J. Markman,
Chief Justice

156161 & (58)

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant/
Cross-Appellee,

v

SC: 156161
COA: 331594
Wayne CC: 12-007733-FH

WILBERT JOSEPH McKEEVER,
Defendant-Appellee/
Cross-Appellant.

On October 10, 2018, the Court heard oral argument on the application for leave to appeal the May 25, 2017 judgment of the Court of Appeals and the application for leave to appeal as cross-appellant. On order of the Court, the applications are again considered. MCR 7.305(H)(1). In lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals and we REINSTATE the defendant's conviction and sentence. Assuming, without deciding, that either the trial court or trial defense counsel was responsible for the failure of a witness to appear on the defendant's behalf, it was still incumbent upon the defendant, as the appellant, to establish at the evidentiary hearing that the witness would provide materially favorable testimony on retrial. See *People v Pickens*, 446 Mich 298, 327 (1994); *People v Ginther*, 390 Mich 436, 442-443 (1973). The defendant failed to produce the witness or otherwise establish that her anticipated testimony would be materially favorable.



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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 19, 2018

Clerk