

# Order

Michigan Supreme Court  
Lansing, Michigan

April 11, 2025

Elizabeth T. Clement,  
Chief Justice

167753

Brian K. Zahra  
Richard H. Bernstein  
Megan K. Cavanagh  
Elizabeth M. Welch  
Kyra H. Bolden  
Kimberly A. Thomas,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 167753  
COA: 367120  
Wayne CC: 16-008127-FH

SARANTAY DEVON HOUSTON,  
Defendant-Appellant.

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On order of the Court, the application for leave to appeal the September 12, 2024 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.

CAVANAGH, J. (*concurring*).

I concur in the Court's denial of leave but write separately to highlight concerns about whether toolmark evidence satisfies the analysis under *Daubert*.<sup>1</sup>

This case returns to this Court's attention for the second time, following our remand for an evidentiary hearing in the trial court. The Court also vacated the portion of the Court of Appeals opinion addressing toolmark identification evidence.<sup>2</sup> After a hearing, the trial court rejected defendant's motion for new trial. The Court of Appeals has now affirmed. Defendant has filed an application for leave to appeal, claiming, as he did in the Court of Appeals, that trial counsel was ineffective for failing to cross-examine the prosecution's expert and for failing to request a *Daubert* hearing as to that expert's toolmark evidence testimony.

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<sup>1</sup> *Daubert v Merrell Dow Pharm, Inc*, 509 US 579 (1993).

<sup>2</sup> We stated: "Contrary to the statement by the Court of Appeals in this case, the defendant's trial counsel was not required to choose between an alibi defense and challenging the expert testimony on firearms and ballistics, as challenging the prosecutor's expert would not have undermined the defendant's alibi defense." *People v Houston*, 505 Mich 967, 967 (2020).

Defendant was convicted by jury of assault with intent to cause great bodily harm and being a felon in possession of a firearm. The conviction stems from an altercation in a bar parking lot that escalated into defendant shooting and, along with several other people, kicking and hitting the victim, Tyrone Powell. At trial, Powell identified defendant as the shooter. Defendant was a stranger to Powell, who testified that he saw defendant for about 20 seconds in total. Powell was initially not cooperative with the police, indicating that he did not want to proceed and that he was not able to give the police any leads. About six months after the shooting, Powell first identified defendant when the police showed him a photographic lineup.

The prosecution presented the testimony of expert witness Rebecca Smith from the Michigan State Police (MSP) crime lab, who matched casings found at the scene to a pistol that the prosecution argued was connected to defendant's residence. Officer Marcus Thirlkill, who executed the warrant at the residence, testified that he found medical records with defendant's name on them there. Officer Jon Gardner, who was also present, testified that pictures of defendant were recovered from the mantel of the home's fireplace. There was also testimony by officers that paperwork was recovered which contained defendant's known nicknames. But Gardner testified that he found no documents connecting defendant to the residence in the Law Enforcement Information Network or with the Secretary of State.

Using toolmark analysis techniques, expert Smith testified that all five shell casings recovered from the shooting were fired from the same firearm. Smith entered the samples of one of the cartridge cases into the National Integrated Ballistic Information Network, which rendered a hit to another case. Smith compared test shots from the other case to the recovered fired cartridge cases from the shooting and determined that the recovered casings came from the same Glock pistol.

At the evidentiary hearing, Smith testified that firearm examination is based on objective science and methods, but that subjectivity comes in when one examiner may come to one conclusion versus another examiner as to whether there are sufficient similarities between a gun and a bullet casing. She further testified there is no threshold of sufficient agreement among individual characteristics for a match—that is, whether there is a match is completely up to the individual examiner. Smith outlined the methods that she used to determine that the casing that had come from the shooting scene matched the gun that was found at the house. She testified that her identification was based on her observation of a sufficient agreement of the individual characteristics. Smith further testified that her observations were rooted in her knowledge, experience, and training. She stated that her findings are verified by another examiner at the MSP lab. She stated that the MSP lab does not track a false positive error rate for matches. She also testified that

she has never failed an annual proficiency test. Finally, she agreed that an examiner cannot say that they have matched casings to a gun exclusive to all other guns in the world.

Defendant challenges trial counsel’s failure to request a *Daubert* hearing on the toolmark evidence testimony. As Justice MCCORMACK has previously observed, “I believe there are serious questions about whether [toolmark] evidence has an adequate scientific foundation to allow its admission under MRE 702.” *People v McAdoo*, 497 Mich 975, 975 (2015) (MCCORMACK, J., concurring). As to the casings evidence here, Smith explained at the evidentiary hearing that whether there are sufficient similarities between a gun and a bullet casing is a subjective conclusion with no standardized threshold of similarities for a match. This seemingly high level of subjectivity may be a problem for reliability, because the method must be objective enough that it could be replicated and yield the same results. See MRE 702(c), (d) (trial court must consider whether “the testimony is the product of reliable principles and methods” and whether “the expert’s opinion reflects a reliable application of the principles and methods to the facts of the case.”). Smith was also unable to express the error rate for her methodology to inform the reliability of her testimony. See *id.*

And as defendant highlights, several courts have prohibited testimony about shell-casing matching in particular. For example, in *United States v Shipp*, 422 F Supp 3d 762, 783 (EDNY, 2019), the examiner’s testimony was circumscribed, and he was prohibited from testifying, “to any degree of certainty, that the recovered firearm is the source of the recovered bullet fragment or the recovered shell casing.” In *United States v Adams*, 444 F Supp 3d 1248, 1267 (D Or, 2020), the district court prohibited any evidence relating to the examiner’s methodology or conclusions that indicated whether the shell casings matched the gun in question. The court observed in its ruling that the examiner’s results did not appear to be the product of scientific inquiry, because “[n]othing in [the examiner’s] testimony explains how or why he reached his conclusion in any quantifiable, replicable way.” *Id.* at 1266. Our Court has yet to evaluate whether toolmark evidence, and especially casings-matching evidence, is sufficiently reliable under MRE 702.

However, I concur in the denial of leave because defendant has not done enough to show that the expert’s conclusions were the result of unreliable methods and principles in this case. Despite securing funds to hire his own expert, the defense did not present an expert to testify in his favor at the evidentiary hearing. Without such testimony or an offer of proof, defendant has not met his burden here to show that counsel was ineffective for failing to request a *Daubert* hearing.



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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 11, 2025

Clerk