Order

Michigan Supreme Court
Lansing, Michigan

June 12, 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: 169845 & (25)
COA: 376328
Oakland CC: 2021-277286-FH

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

JERMAINE MARZELL JONES,
Defendant-Appellant.

On order of the Court, the motion to expedite is GRANTED. The application for leave to appeal the March 23, 2026 order 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.

HOOD, J. (*concurring*).

I respectfully concur in the denial of the application for leave to appeal. I agree with the denial because of the present posture of the case, and the Court of Appeals still has the ability to grant the relief requested by defendant, Jermaine Marzell Jones, if necessary to fully address his ineffective-assistance-of-counsel claim.

By way of background, Jones requests raw data related to a DNA analysis that was part of the evidence leading to his convictions related to firearm possession. Jones filed a claim of appeal through appellate counsel. His counsel retained an expert to review the prosecution's DNA findings, and the expert needed certain materials to perform her review. Counsel sought disclosure of the DNA evidence presented at trial from the Oakland County Sheriff's Office and was provided with three files, but none of them contained electropherograms, which counsel explained were the graphs that depicted the DNA profiles of the samples that were tested.[1] Counsel subsequently moved to compel the

[1] See United States Department of Justice, Office of Justice Programs, *DNA for the Defense Bar* (June 2012), p 171, available at <https://www.ojp.gov/pdffiles1/nij/237975.pdf> (accessed June 2, 2026) [https://perma.cc/M3RB-U9BV] (defining "electropherogram" as

evidence, asking for discovery of the electropherograms relied on by the prosecution's expert. The prosecution refused, arguing that there is no court rule requiring postconviction discovery. The trial court denied the motion to compel without holding a hearing.

Appellate counsel moved to compel the evidence in the Court of Appeals, raising the same arguments. The Court of Appeals denied the motion without an explanation. Despite the denial of his motion, his appeal is still pending in the Court of Appeals. Now Jones seeks leave to appeal here. He asserts that his counsel cannot complete his brief without those data.

I agree with the denial of Jones's interlocutory application for leave to appeal because it is premature, and the Court of Appeals is still positioned to adequately address the central issue in his pending appeal: DNA evidence. At the outset, I acknowledge this is an underdeveloped area of our caselaw. As of the date of this statement, I have not located a Michigan case directly addressing a defendant's right (at the trial level—let alone in an appellate posture) to seek raw data related to DNA analysis (i.e., bench notes, lab logs, electropherograms, etc.). And as jurists, our technical understanding of DNA analysis is often less than precise.

I write separately to emphasize that any competent challenge to fact or opinion testimony on DNA usually requires disclosure and review of electropherograms, bench notes, and lab logs, among other things (for example, the type of analytical software used during the analysis if software was used). In other words, a competent challenge requires the data that underpin the expert's conclusions. See MCR 6.201(A)(3). This is true for at least two reasons. First, the discovery is necessary to identify potential Confrontation Clause issues (i.e., one witness testifying to a team's work). See *Bullcoming v New Mexico*, 564 US 647, 651-652, 655 (2011) (holding that the Confrontation Clause does not allow one analyst to offer "surrogate testimony" based on a "testimonial certification" report and data collected and analyzed by a different analyst who was not available to testify at trial); *Smith v Arizona*, 602 US 779, 793-804 (2024). Second, without the underlying data supporting an expert's opinions (i.e., the electropherograms that an expert is analyzing and translating into layperson's terms), a defendant must essentially take the expert's word for it.

"[t]he graphic representation of the separation of molecules by electrophoresis or other means of separation"). See also *United States v Barton*, 909 F3d 1323, 1328 (CA 11, 2018) (explaining that an electropherogram is "a visualization of the genetic data from which [an] analyst conducts [DNA] profile analysis").

Arguably, at the trial level, a defendant is entitled to what Jones now seeks. See MCR 6.201(A)(3) (mandating disclosure upon request of an expert's curriculum vitae, report or written description of the proposed testimony, the expert's opinion, "and the underlying basis of that opinion"). Practitioners routinely identify electropherograms along with lab logs and bench notes as necessary discovery for effective challenges. See, e.g., United States Department of Justice, Office of Justice Programs, *DNA for the Defense Bar* (June 2012), pp 23-31, available at <https://www.ojp.gov/pdffiles1/nij/237975.pdf> (accessed June 3, 2026) [https://perma.cc/M3RB-U9BV]. See also American Bar Association, *ABA Standards for Criminal Justice, DNA Evidence* (3d ed), pp 90-92, <https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/dna_evidence.pdf> (accessed June 2, 2026). That is at least true at the trial level.

Fast forward to the present posture of this case. I question Jones's ability to establish prejudice in an ineffective-assistance-of-counsel claim without a review of the data underpinning the DNA expert's opinions. Put differently, if the raw data underlying the DNA evidence is not exculpatory (for example, a potentially exculpatory peak discovered through an independent analysis of an electropherogram),[2] then the failure to obtain it would not be prejudicial. Of course, at this juncture, it is questionable how a defendant could establish prejudice without obtaining the raw data that trial counsel never got.

In sum, I agree with the denial because the merits of Jones's appeal are still before the Court of Appeals. Although his motion was denied, the panel that ultimately addresses his case may still grant the relief he requests.

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[2] See *DNA for the Defense Bar* at 24 (addressing "exculpatory peaks"); see also *Barton*, 909 F3d at 1328-1329 (explaining the analysis of "peaks" on an electropherogram).

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.

June 12, 2026

Clerk

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