

**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO,	:	Case No. 2024-0854
Appellant,	:	
v.	:	On Appeal from the Hamilton
	:	County Court of Appeals
ELIJAH BLAINE ROBERTS,	:	First Appellate District
	:	
Appellee.	:	Court of Appeals
	:	Case No. C-220615

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**MERIT BRIEF OF AMICUS CURIAE OFFICE OF THE OHIO PUBLIC DEFENDER IN  
SUPPORT OF APPELLEE ELIJAH BLAINE ROBERTS**

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**STATEMENT OF INTEREST OF AMICUS CURIAE,**  
**OFFICE OF THE OHIO PUBLIC DEFENDER**

The Office of the Ohio Public Defender (OPD) is a state agency that represents indigent criminal defendants, coordinates criminal-defense efforts throughout Ohio, and contributes to the promulgation of Ohio law. The mission of the OPD is to protect and defend the rights of indigent persons by providing and supporting superior representation in the criminal and juvenile justice systems. The OPD has an interest in the present case insofar as it presents this court with the opportunity to re-establish that all litigants before the court must make arguments limited to addressing the proposition(s) of law before the court, as opposed to ancillary or antecedent matters that are not presented in the proposition of law.

**STATEMENT OF THE CASE AND FACTS**

Amicus curiae adopts the statement of the case and facts set forth in the merit brief of Appellee Elijah Blaine Roberts.

**ARGUMENT**

**Appellant's Proposition of Law: Where there is overwhelming evidence of guilt, a reviewing court errs as a matter of law by failing to find harmless the admission of isolated statements and prior acts of the defendant. The remaining evidence, standing alone, constituted overwhelming proof of Roberts' guilt.**

The State's merit brief reads as though its jurisdictional memorandum submitted two or three propositions of law, and that each of those propositions was accepted for review. More specifically, over the course of several pages the argument portion of the State's brief begins by asserting that the First District Court of Appeals 1) incorrectly resolved Mr. Roberts's substantive legal claim involving custodial interrogation, and 2) also incorrectly determined that the other-acts evidence was not admissible. (Merit Brief of Plaintiff-Appellant, pp. 8-12.) Then, the State

proceeds to argue that even if those rulings were correct, reversal was not required because the errors were harmless. (*Id.* at pp. 12-15.)

But in reality, the State submitted only one proposition of law, as is restated above, which this court has accepted for review. And, it must be noted, that proposition of law effectively concedes the correctness of the substantive determinations of the court below. That is because the accepted proposition of law challenges *only* the appellate court's determination that the errors were not harmless, and does not address at all the correctness of the appellate court's substantive rulings.

The State's attempt to revisit the substance of the appellate court's admissibility rulings is improper, because "[w]hen [this court] accept[s] a jurisdictional appeal, [it does] so on the proposition of law presented by the appellant." *State v. Wilson*, 2024-Ohio-776, ¶ 41 (Deters, J., dissenting). Or, put differently, "[r]egardless of [ ] reason or passion, [this court] should heed [its] limited role as expressed by the United States Supreme Court: '[I]n both civil and criminal cases, in the first instance and on appeal \* \* \*, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.'" *State v. Nicholas*, 2022-Ohio-4276, ¶ 84 (Kennedy, J., dissenting, quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008)).

And, importantly, this case does not constitute the first time in recent years that the Hamilton County Prosecutor's Office has attempted to reframe arguments before this court, after a case has been accepted for review. In *State v. Jordan*, Case No. 2022-0736, the State rewrote the proposition of law in its November 17, 2022, merit brief, to put it in a form substantially different from the proposition as written in its jurisdictional memorandum. In response, on the following day, Mr. Jordan filed a motion to dismiss the case or strike the State's merit brief, on the grounds that the State had argued for a proposition of law that was distinctly different from the one accepted

by the court. Later, on the same day that Mr. Jordan's motion to dismiss or strike was filed, the State filed an amended merit brief, with a statement of the proposition of law that comported with the proposition set forth in the jurisdictional memorandum. In light of the filing of the amended merit brief, the motion to dismiss or strike was found to be moot.

In other instances where a party has attempted to make arguments that were patently outside the scope of the proposition of law that the party originally put forth, this court has properly narrowed review to the actual issue presented by the accepted proposition of law. One recent example of this approach can be found in *Bliss v. Johns Manville*, 2022-Ohio-4366. In *Bliss* the proposition of law before the court was “[f]ollowing a favorable verdict based on a full record, de novo review of a trial court’s decision to deny summary judgment cannot include weighing the evidence against the non-moving party, overlooking evidence, and misapplying legal definitions created by the supreme court.” *Id.* at ¶ 9. Then, when Mr. Bliss attempted to also argue in his merit brief that this court “should ‘clarify’ when expert testimony is appropriate in cases like this,” this court observed that “this argument—and any other arguments regarding the admissibility of the expert’s report—are beyond the scope of the proposition of law we accepted for review in this appeal.” *Id.* at ¶ 18. Therefore, Mr. Bliss’s argument about admissibility was not considered by this court: “For purposes of our analysis here, we must accept the conclusion of the Sixth District regarding the admissibility of the expert’s affidavit.” *Id.*

Similarly, here, the accepted proposition of law concerns only what should occur *after* an appellate court’s particular admissibility findings. Therefore, the State’s improper attempt to have this court address the *substance* of the admissibility findings below must be rejected, in the same way that in *Bliss* the appellant’s improper argument was not considered, and the court accepted “the conclusion of the Sixth District regarding [ ] admissibility.”

## **CONCLUSION**

Nothing prevented the State, at the jurisdictional stage, from submitting propositions of law challenging the appellate court's admissibility rulings in this case. But it chose not to do so. Instead, the State submitted a single proposition of law—one that necessarily assumed that the substantive admissibility rulings were correct, by challenging *only* whether the trial court's errors require reversal. Amicus Curiae Office of the Ohio Public Defender urges this court to reject the State's improper attempt to relitigate the admissibility rulings and, further, to find in Mr. Roberts's favor on the only proposition of law that is properly before this court.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Merit Brief of Amicus Curiae Office of the Ohio Public Defender in Support of Appellee Elijah Blaine Roberts was forwarded by e-mail to Philip R. Cummings, Counsel for Appellant, phil.cummings@hcpros.org, and Michael J. Trapp, Counsel for Appellee, mjtrapp@netzero.net, on this 2nd day of December, 2024.

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