IN THE SUPREME COURT OF OHIO

STATE OF OHIO	:	SCT NO. 2023-1614
Appellant	:	
vs.	:	On Appeal from the Hamilton County Court of Appeals, First Appellate District, Case Number: C-230108
ISAIAH MORRIS	:	
Appellee		

MERIT BRIEF OF AMICI CURIAE CUYAHOGA COUNTY PUBLIC DEFENDER & OHIO ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF DEFENDANT-APPELLEE ISAIAH MORRIS

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ADDITIONAL PARTIES LISTED IN CERTIFICATE OF SERVICE

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INTRODUCTION

Police interrogated Isaiah Morris in his jail cell just hours after his initial appearance, and persisted in questioning him after he asked to talk to a lawyer. In doing so, they violated Mr. Morris' rights under both the Fifth and Sixth Amendments to the United States Constitution as well as their Ohio analogues. The first two propositions of law in this appeal address the Sixth Amendment issues—issues which are charge-oriented and give rise to suppression of any statements made in relation to charges pending at the time of the interrogation.

In contrast, the State's Proposition of Law III addresses the rights guaranteed by the Fifth Amendment—rights which apply to any statement made by the defendant, regardless of what charges were pending. Thus, suppression under the Fifth Amendment applies to any statements made where a custodial interrogation was, *inter alia*, conducted after a defendant made it reasonably known to the police that he wished to speak with counsel before continuing.

This brief only addresses the third Proposition of Law posited by the State of Ohio, with particular emphasis on the Fifth Amendment violation that occurred approximately 43 minutes into the interrogation. At that time, as quoted below, Mr. Morris told the police that he wished to confer with an attorney, yet questioning continued:

ISAIAH MORRIS: I can't talk to a lawyer?

DETECTIVE: Anybody can talk to a lawyer.

[Pause]

DETECTIVE: Anybody can talk to a lawyer.

ISAIAH MORRIS: Yeah, cause that's—we goin' to do that because I don't know what you're talking about.

(T.d. 60, pp. 13-14.)

As discussed below, a reasonable person would interpret Mr. Morris' statement "we goin' to do that" as "we goin' to talk to a lawyer," and similarly would understand that he wanted to do so specifically because he "d[id]n't know what [the interrogating officer] [was] talking about." *Id*. Thus, Mr. Morris invoked his right to counsel at this time. And because the police decided to ignore this request and instead keep questioning Mr. Morris, his statements from that point forward must be suppressed.

INTEREST OF AMICI

The Cuyahoga County Public Defender represents a plurality of the criminal defendants in Cuyahoga County. The Public Defender represents approximately one-third of all indigent defendants in criminal felony cases, almost all indigent misdemeanor defendants in the Cleveland Municipal Court, and a large number of juveniles alleged to have committed crimes in the Juvenile Court. The Cuyahoga County Public Defender also represents a large number of indigent clients at the appellate court level, both in the Eighth District Court of Appeals and this Court.

The Ohio Association of Criminal Defense Lawyers is an organization of approximately 700 dues-paying attorney members. Its mission is to defend the rights secured by law of persons accused of the commission of a criminal offense; to foster, maintain and encourage the integrity, independence and expertise of criminal defense lawyers through the presentation of accredited Continuing Legal Education programs; to educate the public as to the role of the criminal defense lawyer in the justice system, as it relates to the protection of the Bill of Rights and individual liberties; and to provide periodic meetings for the exchange of information and research regarding the administration of criminal justice.

STATEMENT OF THE CASE AND FACTS

Amici defer to the Statement of the Case and Facts set forth in the merit brief of the Defendant-Appellee and incorporate that statement herein as if set forth in full.

ARGUMENT

While this Court should reject all three of the State's Propositions of Law, *amici* address only the Third Proposition in this brief. As a threshold matter, the Fifth Amendment questions raised in Proposition of Law III have the potential to resolve this case without wading into novel Sixth Amendment questions—whether those questions are resolved by this Court now or by the court of appeals on remand. Either way, as a substantive matter the State's formulation of Proposition of Law III both misstates settled law and misapplies that law to a clear and reasonably understandable request for counsel. Thus, the suppression of Mr. Morris' statements should ultimately be affirmed.

In Opposition to Proposition of Law III (as formulated by Plaintiff-Appellant State of Ohio):

> **A suspect must unambiguously request counsel, meaning a suspect must articulate a desire to have counsel present with sufficient clarity that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney.**

I. Correctly Resolving Proposition Of Law III Has The Potential To Moot The Other Issues Before This Court.

The court of appeals should have resolved the Fifth Amendment issues addressed in Proposition of Law III before turning to the Sixth Amendment. By starting with the Sixth Amendment issues, the court below unnecessarily reached issues it believed were of first impression. *See State v. Morris*, 2023-Ohio-4105, 229 N.E.3d 152, ¶ 31 (1st Dist.).

Starting instead with the Fifth Amendment would likely have enabled the court of appeals to affirm the decision of the trial court without breaking new constitutional ground. As explained

below, the third proposition of law addresses well-established principles of Fifth Amendment law rather than Sixth Amendment issues of first impression. And if the First District had first determined that police violated Mr. Morris' Fifth Amendment rights—either from the moment their interrogation started or when they refused his request to speak to a lawyer—then most or all of the incriminating statements at issue would still be suppressed.

Of course, this Court is also free to affirm the judgment below on Fifth Amendment grounds without addressing the Sixth Amendment at all. *See Joyce v. Gen. Motors Corp.*, 49 Ohio St.3d 93, 96, 551 N.E.2d 172 (1990) ("[A] reviewing court is not authorized to reverse a correct judgment merely because erroneous reasons were assigned as the basis thereof."). But in keeping with this Court's conservative approach to avoiding constitutional issues not essential to the disposition of the case before it, this Court should also consider remanding the case to the First District for resolution of the straightforward Fifth Amendment issues. *See Risner v. Ohio Dept. of Natural Resources*, 144 Ohio St.3d 278, 2015-Ohio-3731, 42 N.E.3d 718, ¶ 29 ("[W]e have stated that a court should avoid reaching constitutional issues if a case can be decided on other grounds." (quoting *In re Miller*, 63 Ohio St.3d 99, 110, 585 N.E.2d 396 (1992)).

II. The State's Argument Is Legally And Factually Wrong.

Regardless of which court ultimately addresses the Fifth Amendment here, at a minimum it compels the suppression of everything Mr. Morris said following his statement that "we goin' to do that," because no reasonable person would interpret that statement as expressing anything other than a desire to "talk to a lawyer."

A. The State's formulation of Proposition Of Law III misstates settled law to substitute a "reasonable police officer" standard for the "reasonable person standard."

The State frames this Proposition as a question of how a "reasonable **police officer**" would interpret a putative request for counsel. *See* Appellant Op. Br. at p 17. But this is not what the Fifth Amendment demands. The test is whether a "reasonable **person**" would understand that the defendant requested an attorney, not whether a "reasonable **police officer**" would have that same understanding.

The State's framing elides a settled and significant distinction. Unlike the reasonable person, the reasonable police officer is not neutral. Rather, the officer is a participant "in the competitive enterprise of ferreting out crime." *State v. Burroughs*, 169 Ohio St.3d 79, 2022-Ohio-2146, 202 N.E.3d 611, ¶ 13, quoting *Johnson v. United States*, 333 U.S. 10, 14 (1948) (recognizing that, in the Fourth Amendment context, judicial officers, and not police, are considered "neutral and detached.").

That said, even if this Court substitutes "person" for "police officer" and adopts a corrected Proposition of Law III as syllabus law, this Court must still affirm the suppression of any statement made after the defendant said "we goin' to do that"—because "do that" could only reasonably be interpreted as "talk to a lawyer."

B. A reasonable person would understand that Mr. Morris' statement invoked his right to counsel.

If the Third Proposition of Law is considered on its merits under the correct legal standard, then at a minimum this Court should hold that Mr. Morris' Fifth Amendment rights were violated at the 43-minute mark of the interrogation—when officers continued questioning Mr. Morris after he stated "we goin' to do that, because I don't know what you're talking about."

Taken in context, any reasonable person would recognize that the statement "we goin' to do that" plainly referred to speaking with a lawyer before answering more questions. The State's protestation that this statement was ambiguous ignores the dialogue that came immediately prior: (1) in the midst of questioning, Mr. Morris inquired if he could "talk to a lawyer"; (2) the detective twice replied about talking to a lawyer; and finally (3) Mr. Morris next said, "we goin' to do **that**." (T.d. 60, pp. 13-14 (emphasis added).) No other antecedent topic or action is so much as suggested by this exchange, never mind understandable by a reasonable person.

And if there were any doubt, Mr. Morris removed it when he went on to then say that he wanted to do "that" "because I don't know what you're talking about"—thereby tethering the need to see an attorney to the interrogation that was then taking place. Here too, a reasonable person would understand that the words following "because" are "the reason that" an event is occurring. *Because*, OXFORD ENGLISH DICTIONARY 746 (1933 ed.); *see also Because*, CHAMBERS 21ST CENTURY DICTIONARY 115 (1996 ed.) ("for the reason that, * * * by reason of, or on account of"); *Gross v. FBL Fin. Servs.*, 557 U.S. 167, 176, 129 S.Ct. 2343, 174 L.Ed. 2d 119 (2009) (collecting authorities). Thus, a reasonable person would have understood that Mr. Morris wanted to talk to a lawyer specifically because he did not understand the officer's questions.

This link between the need to see an attorney and the immediate circumstances of the interrogation distinguishes this case from those cited by the Ohio Prosecuting Attorneys Association ("OPAA") as amicus. *See* OPAA Merit Br. at pp. 13-14 (citing *State v. Williamson*, 8th Dist. Cuy. No. 95732, 2011-Ohio-409; *State v. Jackson*, 107 Ohio St.3d 300, 2006-Ohio-1; *Kirby v. State*, 304 Ga. 472, 819 S.E.2d 468 (2018)). Focusing on "goin' to do," OPAA argues that this phrase did not necessarily indicate a present desire, as opposed to future desire, to see an attorney. But this argument fails for three reasons.

First, each of OPAA's cited cases involved statements by a defendant which did not connect the dots between a desire to see an attorney and the ongoing interrogation. Here, by contrast, Mr. Morris expressly stated that he wanted to talk to a lawyer "because [he] d[id]n't understand" what his interrogators were "talking about." (T.d. 60, pp. 13-14.) Thus, even if one accepts the premise that a request for counsel made during a custodial interrogation might sometimes be reasonably interpreted as a generalized statement unrelated to the immediate circumstances, that premise is rebutted here—Mr. Morris clearly stated that he wanted a lawyer because of the questioning taking place in that moment.

Second, OPAA's argument fails to appreciate that "talk[ing] to a lawyer" was not something that could be done instantaneously as there was no lawyer present. In such circumstances, even an immediate request to speak to counsel still necessarily anticipates that actually speaking to said lawyer will occur in the future when counsel can be contacted and a meeting arranged. Taken to its logical result, this argument would mean that the right to counsel can **only** be invoked if counsel is already in the room—as in any other circumstance, the detainee will have to wait until counsel is present before speaking with them.

Third, OPAA's argument ignores the reality that Americans say "we're going to" every day when referring to their present actions. A reasonable person would thus not have interpreted "that's what we're goin' to do" as indicating a future desire, any more than this Court would consider a defense counsel's conduct as proper in the following scenario:

PROSECUTOR: Judge, I'm going to object to that last question.

JUDGE: I'm going to sustain the objection.

DEFENSE COUNSEL (to witness): Go ahead and answer the question.

In such a case, will defense counsel avoid contempt by claiming the State had not actually

objected yet? Is there any trial judge who would conclude that "It doesn't matter, I hadn't ruled on it yet anyway?" And if defense counsel instead went on to the next question, is there any court of appeals that would say it was ineffective assistance of counsel to not wait for the trial court to rule on the previous question?

With all due respect to the OPAA, it's not going to work that way—and it will not work that way in the future, either.

CONCLUSION

For these reasons, this Court should either affirm the suppression of Mr. Morris' statements on Fifth Amendment grounds, or remand this case to the First District Court of Appeals so that they may do the same.

Respectfully submitted,

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SERVICE

A copy of the foregoing was served on counsel for all parties by email as indicated below, and by operation of the Court's e-filing system, on July 10, 2024.

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