Supreme Court of Ohio Clerk of Court - Filed May 01, 2024 - Case No. 2023-1149

In the
Supreme Court of Ohio

STATE OF OHIO,	:	Case No. 2023-1149
	:	
Appellee,	:	On Appeal from the
	:	Cuyahoga County
v.	:	Court of Appeals,
	:	Eighth Appellate District
MICHAEL RILEY,	:	
	:	Court of Appeals
Appellant.	:	Case No. CA-23-112302

MERIT BRIEF OF *AMICUS CURIAE* OHIO ATTORNEY GENERAL DAVE YOST IN SUPPORT OF APPELLEE STATE OF OHIO

JOSEPH C. PATITUCE (0081384)
MEGAN M. PATITUCE (0081064)
Patituce & Associates, LLC
16855 Foltz Industrial Parkway
Strongsville, Ohio 44149
(t) 440-471-7784
(f) 440-398-0536
attorney@patitucelaw.com

Counsel for Appellant
Michael Riley

MICHAEL C. O'MALLEY (0059592)
Cuyahoga County Prosecutor
KRISTEN HATCHER (0093864)
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, OH 44113
(t) 216-443-7800
(f) 216-443-7602
khatcher@prosecutor.cuyahogacounty.us

Counsel for Appellee
State of Ohio

DAVE YOST (0056290)
Attorney General of Ohio

T. ELLIOT GAISER* (0096145)
Solicitor General
Counsel of Record
ZACHERY P. KELLER (0086930)
Deputy Solicitor General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
(t) 614-466-8980
(f) 614-466-5087
thomas.gaiser@ohioattorneygeneral.gov

Counsel for *Amicus Curiae*
Ohio Attorney General Dave Yost

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTRODUCTION 1

STATEMENT OF *AMICUS* INTEREST 2

STATEMENT OF THE CASE AND FACTS 2

ARGUMENT 10

Amicus Curiae Ohio Attorney General's Proposition of Law: 10

A trial court's verbatim adoption of a party's proposed findings of fact and conclusions of law is not, in and of itself, a legal error. 10

I. The Court should dismiss this case as improvidently accepted. 11

A. After Riley filed his notice of appeal, the trial court lost jurisdiction to enter findings of fact and conclusions of law. 11

B. Dismissal is the best course. 15

II. A trial court's verbatim adoption of a party's proposed findings and conclusions does not constitute legal error. 19

A. Under Ohio's Constitution, this Court prescribes procedural rules through a formal rulemaking process, not through *ad hoc* decisions. 19

B. Presently, this Court's procedural rules do not prohibit trial courts from adopting a party's proposed findings of fact and conclusions of law. 21

C. Riley's contrary arguments are unpersuasive. 23

CONCLUSION 31

CERTIFICATE OF SERVICE 32

TABLE OF AUTHORITIES

Page(s)

Cases

Anderson v. Bessemer City,
470 U.S. 564 (1985) 23, 29

Byrd v. Smith,
110 Ohio St. 3d 24, 2006-Ohio-3455 21

Chambers v. Mississippi,
410 U.S. 284 (1973) 28

Daher v. Cuyahoga Cmty. College Dist.,
155 Ohio St. 3d 271, 2018-Ohio-4462 19

Disciplinary Counsel v. Kramer,
149 Ohio St. 3d 425, 2016-Ohio-5734 .... 20, 21

Drexler v. Spahn,
No. 21-1368, 2022 U.S. App. LEXIS 33002 (10th Cir. Nov. 30, 2022) 24

Dunbar v. State,
136 Ohio St. 3d 181, 2013-Ohio-2163 .... 12, 15

H.R. v. P.J.E.,
— Ohio St. 3d —, 2023-Ohio-4185 .... 1, 11, 14

In re Admin. Actions,
123 Ohio St. 3d 1431, 2009-Ohio-5510 20

In re Oliver,
333 U.S. 257 (1948) 28

In re S.J.,
106 Ohio St. 3d 11, 2005-Ohio-3215 11

Jefferson v. Upton,
560 U.S. 284 (2010) 23, 29

NLRB v. Eclipse Lumber Co.,
199 F.2d 684 (9th Cir. 1952) 24

Sandlain v. United States,
No. 20-1697, 2021 U.S. App. LEXIS 26209 (6th Cir. Aug. 30, 2021) 24

Sizemore v. Smith,
6 Ohio St. 3d 330 (1983) 13

State ex rel. Allenbaugh v. Sezon,
171 Ohio St. 3d 573, 2023-Ohio-1754 .... 11, 14

State ex rel. Dobson v. Handwork,
159 Ohio St. 3d 442, 2020-Ohio-1069 .... 12, 14

State ex rel. Elec. Classroom of Tomorrow v. Cuyahoga County Court of Common Pleas,
129 Ohio St. 3d 30, 2011-Ohio-626 11

State ex rel. Mather v. Oda,
— Ohio St. 3d —, 2023-Ohio-3907 12

State ex rel. Penland v. Dinkelacker,
162 Ohio St. 3d 59, 2020-Ohio-3774 13

State ex rel. Roush v. Hickson,
— Ohio St. 3d —, 2023-Ohio-1696 24

State ex rel. Special Prosecutors v. Judges, Court of Common Pleas,
55 Ohio St. 2d 94 (1978) 12

State v. Athon,
136 Ohio St. 3d 43, 2013-Ohio-1956 21

State v. Bethel,
167 Ohio St. 3d 362, 2022-Ohio-783 21

State v. Bunch,
171 Ohio St. 3d 775, 2022-Ohio-4723 .... passim

State v. G.K.,
169 Ohio St. 3d 266, 2022-Ohio-2858 19

State v. Gondor,
112 Ohio St.3d 377, 2006-Ohio-6679 28

State v. Grate,
2023-Ohio-2103 (5th Dist.) 23

State v. Harper,
160 Ohio St. 3d 480, 2020-Ohio-2913 .... 16, 18

State v. Kase,
2010-Ohio-2688 (7th Dist.) 13

State v. McGraw,
2012-Ohio-3692 (8th Dist.) 8, 13

State v. McKelton,
148 Ohio St. 3d 261, 2016-Ohio-5735 4

State v. Riley,
161 Ohio St. 3d 1473, 2021-Ohio-717 6

State v. Riley,
2019-Ohio-981 (8th Dist.) .... passim

State v. Washington,
137 Ohio St. 3d 427, 2013-Ohio-4982 12

State v. Weber,
163 Ohio St. 3d 125, 2020-Ohio-6832 13

Stolz v. J & B Steel Erectors,
155 Ohio St. 3d 567, 2018-Ohio-5088 28

Tari v. State,
117 Ohio St. 481 (1927) 12, 14

Todd Dev. Co. v. Morgan,
116 Ohio St. 3d 461, 2008-Ohio-87 24

United State v. Sineneng-Smith,
140 S. Ct. 1575 (2020) 13

United States v. Alexander,
No. 22-10658, 2023 U.S. App. LEXIS 4656 (5th Cir. Feb. 23, 2023) 26

United States v. El Paso Natural Gas Co.,
376 U.S. 651 (1964).. 23

United States v. Hagar,
No. 23-3377, 2023 U.S. App. LEXIS 34378 (6th Cir. Dec. 27, 2023)................................. 26

United States v. Jones,
629 F. App'x 192 (3d. Cir. 2015) 24

United States v. Page,
No. 22-2408, 2023 U.S. App. LEXIS 17191 (7th Cir. July 7, 2023).................................... 24

Welch v. United States,
No. 1:21-cr-20137, 2023 U.S. Dist. LEXIS 138860 (E.D. Mich Aug. 8, 2023) 24

Yee v. Erie County Sheriff's Dep't,
51 Ohio St. 3d 43 (1990) 11, 12

Statutes, Rules, and Constitutional Provisions

Ohio Const. art. IV, §5 .... 1, 2, 20

App.R. 4 15

Civ.R. 1 19

Civ.R. 23 22

Civ.R. 26 22

Civ.R. 49 22

Civ.R. 52 22

Civ.R. 53 22

Crim.R. 1 19

Crim.R. 19 22

Crim.R. 57 19

Juv.R. 40 22

R.C. 109.02 2

R.C. 2923.03 .... 4, 18

R.C. 2953 21

R.C. 2953.21 13

R.C. 2953.71 .... 7, 17, 18

R.C. 2953.73 .... passim

R.C. 2953.74 .... 7, 17

R.C. 2753.73 21

Other Authorities

Case Announcements,
2023-Ohio-4695 (Dec. 27, 2023) 10

INTRODUCTION

Ostensibly, this case asks whether—and if so when—trial courts may properly adopt (verbatim) a winning party's proposed findings and conclusions. Under present law, the answer to that question is straightforward. Existing procedural rules do not prohibit trial courts from adopting the proposed conclusions of parties before them. Nor do existing procedural rules set specific parameters for the practice. Thus, a trial court's "verbatim adoption" of a party's "proposed findings of fact and conclusions of law … is not in and of itself erroneous." *State v. Bunch*, 171 Ohio St. 3d 775, 2022-Ohio-4723, ¶28 n.2. If this Court wishes to bar or limit the practice, it should do so through formal rulemaking, *see* Ohio Const. art. IV, §5(B), not through a decision in this case.

But on closer inspection, this case does not cleanly present the issue just discussed. That is because of a jurisdictional problem arising from the sequence of events below. With few exceptions, a trial court loses jurisdiction to act after an appeal is filed. *See H.R. v. P.J.E.*, — Ohio St. 3d —, 2023-Ohio-4185, ¶18 (*per curiam*). And here, Michael Riley appealed the denial of his application for DNA testing *before* the trial court adopted the State's proposed findings and conclusions. Thus, by the time the trial court took the action central to this appeal, it lacked jurisdiction. This case, it follows, is *not* a chance to clarify when a trial court may ordinarily adopt a party's proposed conclusions as its own.

Because this case is a poor vehicle for resolving the sole proposition of law this Court accepted, the Court should dismiss the matter as improvidently accepted.

STATEMENT OF *AMICUS* INTEREST

The Attorney General is Ohio's chief law enforcement officer and "shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state is directly or indirectly interested." R.C. 109.02. He is interested in the procedural rules that govern Ohio's courts, including any rules about when trial courts may adopt a party's proposed findings and conclusions. As argued below, such procedural rules should be the product of the formal rulemaking process outlined in Article IV, Section 5(B) of the Ohio Constitution. That constitutional process includes checks and balances. And that process affords everyone—including the defense bar and prosecutors—the chance to comment on the wisdom of new rules.

STATEMENT OF THE CASE AND FACTS

1. Eight years ago, in the middle of a summer night, Juan Mitchell and Tarez Steele left a Cleveland-area bar. *State v. Riley*, 2019-Ohio-981, ¶3 (8th Dist.). They were greeted by gunshots. *Id.* Those shots killed Mitchell and wounded Steele. *Id.*

Evidence revealed that Mitchell and Steele were the victims of a drive-by shooting. According to both witnesses and video recordings, "the gunfire came from the driver's side rear window of a Nissan Altima that was pulling out of the bar's parking lot." *Id.* Additional evidence soon connected Michael Riley to the shooting. Multiple witnesses reported seeing a man dressed in a red shirt and white pants (or shorts) right next to the Nissan immediately before the gunfire erupted. *Id.* at ¶¶16, 25–26. That description

matched the outfit that Riley was wearing the night of the murder. *Id.* at ¶¶20, 28, 35. Indeed, one eyewitness to the crime later confirmed that Riley *was* the man she saw by the Nissan immediately before the shooting. *Id.* at ¶¶28–29.

The police also secured surveillance footage from the crime scene. *Id.* at ¶31. The recordings showed a group of men, who appeared to be in conversation, getting into the Nissan moments before the shooting. *Id.* at ¶31–32. The group included Riley, who got into the rear driver's side of the car. *Id.* at ¶32. Within seconds of the group entering the vehicle, there were gunshots. *Id.* The video did not display who fired the shots. *Id.* at ¶37. But it did display "muzzle flashes" coming "out of the rear driver's window of the car" where Riley had entered the vehicle. *Id.* at ¶33; *accord id.* at ¶37.

On top of eyewitness testimony and surveillance footage, other evidence implicated Riley and his associates. For example, the accounts of a married couple, Melanie and Raymond Edwards, shed further light on the cooperative nature of the shooting. Melanie and Raymond knew Riley because he was their heroin dealer. *Id.* at ¶¶18, 22. Shortly after the night of the shooting, Melanie was riding in a car with two of Riley's fellow heroin dealers: Marcus and Matthew Burgess. *Id.* at ¶¶19, 22. During the car ride, Melanie overheard Matthew talking with Riley on the phone. *Id.* at ¶19. The conversation was about the shooting. Both Riley and Matthew were taking credit for being "the person that shot the guy." *Id.* Raymond also learned of the murder from the

Burgess brothers. *Id.* at ¶22. He remembered Marcus asking him to help dispose of a gun. *Id.*

Finally, the police recovered multiple bullet-shell casings at the crime scene. *Id.* at ¶17. Relevant here, the police recovered six cartridges from a .40 caliber weapon. *State v. Riley*, 2023-Ohio-2588, ¶8 (8th Dist.) ("App. Op."). Forensic analysis revealed human DNA on those cartridges. *Id.* But there was an "insufficient quantity of DNA" to yield a "full DNA profile." *Id.* (The police later recovered four other shell casings from the crime scene, fired from a different weapon. Riley Br. 1. Testing of those casings revealed no human DNA. *Id.*)

2. The State charged Riley with several crimes, including aggravated murder, murder, and attempted murder. *Riley*, 2019-Ohio-981,¶4. Riley opted for a bench trial, which took place in March 2018. *Id.*

At trial, the State submitted that Riley was the shooter, but it also presented a "complicity theory." App. Op. ¶45. Under Ohio law, individuals are complicit in a crime when they "[s]olicit or procure another to commit" an offence or if they "[a]id or abet another in committing" an offense. R.C. 2923.03(A). The State may proceed on a complicity theory during trial regardless of whether it specifically charged the defendant with complicity—so long as the State charged the defendant with the principal offense. *State v. McKelton*, 148 Ohio St. 3d 261, 2016-Ohio-5735, ¶¶244–45; *accord* R.C. 2923.03(F).

Here, at the opening of Riley's trial, the prosecution "stated that the evidence would show that Riley 'was the shooter and/or was in complicity with other shooters during this event.'" App. Op. ¶45 (quoting Trial Tr. 113–14); *see also* Trial Tr. 97–98 (discussing, before trial, the possibility of a guilty plea under a "complicity theory"). After presenting its evidence, the prosecution similarly stressed—in response to Riley's motion for acquittal—that the Court needed to view the evidence "in light of the complicity statute." Trial Tr. 577. Finally, the prosecution's closing statements again reinforced that complicity was a crucial part of the case: "the State's theory is that the defendant is the shooter in this case. . . . And if he's not the shooter, he was complicit with the murder in this case, being that he got in that car right as the shots were fired." App. Op. ¶45 (quoting Trial Tr. 599); *see also* Trial Tr. 624.

The defense also accounted for complicitly during trial. Riley's counsel asked questions and made arguments "designed to cut against a finding of complicity." App. Op. ¶45. For example, during cross examination of the State's lead detective, defense counsel challenged whether the detective could point to "any evidence" showing that Riley "was acting in complicity with anyone else in that car." Trial Tr. 572–73. Defense counsel likewise argued—both in motion practice and during closing statements—that the evidence was insufficient to support a conviction under a complicity theory. Trial Tr. 579, 613–15.

The trial court ultimately rendered a mixed verdict. It concluded that while surveillance footage suggested that "it was Mr. Riley doing the shooting," it was "impossible to determine" beyond a reasonable doubt "who among the three or more individuals" in the Nissan actually fired "the fatal and injuring shots." *Riley*, 2019-Ohio-981, ¶38 (quoting Trial Tr. 630–31). The court was also unable to determine "whether there was more than one person shooting out of that vehicle." *Id.* (quoting Trial Tr. 631). It thus found Riley not guilty of aggravated murder. *Id.* But the court found the evidence compelling that everyone in the Nissan was "legally responsible for these crimes" and that Riley "was complicit in the actions that led to" Mitchell's death and Steele's injuries. *Id.* (quoting Trial Tr. 631–32). Accordingly, the court found Riley guilty of the remaining counts. *Id.* It later sentenced Riley to 26 years-to-life in prison. *Id.* at ¶4.

3. Riley appealed his convictions. He argued, among other things, that there was insufficient evidence to support his convictions under a complicity theory. *Id.* at ¶43. The Eighth District disagreed with that argument and affirmed Riley's convictions. *Id.* at ¶¶44–54, 60. This Court later denied Riley leave to file a delayed appeal from that decision. *State v. Riley*, 161 Ohio St. 3d 1473, 2021-Ohio-717.

After his direct appeal failed, Riley filed two other unsuccessful actions in the Eighth District—an original action and a second appeal—stemming from his criminal proceedings. *See* App. Op. ¶10 n.2.

4. This brings us to the present dispute. In October 2022, Riley filed an application in the trial court for postconviction DNA testing. App. Op. ¶8. By way of background, Ohio statutory law allows a convicted offender to request DNA testing. R.C. 2953.73. To receive such testing, an otherwise eligible offender must show that the testing would be "outcome determinative." R.C. 2953.74(B)–(D). DNA testing is "outcome determinative" if such testing, viewed against all other evidence, creates "a strong probability that no reasonable factfinder would have found the offender guilty of that offense." R.C. 2953.71(L).

Riley sought new DNA testing of the six .40-caliber cartridges that police recovered at the crime scene. App. Op. ¶26; *see above* 4. Riley argued that, because of advancements in DNA testing since the time of his trial, retesting the cartridges was likely to produce new information. He further argued that he was not the person in the Nissan who fired the gunshots. App. Op. ¶39. Riley posited that, if new testing excluded him as a "a contributor of DNA" on the cartridges, the new testing would support that he was not the shooter. *Id.* As proves notable later on, Riley's application for new DNA testing was lengthy. It included a 22-page memorandum in support and over 100 pages of attached exhibits. Appl. DNA Testing & Attachments (Oct. 22, 2022). Perhaps most important to this case, Riley listed six findings that the Court was required to make in order to grant his application. *Id.* at 15–16 (pages 9–10 of Riley's memorandum in support). Riley argued that he met those requirements. *Id.*

After briefing from the State, the trial court summarily denied the application for new testing in a one-sentence decision. Journal Entry (Dec. 13, 2022).

5. Riley appealed on January 9, 2022. He argued, in part, that the trial court abused its discretion by denying his application for DNA testing without explaining the reasons for the denial. App. Op. ¶10. But on the same day that Riley appealed, the State proposed findings of fact and conclusions of law to support the trial court's denial of Riley's application. *Id.* at ¶11. Two days later—and thus two days after Riley initiated his appeal—the trial court adopted the State's proposed findings and conclusions. Journal Entry (Jan. 11, 2023).

The Eighth District affirmed the denial of Riley's application. App. Op. ¶50. Before doing so, the court addressed a threshold question: were the trial court's findings of fact and conclusions of law, entered *after* Riley initiated his appeal, properly before the appellate court? *Id.* at ¶20. The Eighth District held that they were. *Id.* at ¶22. A trial court, the Eighth District reasoned, retains jurisdiction after an appeal is filed to take actions in aid of the appeal. *Id.* at ¶21. According to the Eighth District, the trial court's explanation of its reasoning was in aid of the appeal. *Id.* at ¶¶21–22 (citing *State v. McGraw*, 2012-Ohio-3692 (8th Dist.)).

The Eighth District proceeded to address the substance of the trial court's ruling. It agreed with the trial court that Riley failed to support his application. *Id.* at ¶38. More precisely, the Eighth District held that the DNA testing Riley desired "would not have

been outcome determinative under the facts of this case." *Id.* For one thing, even if testing revealed that Riley's DNA was not on the cartridges, there was still powerful evidence "that Riley may have been the shooter." *Id.* at ¶40. That evidence included surveillance footage and Riley's own attempt to "claim credit." *Id.* But more importantly, the trial court's verdict was based on complicity, not a finding that Riley was the actual shooter. *Id.* at ¶41. And the evidence disproved any notion "that Riley was a mere bystander to this drive-by shooting." *Id.* The Eighth District therefore concluded that, even if DNA testing suggested that someone else was the shooter, "it certainly would not show that Riley was less than complicit in these offenses." *Id.* at ¶42. Along related lines, the Eighth District was unconvinced that Riley's defense—as to his complicity in the crimes—would have materially changed if he had the new testing. *Id.* at ¶43. That was in large part because the record showed "that Riley *was* tried on a complicity theory and that his defense counsel was prepared for and defended against that theory at trial." *Id.* at ¶45.

Putting all of this together, Riley failed to show "a strong probability that no reasonable factfinder would have found [him] guilty" if new testing produced "an exclusionary result." *Id.* at ¶47. Consequently, the Eighth District held that, "because postconviction DNA testing would not be outcome determinative under the facts of this case," the trial court was correct to deny Riley's application. *Id.* at ¶48.

6. Riley appealed to this Court, offering three propositions of law. First, Riley argued that the trial court erred in adopting verbatim the State's proposed findings of

fact and conclusions of law. Second, Riley asserted that the initial DNA testing results in his case amounted to an inconclusive result within the meaning of Ohio law. Third, Riley submitted that the new testing he requested would be outcome determinative if it yielded an exclusionary result.

This Court accepted *only* Riley's first proposition of law for review. *Case Announcements*, 2023-Ohio-4695 (Dec. 27, 2023).

ARGUMENT

***Amicus Curiae* Ohio Attorney General's Proposition of Law:**

> *A trial court's verbatim adoption of a party's proposed findings of fact and conclusions of law is not, in and of itself, a legal error.*

Riley's first proposition of law centers on the trial court's decision to wholly adopt the State's proposed findings of fact and conclusions of law. If the Court reaches Riley's first proposition, it should hold that under existing procedural rules there is nothing wrong with a trial court adopting a party's proposed findings and conclusions as its own. But this case does not cleanly present the question of whether—and if so when—a trial court may adopt a party's proposal. That is because, by the time the trial court adopted the State's proposal, the court lacked jurisdiction to do so.

This brief proceeds in two parts. It first argues that the Court should dismiss this case as improvidently accepted. It then addresses Riley's first proposition of law in the alternative.

I. The Court should dismiss this case as improvidently accepted.

The Court presumably accepted this case to decide if and when a trial court errs by adopting (verbatim) the winning side's proposed findings and conclusions. *See Bunch*, 171 Ohio St. 3d 775, ¶28 n.2. In the ordinary course, that question will *not* turn on the trial court's jurisdiction to act. In other words, when a trial court adopts one side's proposed findings and conclusions, the question will typically be whether the court commits *procedural* error, as opposed to *jurisdictional* error. Not so here. In this case, because the trial court acted after Riley had already initiated an appeal, the trial court no longer had jurisdiction to act. It follows that this case is a poor vehicle for offering guidance in other cases.

A. After Riley filed his notice of appeal, the trial court lost jurisdiction to enter findings of fact and conclusions of law.

1. Generally, "the mere filing of the notice of appeal divests the trial court of jurisdiction." *H.R.*, 2023-Ohio-4185, ¶18. In more precise terms, "once an appeal is perfected, the trial court is divested of jurisdiction over matters that are inconsistent with the reviewing court's jurisdiction to reverse, modify, or affirm the judgment." *State ex rel. Allenbaugh v. Sezon*, 171 Ohio St. 3d 573, 2023-Ohio-1754, ¶16 (*per curiam*) (quoting *State ex rel. Elec. Classroom of Tomorrow v. Cuyahoga County Court of Common Pleas*, 129 Ohio St. 3d 30, 2011-Ohio-626, ¶13); *accord In re S.J.*, 106 Ohio St. 3d 11, 2005-Ohio-3215, ¶9; *Yee v. Erie County Sheriff's Dep't*, 51 Ohio St. 3d 43, 44 (1990) (*per curiam*). As a corollary, when a trial court loses jurisdiction because of an appeal, but acts anyway, the action is "void."

State ex rel. Dobson v. Handwork, 159 Ohio St. 3d 442, 2020-Ohio-1069, ¶17. That label comes with significant consequences: a reviewing court must "disregard[] entirely" a void action, *Tari v. State*, 117 Ohio St. 481, 494 (1927), as if the action "never existed," *Dunbar v. State*, 136 Ohio St. 3d 181, 2013-Ohio-2163, ¶15.

These general principles come with some qualifiers. For example, when a party appeals from an interlocutory order, a trial court may resolve matters that remain pending so long as those matters are "not the subject of the appeal." *See Yee*, 51 Ohio St. 3d at 44. Even when a party appeals from a final judgment, a trial court may still address issues collateral to a judgment, such as contempt or appointment of a receiver. *See Dobson*, 159 Ohio St. 3d 442, ¶17. Most relevant here, this Court has suggested that a trial court retains jurisdiction to take post-appeal actions that are "in aid of the appeal." *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas*, 55 Ohio St. 2d 94, 97 (1978) (*per curiam*) (quotations omitted); *see also State ex rel. Mather v. Oda*, — Ohio St. 3d —, 2023-Ohio-3907, ¶17; *State v. Washington*, 137 Ohio St. 3d 427, 2013-Ohio-4982, ¶8.

Despite these suggestions, this Court's cases offer little guidance as to which trial-court actions qualify as being "in aid of the appeal." Perhaps the phrase "in aid of the appeal" just refers to the notion that trial courts may issue post-judgment orders addressing "collateral issues." *See Dobson*, 159 Ohio St. 3d 442, ¶17 (quotations omitted). But some of Ohio's courts of appeals have gone further, concluding that trial courts act "in aid of the appeal" when they belatedly explain the reasons for an appealed judgment.

See, e.g., *McGraw*, 2012-Ohio-3692, ¶18; *State v. Kase*, 2010-Ohio-2688, ¶11 (7th Dist.). Those conclusions are debatable. On the one hand, appellate courts "review judgments," not the reasoning within lower-court opinions. *State v. Weber*, 163 Ohio St. 3d 125, 2020-Ohio-6832, ¶49. Thus, in many instances, trial courts offering insight into their reasoning will not interfere with an appeal; and such reasoning may help clarify the scope of an appeal. On the other hand, appellate courts, like other courts, usually rely on the parties to present issues. *Sizemore v. Smith*, 6 Ohio St. 3d 330, 333 n.2 (1983); *see also United State v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020). In this party-presentation sense, it is fair to question whether trial courts are "aiding" an appeal when they supply belated reasons for their judgments. That is especially so when trial courts offer reasoning that counters arguments for reversal.

But regardless of whether belated reasoning *typically* aids an appeal, a final wrinkle proves critical here. Although appellate courts review judgments, *Weber*, 163 Ohio St. 3d 125, ¶49, sometimes statutory law mandates that trial courts supply their reasons for entering a particular judgment. For example, Ohio's postconviction statute requires trial courts to "make and file findings of fact and conclusions of law" when they deny postconviction relief. R.C. 2953.21(H). Ohio law regarding applications for DNA testing similarly requires that trial courts include "the reasons for the acceptance or rejection" of applications. R.C. 2953.73(D). When a statute requires that trial courts offer their reasoning, failure to do so becomes an arguable basis for reversal. *State ex rel.*

Penland v. Dinkelacker, 162 Ohio St. 3d 59, 2020-Ohio-3774, ¶3. Consequently, at least when a statute demands reasoning, a trial court's attempt to belatedly offer reasoning—after an appeal is filed—interferes with the appellate court's ability to reverse, modify, or affirm the judgment. *See Sezon*, 171 Ohio St. 3d 573, ¶16.

2. Turn then to this case. As all agree, the trial court adopted the State's proposed entry two days after Riley filed his appeal to the Eighth District. By that time, the trial court had presumptively lost jurisdiction to take further actions. *See H.R.*, 2023-Ohio-4185, ¶18. This case, moreover, does not fall within any exception to that presumption. Most relevant, the trial court's belated action did *not* aid the appeal. Because the trial court was required to supply the reasons for its judgment, *see* R.C. 2953.73(D), the trial court's entry interfered with a potential basis for reversal. Indeed, as part of his appeal below, Riley argued for reversal based on the trial court's noncompliance with R.C. 2953.73(D). App. Op. ¶10. (As discussed more in a moment, Riley has since abandoned that argument before this Court. *Below* 16. But at the time the trial court adopted the State's proposed findings and conclusions, the trial court's lack of reasoning remained an arguable basis for reversal.)

The upshot is that, after Riley appealed, the trial court lacked jurisdiction to take any action as to the State's proposal. It follows that the trial court's entry adopting that proposal is void—meaning the Court should entirely disregard it. *See Dobson*, 159 Ohio St. 3d 442, ¶17; *Tari*, 117 Ohio St. at 494. And it follows from there that this case does not

present the question of when a trial court *with jurisdiction* may adopt a party's proposed findings of fact and conclusions of law.

A quick detour into Ohio's procedural rules reinforces the above conclusions. Appellate Rule 4 addresses the interaction between the timing of an appeal and post-judgment filings before the trial court. The rule lists scenarios under which the filing of a post-judgment request tolls the time for appeal. App.R. 4(B)(2)–(3). For example, the deadline for appealing a final judgment is tolled in civil cases if a party requests findings of fact and conclusions of law. App.R. 4(B)(2)(d). Appellate Rule 4 further provides that if a party appeals before resolution of the listed post-judgment matters, the appellate court—upon any party's suggestion—"shall remand the matter to the trial court." App.R. 4(B)(2)–(3). But whatever happens on remand does not automatically become a part of the already pending appeal. Rather, the appealing party must file a new or amended notice of appeal if the party "wishes to appeal from the trial court's orders or judgments on remand." *Id.* For present purposes, the critical takeaway is this: Appellate Rule 4 respects that, absent a remand, trial courts *cannot* freely act on post-judgment filings once an appeal has begun.

B. Dismissal is the best course.

Because this Court should treat the trial court's post-appeal entry as if it never happened, *see Dunbar*, 136 Ohio St. 3d 181, ¶15, Riley's first proposition of law (about that post-appeal entry) necessarily becomes irrelevant. And Riley's first proposition was the

only proposition that this Court accepted for review. So the question becomes what to do with the case. For at least three reasons, the Court should dismiss this matter as improvidently accepted.

First, Riley has forfeited any argument that the Eighth District erred by failing to remand his case for further reasoning. Once again, statutory law requires trial courts to give their "reasons for the acceptance or rejection" of an application for DNA testing. R.C. 2953.73(D). The Eighth District held that this requirement did not necessitate remand under this case's circumstances. App. Op. ¶¶18–27. Riley chose not to challenge that holding in this Court, instead opting to focus on other topics. He has thus abandoned the issue. To be sure, forfeiture might seem odd here, given that parties cannot forfeit jurisdictional challenges. But one must remember that there are two different lower courts in play: while *the trial court* lost jurisdiction to act after Riley's appeal, *the Eighth District* still possessed jurisdiction to act on Riley's appeal. Thus, an argument challenging how the Eighth District exercised *its* jurisdiction is an argument alleging "voidable" error that Riley was free to abandon. *See State v. Harper*, 160 Ohio St. 3d 480, 2020-Ohio-2913, ¶5.

Second, and even setting preservation aside, this Court is not a court of case-specific error correction. Rather, the Court generally limits itself to deciding issues that are of broad significance. *See* S.Ct.Prac.R. 7.02(C)(2). In this case, any error resulting from the sequence of events below is not an error worthy of correction. Said another way,

given this case's unusual procedural history, providing an answer as to how the Eighth District should have proceeded will be of little use in other cases. Tellingly, despite presenting three different propositions of law for this Court's consideration, Riley did not suggest that the issue highlighted above was one warranting further attention. *See generally* Riley Mem. Supp. Jur. (Sept. 11, 2023).

Third, requiring any further proceedings regarding Riley's application will simply delay the inevitable. The Eighth District's substantive analysis below already shows why Riley's application for DNA testing is doomed on the merits, regardless of whether lower-court proceedings should have unfolded in a slightly different order.

To unpack that conclusion, it helps to revisit Riley's application. Riley sought further DNA testing of bullet casings found at the scene of the crime. He hoped that new test results would support his position that he was not the actual shooter. *See above* 7. But recall that, to ultimately succeed on his application for DNA testing, Riley needed to show that the desired testing would have been "outcome determinative." *See* R.C. 2953.74(B)–(D). That is, the testing needed to create "a strong probability that no reasonable factfinder would have found" Riley guilty. R.C. 2953.71(L). Recall also that, after Riley's bench trial, the trial court found Riley guilty of being "*complicit* in the actions that led to the death of Juan Mitchell and the injuries to Tarez Steele." *Riley*, 2019-Ohio-981, ¶38 (emphasis added) (quoting Trial Tr. 632). Although the trial court was unable

to "specifically identify" the shooter or shooters, *id.*, it remained convinced that Riley was an active participant in the crimes, *see* R.C. 2923.03(A).

Combining all this, Riley's application for DNA testing is destined for failure. At most, the testing Riley requested would provide some evidence (but hardly conclusive evidence) that one of Riley's accomplices was the actual shooter. The trial court, however, did not find Riley guilty of being the actual shooter, it found him guilty of complicity in the shooting. App. Op. ¶41. Thus, the desired testing would do nothing to undermine the trial court's verdict, even if it yielded "a positive match to someone else who was in the car that night." App. Op. ¶42. It necessarily follows that Riley did not show a "strong probability that no reasonable factfinder would have found" him guilty under a complicity theory. *See* R.C. 2953.71(L). And that means the testing Riley seeks is *not* outcome determinative.

Given the futile nature of Riley's application, this matter should conclude now. Criminal cases, after all, must end at some point. This Court, in turn, should be reluctant to take discretionary action that needlessly "undermin[es] the finality of criminal judgments." *Cf. Harper*, 160 Ohio St. 3d 480, ¶3. Here, it makes little sense to press on with more proceedings just so that Riley's application can eventually fail for the same reasons the Eighth District has already identified. *See* App. Op. ¶¶39–48.

II. A trial court's verbatim adoption of a party's proposed findings and conclusions does not constitute legal error.

If this Court reaches the first proposition, it should hold that a trial court does not err simply because it adopts—verbatim—the winning side's proposed findings of fact and conclusions of law. Nothing in existing law, including this Court's current procedural rules, prohibits Ohio courts from accepting a party's proposed findings and conclusions. That practice, therefore, "is not in and of itself erroneous." *Bunch*, 171 Ohio St. 3d 775, ¶28 n.2. If this Court wishes to forbid the practice—or set more specific parameters on the practice—it should do so through formal rulemaking, not through a decision here.

A. Under Ohio's Constitution, this Court prescribes procedural rules through a formal rulemaking process, not through *ad hoc* decisions.

Ohio's procedural rules describe the process by which courts exercise their jurisdiction. *See, e.g.*, Crim.R. 1(A); Civ.R. 1(A). But realistically, procedural rules cannot expressly address (at least at a granular level) every conceivable step that trial courts take along the way to resolving cases. Given that reality, trial courts generally have some leeway—often called "inherent authority"—to manage cases within their jurisdiction so long as their actions do not run afoul of existing law, such as procedural rules or applicable statutes. *See State v. G.K.*, 169 Ohio St. 3d 266, 2022-Ohio-2858, ¶¶26–27; *Daher v. Cuyahoga Cmty. College Dist.*, 155 Ohio St. 3d 271, 2018-Ohio-4462, ¶12; *cf. also* Crim.R. 57(B) ("If no procedure is specifically prescribed by rule, the court may proceed in any

lawful manner not inconsistent with these rules of criminal procedure."). All of this is to say that, unless procedural rules forbid trial courts from adopting parties' proposals, it is presumably within their authority to do so.

With that point in mind, consider the process by which procedural rules come to be. The Ohio Constitution grants this Court authority to "prescribe rules governing practice and procedure in all courts of the state." Ohio Const. art. IV, §5(B). But it also establishes *how* the Court prescribes such rules. Specifically, the Constitution establishes an annual rulemaking process (occurring over roughly six months) by which the Court may propose, amend, and finalize procedural rules. *Id.* The Constitution builds checks and balances into that process. Most importantly, the General Assembly has the power to reject the Court's proposed rules. *Id.* Consequently, for a new procedural rule to go into effect, it must have this Court's explicit approval and the implicit blessing of the legislature.

This Court has taken further steps to ensure thoughtful and informed rulemaking. For example, the Court has created the Commission on Rules of Practice & Procedure to assist with its rulemaking. That commission recommends amendments to procedural rules, which this Court then publishes for public comment. *See In re Admin. Actions*, 123 Ohio St. 3d 1431, 2009-Ohio-5510. This approach ensures that interested stakeholders receive a chance to weigh in before this Court makes changes to procedural rules. *See Disciplinary Counsel v. Kramer*, 149 Ohio St. 3d 425, 2016-Ohio-5734, ¶31 (plurality op.).

The critical point for this case is that any changes to the procedural rules should be a product of formal rulemaking. *See id.* at ¶¶30–32; *see also State v. Athon*, 136 Ohio St. 3d 43, 2013-Ohio-1956, ¶27 (Kennedy, J. dissenting); *Byrd v. Smith*, 110 Ohio St. 3d 24, 2006-Ohio-3455, ¶37 (O'Donnell, J., dissenting). "Any change to the rules … should not be done without completing" the above process. *Kramer*, 149 Ohio St. 3d 425, ¶32 (plurality op.). As a result, this case should be decided under the rules as they *currently* exist.

B. Presently, this Court's procedural rules do not prohibit trial courts from adopting a party's proposed findings of fact and conclusions of law.

The task remains to apply existing procedural rules to this case. To do so, one must first decide which set of rules (civil or criminal) governs. Applications for DNA testing are a form of postconviction remedy. *See* R.C. 2953. By and large, statutory law addresses the process by which these applications are submitted and decided. *See* R.C. 2753.73. In other postconviction contexts, however, this Court has said that postconviction proceedings are civil in nature. *See State v. Bethel*, 167 Ohio St. 3d 362, 2022-Ohio-783, ¶47. Arguably then, this Court's civil rules govern to the extent statutory law leaves gaps. But any choice of procedural rules proves academic here: regardless of whether the Court views this case as civil or criminal in nature, the adoption of a party's proposals is not an error.

As things stand today, this Court's procedural rules do not prohibit trial courts from adopting a party's proposed findings and conclusions. Quite the opposite. Several

of the Court's rules anticipate that parties will submit various types of proposals to the Court over the course of a case. *See, e.g.*, Civ.R. 23(E) (proposed class settlements and dismissals); Civ.R. 26(F)(2) (proposed discovery plan); Civ.R. 49(B) (proposed interrogatories). More specific to this case, the Court's rules signal that courts and their magistrates may allow—and indeed may sometimes *require*—parties to submit proposed findings of fact and conclusions of law. *See, e.g.*, Civ.R. 52; Civ.R. 53(D)(3)(a)(ii); Crim.R. 19(D)(3)(ii); Juv.R. 40(D)(3)(a)(ii). Those rules would make little sense unless trial courts were also allowed to adopt such proposals.

A closer look at Civil Rule 52 drives the point home. That rule authorizes parties to request findings of fact and conclusions of law. But when they do so, trial courts may require "any or all of the parties to submit proposed findings of fact and conclusions of law." Civ.R. 52. That trial courts may command parties to submit proposals is a sure sign that they may also adopt proposals they agree with. And the fact that trial courts may seek proposals from "*any or all* of the parties" further implies that trial courts have the option to request proposals from only the party they substantively agree with. *Id.* (emphasis added).

Caselaw supplies additional reinforcement. Just two years ago, this Court noted that a trial court does not err simply because it adopts "verbatim" the State's "proposed findings of fact and conclusions of law." *Bunch*, 171 Ohio St. 3d 775, ¶28 n.2. Since *Bunch*, at least one Ohio appellate court has refused to invent a "yet undefined standard" as to

when trial courts "may or may not adopt from" a party's "proposed findings." *State v. Grate*, 2023-Ohio-2103, ¶36 (5th Dist.). The U.S. Supreme Court, although sometimes critical of "verbatim adoption of findings," has likewise concluded that such findings should ordinarily "be treated as findings of the court." *Jefferson v. Upton*, 560 U.S. 284, 293–94 (2010). Thus, even if adopted findings are not "the product of the workings of the [] judge's mind," they are still "formally" the court's finding and they should not "be rejected" if "supported by evidence." *United States v. El Paso Natural Gas Co.*, 376 U.S. 651, 656 (1964). Said yet another way, "even when the trial judge adopts proposed findings verbatim, the findings are those of the court and may be reversed only if" they fail the applicable standard of review. *Anderson v. Bessemer City*, 470 U.S. 564, 572 (1985).

In sum, under both current procedural rules and existing precedent, trial courts may adopt—verbatim—a party's proposed findings of fact and conclusions of law. If the Court wishes to change that going forward, it should do so through formal rulemaking.

C. Riley's contrary arguments are unpersuasive.

Riley seems to agree with much of the above analysis. He does not identify any procedural rule that bars trial courts from adopting parties' proposed findings and conclusions. Nor does he identify any procedural rule that sets specific limits on when trial courts may adopt a party's proposal. Rhetorically, Riley invites the Court to tackle the issue of verbatim adoptions "head-on." Riley Br. 4. But, in substance, Riley does not ask that the Court do anything to prohibit, or significantly curtail, the practice. Riley

instead submits a narrower rule, conveniently tailored to his case's specific timing and circumstances. *See* Riley Br. 3–4. But even in this narrow form, Riley's arguments are unconvincing.

Begin with Riley's arguments about the timing of his case. Invoking generalized principles of due process, Riley argues that—because the trial court adopted the States' proposal a few days after the State submitted it—he was deprived of a meaningful "chance to be heard." Riley Br. 3–4, 14. This argument starts with an unobjectionable premise: it is true, at least generally speaking, that courts should not issue dispositive rulings without giving the losing party a chance to be heard on the matter. *See, e.g.*, *State ex rel. Roush v. Hickson*, — Ohio St. 3d —, 2023-Ohio-1696, ¶10; *Todd Dev. Co. v. Morgan*, 116 Ohio St. 3d 461, 2008-Ohio-87, ¶¶17–18. But this premise stretches only so far. Key here, due-process principles promise *a* chance to be heard; they do not guarantee that convicted offenders will receive the final word during every round of postconviction briefing. *See, e.g.*, *United States v. Page*, No. 22-2408, 2023 U.S. App. LEXIS 17191, at *1 (7th Cir. July 7, 2023); *Sandlain v. United States*, No. 20-1697, 2021 U.S. App. LEXIS 26209, at *4 (6th Cir. Aug. 30, 2021) (chambers order); *United States v. Jones*, 629 F. App'x 192, 194 (3d. Cir. 2015) (*per curiam*); *Welch v. United States*, No. 1:21-cr-20137, 2023 U.S. Dist. LEXIS 138860, at *5 (E.D. Mich Aug. 8, 2023) (collecting authority); *see also NLRB v. Eclipse Lumber Co.*, 199 F.2d 684, 686 (9th Cir. 1952); *Drexler v. Spahn*, No. 21-1368, 2022 U.S. App. LEXIS

33002, at *10 (10th Cir. Nov. 30, 2022); *cf. also* S.Ct.Pract.R. 4.01(B) (generally forbidding replies during motion practice).

In this case, Riley had a meaningful chance to make his case as to why he should receive further DNA testing. Riley, after all, was the one who kicked off the present round of proceedings by filing his application for new DNA testing. That application was robust: it included over 20 pages of legal briefing and over 100 pages of supporting attachments. Appl. DNA Testing & Attachments (Oct. 22, 2022). Remember, also, that Riley's submissions included his own list of required findings; findings that Riley argued were justified. *See id.* at 15–16 (pages 9–10 of Riley's memorandum in support). Considering all this, the fact that the trial court failed to await another round of briefing from Riley—to get his thoughts on the State's post-briefing proposal—hardly amounts to a violation of due process.

A hypothetical sharpens the point. Imagine that a trial court needs to make a case-dispositive ruling. To ensure an informed decision, the court allows each side two rounds of briefing, with no page limits. In an abundance of caution, the court then holds a full-day hearing, giving each side a chance to present further evidence and argue their positions ad nauseum. At the end of the hearing, the court announces its conclusion from the bench and requests that the winning side propose findings to support the decision. Under that scenario, there would be no question that the losing side received a

meaningful chance to be heard. But under Riley's position, the loser would be constitutionally entitled to another round of "proposal" briefing. That cannot be right.

Riley's expectation of supplemental briefing is also at odds with the expedited review process Ohio law envisions for this area. *See* R.C. 2953.73(D). The statute governing DNA-testing requests anticipates a two-step application process: (1) eligible offenders will apply for DNA testing and (2) the State will respond to the application. R.C. 2953.73(B)–(C). The statute, in other words, does not anticipate that offenders will reply to whatever the State has to say. Instead, after the application and response, it is up to the Court to decide whether further proceedings are needed before a decision. *See* R.C. 2953.73(D).

In any event, even assuming the trial court should have given Riley more time to respond to the State's proposal, Riley fails to show prejudice. *See United States v. Hagar*, No. 23-3377, 2023 U.S. App. LEXIS 34378, at *8 (6th Cir. Dec. 27, 2023); *United States v. Alexander*, No. 22-10658, 2023 U.S. App. LEXIS 4656, at *1 (5th Cir. Feb. 23, 2023). Riley claims otherwise, saying that if given the chance he would have pointed out errors within the State's proposal. But the arguments Riley identifies largely echo things Riley already said within his initial application. *Compare* Riley Br. 8–11; *with* Appl. DNA Testing & Attachments 16–23 (Oct. 22, 2022) (pages 10–17 of Riley's memorandum in support). Thus, even stopping with trial-level proceedings, it is difficult to see how Riley was

harmed simply because he could not repackage his earlier arguments as a response to the State's proposal.

This matter, however, did not stop with the trial-level proceedings. Rather, Riley was free to argue on appeal that the trial court's findings were wrong and unduly sympathetic to the State's position. Perhaps recognizing as much, Riley strains to show that his inability to respond to the State's proposal had "cascading" effects that "permeated" appellate proceedings. Riley Br. 13. These arguments ask the Court to suspend reality. Remember that the trial court adopted the State's proposed findings and conclusions only two days into Riley's appeal. Riley therefore knew about the trial court's verbatim adoption before he filed his opening appellate brief. The Eighth District also granted Riley special leave to file a reply brief addressing the trial court's belated findings and conclusions. *See id.* at 3. The court also held oral argument months after it supplemented the record to include the trial court's findings and conclusions. *Id.* Adding things up, Riley had several chances on appeal to address this matter. And, as discussed above (at 16), Riley has at this point voluntarily abandoned his best argument: that the Eighth District should have simply ignored the trial court's belated reasoning altogether. All told, Riley's cries of prejudice ring hollow.

Four points round out this discussion. *First*, Riley's failure to develop his legal arguments only strengthens the case for dismissal. *See above* 15–18. Although Riley spends a few sentences alluding to due-process principles, he fails to develop any

detailed constitutional argument. *See* Riley Br. 4. At best, Riley stays at an incredibly high level of generality, comparing his case to cases involving much different topics. *See, e.g.*, *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973) (exclusion of critical evidence at trial); *In re Oliver*, 333 U.S. 257, 278 (1948) (imprisonment without a fair trial). Riley, moreover, does not offer any argument specific to the Ohio Constitution. This case, it follows, does not provide the Court an opportunity to consider whether the Ohio Constitution offers any unique protection in this regard. *See Stolz v. J & B Steel Erectors*, 155 Ohio St. 3d 567, 2018-Ohio-5088, ¶44 (Fischer, J., concurring).

Second, the Court should reject the invitation, made by one of Riley's amici, to inject a new proposition into this case. Specifically, the Ohio Public Defender suggests that the Court use this case to cabin *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, a case about the standard of appellate review for a trial court's postconviction findings. The Ohio Public Defender suggests that *Gondor*'s standard—which is deferential to the postconviction findings of trial courts—should not apply when trial courts adopt the findings of a party. That topic does not fit the topic this Court accepted for review. Riley's proposition of law involves the manner in which trial courts make their findings, *not* the standard of review that applies to such findings later on. Notably, in support of its argument, the Ohio Public Defender cites the U.S. Supreme Court's criticisms of verbatim adoptions. OPD Amicus Br. 5–6. But that Court has also said that verbatim adoptions remain the findings of the court "and may be reversed only if clearly erroneous."

Anderson, 470 U.S. at 572; *see also Jefferson*, 560 U.S. at 294 (leaving open the question of whether adopted findings, solicited via *ex parte* communications, warranted a "presumption of correctness"). Regardless, if the Court wishes to speak on the standard of review that applies to verbatim adoptions, it should wait for a case that better presents the issue.

Third, while this case should not turn on policy considerations, it is worth noting that verbatim adoptions are a topic on which reasonable minds can disagree. There are no doubt strong arguments for why verbatim adoptions are an undesirable practice. Most obvious, verbatim adoptions raise questions as to the carefulness and thoroughness of a trial court's review. *See Bunch*, 171 Ohio St. 3d 775, ¶28 n.2. But it does not necessarily follow that the practice should be forbidden. Many if not most trial courts have very crowded dockets. And sometimes courts, after thorough consideration, simply agree with one party over another. In those scenarios, allowing trial courts to adopt the views of a party they agree with makes the judicial process more efficient. Put it this way: many parties would presumably prefer a prompt ruling from a busy trial court even if that sacrifices getting to read the court's original prose. The point, for present purposes, is not to say which of the above considerations should win out. The point is merely that there are competing tradeoffs. The need to weigh those tradeoffs only reinforces that any change in procedural requirements should be a product of formal rulemaking—not litigation.

Fourth, and finally, buried in Riley's arguments is a surprising statement. Riley says that he was not tried under a complicity theory. Riley Br. 10. But he offers no support for that statement. That lack of support is likely because complicity was a recurring theme during his trial. *See, e.g.*, Trial Tr. 97–98, 113–14, 572–73, 577, 579, 599, 613–15, 624, 631–32. It was also a critical part of Riley's direct appeal. *See Riley*, 2019-Ohio-981, ¶¶43–54. The punchline is this: because there is no serious question that Riley was convicted of complicity, Riley has no convincing explanation for how the testing he seeks—going, circumstantially, to whether he was the actual shooter—would undermine his convictions. *See above* 17–18.

CONCLUSION

For the above reasons, the Court should dismiss this case as improvidently accepted. If the Court does reach the first proposition, it should affirm the Eighth District's decision.

Respectfully submitted,

DAVE YOST
Attorney General of Ohio

/s T. Elliot Gaiser
T. ELLIOT GAISER* (0096145)
Solicitor General
**Counsel of Record*
ZACHERY P. KELLER (0086930)
Deputy Solicitor General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
(t) 614-466-8980
(f) 614-466-5087
thomas.gaiser@ohioattorneygeneral.gov

Counsel for *Amicus Curiae*
Ohio Attorney General Dave Yost

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit Brief of *Amicus Curiae* Ohio Attorney General Dave Yost in Support of Appellee was served this 1st day of May, 2024, by e-mail on the following:

Joseph C. Patituce
Megan M. Patituce
Patituce & Associates, LLC
16855 Foltz Industrial Parkway
Strongsville, Ohio 44149
attorney@patitucelaw.com

Kristen Hatcher
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, OH 44113
khatcher@prosecutor.cuyahogacounty.us

/s T. Elliot Gaiser
T. Elliot Gaiser
Solicitor General