

26 - 5748 ORIGINAL
No. 5748

In the Supreme Court of the United States
MICHAEL T. SMITH,

Petitioner,

v.

CITY OF LAKEWOOD, OHIO,

Respondent,

On Petition for a Writ of Certiorari to the
Eighth District Court of Appeals of the State of Ohio

PETITION FOR A WRIT OF CERTIORARI

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Supreme Court, U.S.
FILED

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QUESTION PRESENTED

Whether the Due Process Clause permits a reviewing court, in applying *Jackson v. Virginia* and *Lockhart v. Nelson*, to sustain a criminal conviction by treating evidence admitted at trial only for a limited, nontruth purpose as substantive proof of an element of the offense.



PARTIES TO THE PROCEEDING

Petitioner is Michael T. Smith. Respondent is the City of Lakewood, Ohio. No party is a corporation.

RELATED PROCEEDINGS

Lakewood Municipal Court: City of Lakewood v. Smith, No. 2023-CRB-00524 (July 3, 2024) (entering final judgment of conviction and sentence).

Eighth District Court of Appeals of Ohio: Lakewood v. Smith, No. 114186, 2025-Ohio-2447 (July 10, 2025) (affirming trial court judgment).

Eighth District Court of Appeals of Ohio: Lakewood v. Smith, No. 114186 (Aug. 20, 2025) (denying application for reconsideration).

Supreme Court of Ohio: Lakewood v. Smith, No. 2025-1473, 2026-Ohio-154 (Jan. 20, 2026) (declining discretionary review).

Supreme Court of the United States: Smith v. City of Lakewood, Ohio, No. 25A1125 (Apr. 14, 2026) (Kavanaugh, J.) (extending the time to file this petition through June 19, 2026).

Eighth District Court of Appeals of Ohio: Lakewood v. Smith, No. 114186, 2026-Ohio-1763 (May 8, 2026) (denying application to reopen).

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
RELEVANT CONSTITUTIONAL PROVISIONS AND RULES	2
INTRODUCTION	3
STATEMENT	6
REASONS FOR GRANTING THE PETITION	11
A. Lower courts are divided over whether appellate sufficiency review may count limited- purpose evidence as substantive proof.	11
B. The decision below conflicts with Smith v. Arizona and with the structure of Jackson and Lockhart.....	15
C. The question presented is recurring, important, and cleanly presented in this case.....	18
CONCLUSION	21

APPENDIX CONTENTS

	Page
Appendix A: Order of the Supreme Court of Ohio Declining Jurisdiction (Jan. 20, 2026).....	1a
Appendix B: Journal Entry and Opinion of the Eighth District Court of Appeals, Lakewood v. Smith, 2025-Ohio-2447 (July 10, 2025)	2a
Appendix C: Journal Entry Denying Application for Reconsideration, Eighth District Court of Appeals (Aug. 20, 2025)	15a
Appendix D: Journal Entry and Opinion Denying Application to Reopen, Eighth District Court of Appeals (May 8, 2026).....	16a
Appendix E: Final Judgment and Sentence, Lakewood Municipal Court (July 3, 2024).....	27a
Appendix F.1: Smith's Motion in Limine Regarding Evid. R. 803(8): Limited Admissibility of Law-Enforcement Records.....	28a
Appendix F.2: Smith's Motion to Dismiss for Lack of Service or Notification by Law-Enforcement Officer.....	34a
Appendix F.3: Exhibit A to Lack-of-Service Motion (service-notice and docket materials)....	38a
Appendix F.4: Smith's Motion to Exclude Witnesses/Victim and Officers' Testimony	48a
Appendix F.5: Smith's Motion in Limine of Remaining Issues.....	52a
Appendix F.6: Certified Journal Entries Ruling on Pretrial Motions	58a
Appendix F.7: Smith's Motion in Limine to Suppress Sealed-Record Evidence	61a
Appendix F.8: Eighth District Stay and Common Pleas Sealing Entries	63a
Appendix F.9: Final Jury Instructions on Service/Notice Element.....	67a
Appendix G: Trial Transcript Excerpts Demonstrating the Purpose-Switch and Rule 29 Preservation	72a

TABLE OF AUTHORITIES

	Page(s)
CASES	
Anderson v. United States, 417 U.S. 211 (1974)	16
Cleveland v. Boone, 2018-Ohio-849 (8th Dist.)	10
Cole v. Arkansas, 333 U.S. 196 (1948)	17
Crawford v. Washington, 541 U.S. 36 (2004)	4, 16, 19
In re Winship, 397 U.S. 358 (1970)	2, 18
Jackson v. Virginia, 443 U.S. 307 (1979)	2, 5, 11, 15-16, 19, 21
Lakewood v. Smith, No. 114186, 2025-Ohio-2447	1
Lockhart v. Nelson, 488 U.S. 33 (1988)	5, 11-12, 14-17, 21
McDaniel v. Brown, 558 U.S. 120 (2010)	17
Quinn v. State, 398 So. 3d 256 (Miss. 2024)	5, 14
Smith v. Arizona, 602 U.S. 779 (2024)	4, 11, 15, 19, 21
Smith v. City of Lakewood, Ohio, No. 25A1125	2
State v. Brewer, 121 Ohio St. 3d 202, 2009-Ohio-593	14
State v. Butler, 2021 MT 124	5, 12-13
State v. Robles, 348 Conn. 1, 301 A.3d 498 (2023)	5, 12-13
State v. Tate, No. SC100676 (Mo. banc Apr. 1, 2025)	5, 13
Strongsville v. N.D., 2016-Ohio-7484 (8th Dist.)	10
Tennessee v. Street, 471 U.S. 409 (1985)	16
United States v. Bailey, 553 F.3d 940 (6th Cir. 2009)	5, 12-13
Williams v. State, 565 S.W.2d 63 (Tex. Crim. App. 1978)	5, 13
CONSTITUTIONAL PROVISIONS	
U.S. Const. amend. VI	2, 18-19
U.S. Const. amend. XIV	2, 18-19
STATUTES	
28 U.S.C. § 1257(a)	2
Ohio Revised Code § 2903.214(G)(2)	6
Ohio Revised Code § 2919.27	6-7
RULES	
Ohio Appellate Rule 26(A)	10
Ohio Appellate Rule 26(B)	11
Ohio Criminal Rule 29	5, 9-10, 20
Ohio Rule of Evidence 105	2
Ohio Rule of Evidence 801(C)	2
Ohio Rule of Evidence 803(8)	7

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Michael T. Smith respectfully petitions for a writ of certiorari to review the judgment of the Eighth District Court of Appeals of the State of Ohio.

OPINIONS BELOW

The opinion of the Eighth District Court of Appeals affirming Petitioner's conviction (App., infra, 2a-14a) is reported at Lakewood v. Smith, 2025-Ohio-2447. The Eighth District's entry denying reconsideration (App., infra, 15a) is unreported. The Supreme Court of Ohio's order declining jurisdiction (App., infra, 1a) is unreported. The Eighth District's journal entry and opinion denying reopening (App., infra, 16a-26a) is unreported. The Lakewood Municipal Court's final judgment and sentence (App., infra, 27a) is unreported.

JURISDICTION

The Eighth District Court of Appeals entered judgment affirming Petitioner's conviction on July 10, 2025. App., infra, 2a-14a. The Eighth District denied reconsideration on August 20, 2025. App., infra, 15a. The Supreme Court of Ohio declined discretionary review on January 20, 2026. App., infra, 1a. On April 14, 2026, Justice Kavanaugh granted Petitioner's application to extend the time to file this petition through June 19, 2026. See *Smith v. City of Lakewood, Ohio*, No. 25A1125. This petition is filed within that extended time. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS AND RULES

The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." That guarantee requires the State to prove every element of a criminal offense beyond a reasonable doubt and to sustain a conviction only on evidence constitutionally sufficient for that purpose. See *In re Winship*, 397 U.S. 358, 364 (1970); *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979).

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him."

Ohio Rule of Evidence 105 provides: "When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request of a party, shall restrict the evidence to its proper scope and instruct the jury accordingly."

Ohio Rule of Evidence 801(C) defines hearsay as a statement, other than one made by the declarant while testifying, "offered in evidence to prove the truth of the matter asserted in the statement."

INTRODUCTION

A limiting rule is supposed to mean something. If a trial court admits a statement only to explain why police acted, the State has not proven the statement's truth. And if a conviction depends on an element the State failed to prove with truth-bearing evidence, an appellate court should not be able to save the judgment by changing the statement's purpose after the verdict.

The decision below does exactly that. To convict the Petitioner of violating a protection order, the City had to prove that the Petitioner was served with, or otherwise had notice of, the ex parte order before he mailed a letter. The City tried to prove that element with a sealed civil-hearing transcript and Detective Heather Herpka's testimony that, based on a phone call and during her investigation, she "learned" Petitioner had been served. App., *infra*, 8a-9a.

No process server testified. No certified-mail receipt was produced. No witness with personal knowledge of the service supplied the missing element.

The Eighth District recognized the defect in the City's main proof. It held that the sealed transcript was improperly admitted and that the City had used it to establish an essential element: Petitioner's service or knowledge of the order. App., *infra*, 6a-8a. But the Court then affirmed, relying on the detective's "learned" testimony to prove the same fact. It held that "a jury could conclude, based solely on Detective Herpka's testimony," that the Petitioner had been served before mailing the letter. App., *infra*, 9a. The court, therefore, did not merely consider all evidence admitted at trial. It converted investigative background testimony into substantive proof of an element.

The trial transcript makes the switch visible. When the prosecutor asked the truth question, whether the magistrate's office indicated that service was perfected, the trial court sustained a hearsay objection and explained: "She can't tell us what someone said." The

prosecutor then rephrased the same fact as what Herpka learned "[i]n the course of [her] investigation," and the answer was allowed. App. G, *infra*, 84a. That is the evidentiary move this petition asks the Court to review.

That move matters far beyond this case. Courts admit limited-purpose evidence every day: course-of-investigation testimony, impeachment statements, expert-basis statements, background evidence, and other statements admitted for a purpose other than their truth. If reviewing courts may disregard those limits during sufficiency review, then the prosecution can avoid hearsay, personal knowledge, and confrontation constraints at trial and ask the appellate court to treat the same statements as truth evidence after conviction.

This Court's recent decision in *Smith v. Arizona*, 602 U.S. 779 (2024), confirms why the distinction is constitutional, not semantic. There, as here, the State relied on a not-for-truth theory to place an absent declarant's factual assertions before the jury.

This Court rejected that maneuver: when an expert conveys an absent analyst's statements to support an opinion, and those statements support that opinion only if true, they come in for their truth. *Id.* at 793-96. The same logic applies to sufficiency review. If an officer's "I learned" testimony supports affirmance only if the out-of-court assertion of service is true, then the reviewing court has used the statement for its truth.

Justice Scalia's opinion in *Crawford* gives that point an originalist footing: the Framers did not leave confrontation rights to the "vagaries of the rules of evidence"; reliability must be assessed in the "crucible of cross-examination." 541 U.S. at 61. A rule that admits testimony as nontruth background and then treats it as reliable truth evidence on appeal does the opposite--it lets a judicial reliability judgment substitute for the adversarial testing the Constitution prescribes.

Jackson v. Virginia and Lockhart v. Nelson do not authorize that result. Jackson asks whether record evidence could permit a rational factfinder to find each element beyond a reasonable doubt. 443 U.S. at 318-19. Lockhart holds that a reviewing court may consider evidence admitted as proof even if that evidence is later ruled inadmissible. 488 U.S. 33, 40-42 (1988). But Lockhart did not hold that evidence admitted or admissible only for a limited purpose may be repurposed on appeal as substantive proof. The difference lies between reviewing the trial record and rewriting it.

Lower courts are divided on that difference. Connecticut, Montana, Texas, the Sixth Circuit, and Missouri preserve the purpose limitation: evidence admitted for a limited purpose may be considered only for that purpose, including in sufficiency review. See *State v. Robles*, 348 Conn. 1, 73-74, 301 A.3d 498 (2023); *State v. Butler*, 2021 MT 124, ¶¶ 16-18; *Williams v. State*, 565 S.W.2d 63, 65 (Tex. Crim. App. 1978); *United States v. Bailey*, 553 F.3d 940, 943-45 (6th Cir. 2009); *State v. Tate*, No. SC100676, slip op. 10 n.7 (Mo. banc Apr. 1, 2025). Ohio and Mississippi point the other way, allowing officers "learned" or course-of-investigation testimony to supply the missing element when the prosecution's direct proof fails. See App., *infra*, 9a-11a; *Quinn v. State*, 398 So. 3d 256 (Miss. 2024).

This case is a clean vehicle. The court below identified the inadmissible exhibit, recognized that it had been used to prove an essential element, and then expressly identified the substitute evidence it used to affirm. App., *infra*, 6a-9a. The jury instructions confirm that service was an essential element. App. F.9, *infra*, 67a-71a; App. G, *infra*, 98a-99a. Petitioner preserved the service and limited-purpose problems through pretrial motions, trial objections, a Criminal Rule 29 motion, appeal, reconsideration, and reopening. App., *infra*, 5a, 10a-11a, 15a, 23a, 25a; App. F.1-F.9, *infra*, 28a-71a. If limited-purpose testimony cannot become truth evidence on

appeal, the affirmance cannot stand on the ground the Eighth District gave. This Court should grant review.

STATEMENT

1. Petitioner Michael T. Smith was charged in Lakewood Municipal Court with one count of violating a protection order. The charge arose from a certified letter Petitioner mailed to N.S., which she reported to the Lakewood Police Department on June 8, 2023. Lakewood charged Petitioner on June 16, 2023, with violating a protection order under Ohio Revised Code § 2919.27. App., *infra*, 4a. The Lakewood Municipal Court later entered final judgment and sentence. App., *infra*, 27a.

The underlying civil proceeding began when N.S. filed a petition for a civil stalking protection order against Petitioner on April 11, 2023. The Cuyahoga County Court of Common Pleas issued an ex parte protection order the same day, pending a full hearing. App., *infra*, 3a-4a. After the full hearing on July 17, 2023, the petition for a full protection order was denied. On August 16, 2023, the common pleas court adopted the magistrate's decision and terminated the ex parte order. The court then sealed the ex parte order and related records on December 18, 2023, under Ohio Revised Code § 2903.214(G)(2). App., *infra*, 4a.

The enforceability of an ex parte order for conduct occurring before dissolution is not the question presented. This petition concerns only proof: whether a reviewing court may affirm by using testimony that could lawfully serve only a limited, nontruth function as substantive proof that service or notice occurred.

2. While the criminal case remained pending, N.S. moved to unseal the protection-order records. The common pleas court granted that motion on March 8, 2024. Petitioner appealed, and the Eighth District first stayed and later vacated the unsealing order, holding that the records

should never have been unsealed. During the twelve days the records were unsealed, the City obtained the July 17, 2023 civil-hearing transcript. App., *infra*, 5a.

At the Petitioner's criminal trial, the municipal court allowed the City to introduce redacted portions of that transcript as Exhibit 3. The transcript contained the Petitioner's civil-hearing testimony about his awareness of the *ex parte* order. Petitioner objected in limine and at trial, arguing that the exhibit was inadmissible because it came from the sealed record. App., *infra*, 5a. The sealed-record motion and related stay and resealing entries are collected in Appendix F.7-F.8, *infra*, 61a-66a (record pp. 595-600).

The certified journal entries also show that the Petitioner proceeded *pro se* with standby counsel for roughly two months before counsel was reappointed. During that period, the Petitioner personally filed preservation motions directed at the precise proof problem presented here. Appendix F collects those materials, including the Evid.R. 803(8) motion addressing law-enforcement recitations (F.1, 28a-33a), the lack-of-service/notification motion (F.2, 34a-37a), Exhibit A to that motion (F.3, 38a-47a), the motion to exclude witnesses naming Detective Herpka (F.4, 48a-51a), the remaining-issues motion in limine objecting to uncertified service assertions (F.5, 52a-57a), the certified journal entries ruling on pretrial motions (F.6, 58a-60a), the sealed-record motion (F.7, 61a-62a), the stay and resealing entries (F.8, 63a-66a), and final jury instructions making service an element (F.9, 67a-71a).

The City also relied on Detective Heather Herpka. The Eighth District recognized that, to establish a violation of R.C. 2919.27(A)(2), the City had to prove both a reckless violation and that Petitioner either was served with the order or had constructive notice of it. App., *infra*, 8a. Herpka's service testimony was not testimony based on personal knowledge that she served the

Petitioner, witnessed the service, or possessed a certified receipt. It was testimony about what she "learned" from an unknown phone call during the investigation:

Q: And the date, if you remember, that the service was completed on Mr. Smith?

A: Based on that phone call, I learned that he was served with a certified letter on May 1st, 2023.

Q: In the course of your investigation into the protection order, did you learn that it was perfected [o]n Mr. Smith?

A: Yes.

App., *infra*, 9a.

The surrounding transcript shows why that testimony was not substantive proof. Earlier, the prosecutor asked what Herpka learned from Wayne County. Defense counsel objected. The trial court allowed the question only if Herpka stated what she learned, "not who said it or what was said." App. G, *infra*, 73a (Tr. 134:10-20). The same pattern continued when she testified that, "[b]ased on that phone call," she learned Petitioner was served by certified letter on May 1, 2023. App. G, *infra*, 75a-76a (Tr. 144:17-145:5).

The point became unmistakable on redirect. The prosecutor asked whether the magistrate's office "indicate[d] that the service was perfected."

Defense counsel objected: "Hearsay. This is somebody else indicating service is perfected." The court sustained the objection: "She can't tell us what someone said." The prosecutor immediately rephrased the question as whether, "[i]n the course of [her] investigation," Herpka learned that service was perfected. Herpka answered yes. App. G, *infra*, 84a (Tr. 161:4-18).

Cross-examination confirmed the missing proof. Herpka admitted that the protection order listed a Seven Hills address that was not the Petitioner's address, that the Wayne County sheriff's attempt to serve the Petitioner failed, that she had no certified letter, no copy of any certified letter, no knowledge of the letter's contents, and no certified-mail receipt. App. G, *infra*, 79a-82a (Tr. 156:5-159:15).

Petitioner preserved the point at trial in the same words the jury instructions later used. At the close of the City's case, he moved for acquittal because there was no sufficient proof that he had been shown a copy of the order or informed of it by a judge, magistrate, or law-enforcement officer before the alleged violation. App. G, *infra*, 85a-87a (Tr. 166:19-168:2). The City's response confirmed the purpose-switch: it relied on Herpka's investigation and the sealed civil-hearing statement to prove service. App. G, *infra*, 87a-88a (Tr. 168:8-169:9).

The City then used the "learned" testimony for its truth in closing. It argued that Herpka's investigation "revealed that service was perfected on May 1st," acknowledged that it would not produce "a copy of the card or the card itself," and told the jury that Herpka's testimony about her investigation proved service. App. G, *infra*, 95a-97a (Tr. 184:20-186:16).

The final instructions made service an element and defined service as being shown the order or informed by a judge, magistrate, or law-enforcement officer. App. G, *infra*, 98a-99a (Tr. 194:20-195:8).

At the close of the City's case, Petitioner moved for a judgment of acquittal under Criminal Rule 29. The motion was denied, and the jury found the Petitioner guilty. App., *infra*, 5a-6a. The court sentenced the Petitioner to 180 days in jail, with 120 days suspended; a \$1,000 fine, with \$600 suspended; court costs; and five years of community-control supervision. App., *infra*, 6a, 27a.

3. A divided Eighth District panel affirmed. App., *infra*, 2a-14a. The court held that the sealed transcript was improperly admitted. It reasoned that the records should never have been unsealed, that properly sealed court records are not public records, and that the City had identified no authority permitting the use of erroneously acquired sealed records as evidence in a criminal prosecution. App., *infra*, 6a-7a.

The court also held that the Petitioner was prejudiced because the City introduced Exhibit 3 to prove an essential element: the Petitioner's service or knowledge of the ex parte protection order. App., *infra*, 8a. It nevertheless found the error harmless by relying on Herpka's testimony to prove the same fact. The court stated: "We find that Detective Herpka's testimony establishes Smith's guilt beyond a reasonable doubt by proving the same fact for which the erroneously admitted exhibit had been offered, namely, Smith's knowledge of the ex parte protection order. A jury could conclude, based solely on Detective Herpka's testimony, that Smith was served the ex parte protection order before he sent the letter to N.S." App., *infra*, 9a.

The panel then rejected Petitioner's Crim.R. 29 sufficiency challenge on the same ground, stating that Herpka testified that she learned during her investigation that Petitioner had been served on May 1, 2023. App., *infra*, 10a-11a. The court separately rejected Petitioner's argument that the later denial and dissolution of the full protection order retroactively eliminated the ex parte order. App., *infra*, 11a. That enforceability issue is not presented here.

Judge Eileen A. Gallagher dissented. She would have held that admitting evidence from the CSPO hearing or anything related to the sealed record was an error and was not harmless. App., *infra*, 13a-14a.

4. Petitioner sought reconsideration under Ohio Appellate Rule 26(A). The Eighth District denied reconsideration on August 20, 2025, stating that the cases raised in the application, *Strongsville v. N.D.*, 2016-Ohio-7484 (8th Dist.), and *Cleveland v. Boone*, 2018-Ohio-849 (8th Dist.), were not cited or argued in the appeal and therefore could not be raised for the first time on reconsideration. App., *infra*, 15a. The Supreme Court of Ohio declined discretionary review on January 20, 2026. App., *infra*, 1a.

5. Petitioner also filed a separate application to reopen under Ohio Appellate Rule 26(B), arguing that appellate counsel should have presented the service, hearsay, confrontation, and switch-of-purpose issues more directly. App., infra, 16a-17a. On May 8, 2026, the Eighth District denied reopening. App., infra, 16a, 26a.

Although the reopening court denied relief, it acknowledged that appellate counsel had raised the issue of service. App., infra, 23a. It also described the record counsel had marshaled: certified-mail service from the clerk's office was sent to the wrong address; there was no certified-mail receipt; the attempt to serve Petitioner at his correct Wayne County address failed; the Wayne County sheriff's office told Officer Herpka that it did not serve Petitioner; and Petitioner's civil-hearing admission was inadmissible, an issue won on appeal. App., infra, 25a. Judge Gallagher dissented from the denial of reopening. App., infra, 26a.

REASONS FOR GRANTING THE PETITION

The petition should be granted for three reasons. First, lower courts are divided over whether sufficiency review must respect the purpose for which evidence was admitted. Second, the decision below conflicts with the logic of *Smith v. Arizona* and with the structure of *Jackson* and *Lockhart*. Third, the issue is recurring and cleanly presented because the court below expressly used Herpka's "learned" testimony as the sole substitute for an inadmissible exhibit that had supplied an essential element.

A. Lower courts are divided over whether appellate sufficiency review may count limited-purpose evidence as substantive proof.

1. One line of authority applies a purpose-sensitive rule: evidence admitted for one purpose remains confined to that purpose when the reviewing court asks whether the proof was sufficient. That rule follows directly from the ordinary operation of limiting instructions and

evidence rules. If the jury may consider a statement only for context, impeachment, background, or expert basis, a reviewing court may not later use the statement as proof that the asserted fact occurred.

For example, in *State v. Robles*, 348 Conn. 1, 301 A.3d 498 (2023), the Connecticut Supreme Court held that evidence offered and admitted for a limited purpose may not be used for a different purpose in determining whether the evidence was sufficient. If evidence was "used for a purpose other than the limited purpose for which it was admitted," the reviewing court "cannot consider the evidence" in the sufficiency analysis. *Id.* at 73-74. *Robles* therefore, rejects the exact transformation made below: turning a limited-use statement into substantive proof of an element.

The Montana Supreme Court applied the same principle to officer testimony offered as investigative background. In *State v. Butler*, 2021 MT 124, the prosecution elicited testimony about what an officer learned during an investigation and then used that testimony to prove an element. The court reversed, explaining that out-of-court statements admitted only for a nonhearsay purpose cannot be used as substantive evidence. *Id.* ¶¶ 16-18. An officer's "learned" testimony may explain why the officer acted; it is not proof that the learned fact is true.

The Sixth Circuit has enforced the same boundary in sufficiency review. In *United States v. Bailey*, 553 F.3d 940 (6th Cir. 2009), the court corrected its prior sufficiency analysis because it had relied on statements admitted only for impeachment. Once those impeachment-only statements were removed from the evidence available for substantive use, the remaining evidence was insufficient to support the firearm convictions. *Id.* at 943-45. *Bailey* demonstrates that Lockhart's all-evidence rule is not a license to use evidence for a purpose the trial court did not permit.

Texas applies the same limitation. The Texas Court of Criminal Appeals held in *Williams v. State*, 565 S.W.2d 63 (Tex. Crim. App. 1978), that evidence admitted only to show a scheme or system could not support the judgment of conviction. The court stated the rule directly: limited-purpose evidence "will not support the judgment of conviction" for another purpose. *Id.* at 65.

Missouri's recent decision in *State v. Tate*, No. SC100676 (Mo. banc Apr. 1, 2025) also preserves the distinction. *Tate* held that medical records admitted without limitation could be considered in sufficiency review, but the court expressly reaffirmed the limiting principle that evidence admitted for a limited purpose may be considered only for that purpose. *Id.*, slip op. 10 n.7. *Tate* is important because it accepts the all-admitted-evidence rule only where the evidence was admitted without limitation. It does not allow a reviewing court to erase a limitation.

2. The decision below follows a contrary, purpose-blind approach. The Eighth District held that the sealed civil-hearing transcript was improperly admitted and that the City had used it to prove an essential element: Petitioner's service or knowledge of the ex parte protection order. *App.*, *infra*, 6a-8a. But instead of asking whether the remaining evidence was available as substantive proof of service, the court treated Detective Herpka's "learned" testimony as proof of that same fact. It held that "a jury could conclude, based solely on Detective Herpka's testimony," that Petitioner had been served before mailing the letter. *App.*, *infra*, 9a.

That is the precise move *Robles*, *Butler*, *Bailey*, *Williams*, and *Tate* forbid. Herpka did not testify from personal knowledge that service occurred. She testified that, based on an unknown phone call, she "learned" that service had occurred. Such testimony may explain the investigation, but it is not substantive proof that the out-of-court declarant's assertion was true. The Eighth District nevertheless changed how the trial court admitted the testimony ad hoc,

counted the statement for its truth, and used it to supply the element that the inadmissible transcript had been offered to prove.

Ohio's path stems from an overextension of *State v. Brewer*, 121 Ohio St. 3d 202, 2009-Ohio-593. *Brewer* adopted *Lockhart's* rule for evidence admitted as substantive proof but later held inadmissible. *Id.* ¶¶ 19-25. *Brewer* did not decide whether a reviewing court may change the purpose of evidence after trial. It did not involve course-of-investigation testimony, impeachment-only statements, expert-basis evidence, or statements that could lawfully function only as nontruth background. The decision below extends *Brewer's* all-evidence rule from evidence admitted and used as proof to, in effect, all words the jury heard, regardless of the purpose for which those words entered the case.

Mississippi illustrates the same competing approach. In *Quinn v. State*, 398 So. 3d 256 (Miss. 2024), the State initially agreed that the lead detective would testify only about the course of investigation, and the defense argued that venue could not be proved through testimony offered only for that nontruth purpose. The Mississippi Supreme Court nevertheless reinstated the conviction after treating the detective's course-of-investigation testimony as sufficient venue evidence. Although *Quinn* addressed waiver issues, it reflects the same practical rule applied below: officer "learned" testimony, introduced as investigative background, may serve as the missing substantive proof of an element.

The division is outcome-determinative. In Connecticut, Montana, Texas, Missouri, and the Sixth Circuit, the reviewing court would ask whether *Herpka's* testimony was available as substantive proof that service occurred. If the only lawful purpose was investigative background, the testimony could not supply the missing element. In Ohio, by contrast, the court counted the

testimony because the jury heard it, even though the testimony's only legitimate function was to explain how the investigation proceeded.

The conflict also has practical force. Trial courts routinely allow officers to explain investigative steps, experts to disclose limited basis facts, witnesses to provide context, and parties to impeach with statements not admitted for their truth. If reviewing courts must respect those limits, the State must prove every element with evidence available for that purpose. If reviewing courts may ignore those limits, the State can avoid the hearsay, personal knowledge, and confrontation requirements at trial, and then ask the appellate court to treat the same evidence as substantive proof after conviction.

This Court should grant review to decide whether "all evidence admitted" means evidence admitted for the purpose used to sustain the conviction, or whether it includes limited-purpose evidence repurposed on appeal as proof of guilt.

B. The decision below conflicts with *Smith v. Arizona* and with the structure of *Jackson and Lockhart*.

1. The decision below is inconsistent with *Smith v. Arizona*. In *Smith*, the State argued that an expert's repetition of an absent analyst's statements was not offered for the truth, but only to explain the basis for the expert's opinion. This Court rejected that rationale. When an out-of-court statement supports the State's proof only if true, the statement is being used for its truth. 602 U.S. at 793-96.

The point is not limited to forensic experts. *Smith* clarifies how courts must identify truth-use. A statement is not kept outside hearsay or confrontation analysis merely because the State labels it "basis," "background," "context," or "course of investigation." Courts must ask

what work the statement actually does. If the statement supplies the factual predicate that makes the State's proof succeed, it functions as proof of the matter asserted.

Herpka's testimony functioned exactly that way. Her statement that she "learned" Petitioner was served helped the State only if the underlying out-of-court assertion was true. The Eighth District did not use the testimony to understand why Herpka investigated, charged, or interviewed someone. It relied on the testimony to prove the event itself: the service of the order. App., *infra*, 9a-11a. That is truth-use under Smith.

The same conclusion follows from this Court's broader confrontation cases. Crawford permits statements to be used for genuinely nontruth purposes, 541 U.S. 36, 59 n.9 (2004), and Tennessee v. Street explains that the confrontation concern ebbs when a statement's truth is not at issue, 471 U.S. 409, 414 (1985). But those cases depend on the premise that the statement remains confined to a nontruth use. When the reviewing court later uses the statement as proof that service occurred, the nontruth premise collapses. See also Anderson v. United States, 417 U.S. 211, 219-20 (1974).

That is especially serious where, as here, the missing fact concerns a formal legal act. Service of a court order is a highly documented process. It is the act that made Petitioner's conduct criminal under the theory submitted to the jury. The final jury instructions required the City to prove beyond a reasonable doubt that Petitioner was served and recklessly violated the order, and defined service as being shown the order or informed by a judge, magistrate, or law-enforcement officer. App. F.9, *infra*, 67a-71a (record pp. 678-682).

2. The decision below also distorts Jackson and Lockhart. Jackson asks whether "record evidence" could permit a rational trier of fact to find guilt beyond a reasonable doubt. 443 U.S. at 318-19. That inquiry presupposes a stable trial record. A reviewing court may draw reasonable

inferences from evidence; it may not alter the evidentiary purpose that defined what the evidence was.

Lockhart likewise does not authorize a switch in purpose. Lockhart held that the Double Jeopardy Clause does not bar retrial when a conviction is reversed because evidence admitted as proof was later held inadmissible. 488 U.S. at 40-42. *McDaniel v. Brown* later quoted Lockhart to explain that sufficiency review generally considers all evidence admitted by the trial court, even if later ruled inadmissible. 558 U.S. 120, 131 (2010). But neither case addressed evidence admitted only for a limited, nontruth purpose. Neither case held that a reviewing court may expand the use of the evidence after the verdict.

That distinction is essential. Evidence later held inadmissible as proof was at least used at trial as proof. The Defendant knew the State was asking the factfinder to treat it that way and could respond accordingly. Limited-purpose evidence is different. The defendant is entitled to rely on the limitation in shaping objections, cross-examination, rebuttal, jury-instruction requests, and trial strategy. See *Cole v. Arkansas*, 333 U.S. 196, 201-02 (1948) (the state appellate court's affirmance of defendants' convictions on grounds other than those for which they were charged, tried, and convicted violated due process).

Nor can the State avoid the problem by saying that the jury heard the words. A jury hears many words that it may not use for all purposes. A limiting instruction would be meaningless if appellate courts could ignore the limitation whenever the State's substantive proof failed. And even without an express limiting instruction, testimony that is admissible only as investigative background cannot become truth evidence merely because the State needs it to sustain the conviction.

3. The decision below shows the danger of a purpose-blind rule. The transcript is not ambiguous. The trial court sustained the truth-form question as hearsay because Herpka could not tell the jury what another person said. App. G, *infra*, 84a. The State then reasked the same point that Herpka had learned in the course of her investigation, and later argued that the investigative revelation was proof that service was perfected. App. G, *infra*, 84a, 95a-97a. The City did not produce a certified-mail receipt. It did not call a process server. Herpka admitted she had no certified letter, no copy of one, no receipt, and no knowledge of what the alleged certified letter contained. App. G, *infra*, 79a-84a.

The reopening court later described the same service-related record: certified mail had been sent to the wrong address, the attempt at Petitioner's correct address had failed, Wayne County told Officer Herpka that it had not served Petitioner, and the civil-hearing admission was inadmissible. App., *infra*, 25a. Appendix F contains the preservation materials showing that Petitioner challenged the service proof and the use of law-enforcement recitations as substantive evidence. App. F.1-F.9, *infra*, 28a-71a.

Yet the Eighth District affirmed because Herpka testified that she "learned" service had occurred. App., *infra*, 9a-11a; App. G, *infra*, 75a-76a, 79a-84a. That reasoning allows the State to prove a formal element through an unnamed out-of-court declarant filtered through a police witness, then use the appellate process to turn investigative background into proof beyond a reasonable doubt. Due process and confrontation do not permit that transformation.

C. The question presented is recurring, important, and cleanly presented in this case.

1. The issue is recurring. The modern criminal trial routinely includes limited-purpose evidence. Police officers testify about what they learned and why they acted. Experts disclose assumptions or basis facts. Prosecutors offer contextual evidence to make a narrative intelligible.

Parties impeach with statements not admitted for truth. Trial courts often admit such evidence only because it is not being offered as substantive proof.

The question presented determines whether those limitations survive appellate review. If they do, the State must prove each element with evidence legally available for that purpose. If they do not, a prosecutor can obtain admission for a limited reason at trial and later defend the conviction by treating the same evidence as proof of the matter asserted. That is not a minor evidentiary point. It changes the allocation of proof and the defendant's ability to confront the witnesses whose assertions actually establish guilt.

The issue is also important because it sits at the intersection of three constitutional safeguards. First, due process requires proof beyond a reasonable doubt of every element. In *re Winship*, 397 U.S. at 364. Second, *Jackson* requires an appellate sufficiency review to test whether the record evidence supports that proof. 443 U.S. at 318-19. Third, the Confrontation Clause prevents testimonial assertions from doing truth-work against an accused unless the witness is produced or the Crawford requirements are met. *Smith*, 602 U.S. at 793-96; *Crawford*, 541 U.S. at 53-54.

This case shows how those protections can be defeated together. The sealed transcript supplied the element directly, but the Eighth District held that the exhibit was improperly admitted. App., *infra*, 6a-8a. The officer's "learned" testimony then supplied the same element indirectly, but only by accepting the truth of an out-of-court statement. App., *infra*, 9a-11a. The State, therefore, kept the conviction by substituting an untested recitation for competent proof of service.

2. This case is an unusually clean vehicle. The court below did not bury its reasoning in a general harmless-error discussion. It identified the inadmissible exhibit, identified the element

This case is therefore a suitable vehicle to answer a narrow constitutional question left open by Jackson and Lockhart and sharpened by Smith v. Arizona: when the State introduces or relies on evidence for a nontruth or limited purpose, may a reviewing court nevertheless use that evidence as substantive proof of an element? The answer should be no.

CONCLUSION

The petition for a writ of certiorari should be granted.

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