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In the
Indiana Supreme Court

Supreme Court Case No. ________________________

C.J.,	)	Appeal from the Marion County
	)	Superior Court Juvenile Division
Appellant,	)	
	)	Court of Appeals Case No.
	)	19A-JV-255
	)	
v.	)	Trial Court Case No.
	)	49D09-1810-JD-1192
	)	
	)	Hon. Geoffrey Gaither, Magistrate
State of Indiana,	)	Hon. Marilyn Moores, Judge
	)	
Appellee.	)	
	)	

RESPONSE TO PETITION TO TRANSFER

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QUESTION PRESENTED ON TRANSFER

C.J. is a 12-year-old child with an IQ of 70. After a 23-second "consultation" with his mother, C.J. signed a *Miranda* waiver and confessed during an interrogation outside the presence of his parents. In a unanimous opinion, the Court of Appeals held that C.J.'s waiver of constitutional rights was not knowing, intelligent, and voluntary under the totality of the circumstances. One issue has been presented for transfer:

I. Whether the State proved beyond a reasonable doubt that C.J.'s waiver of constitutional rights was knowing, intelligent, and voluntary.

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BACKGROUND AND PRIOR TREATMENT OF ISSUES ON TRANSFER

C.J. is a twelve-year-old child who lives with his mother, step-father, and two siblings, eleven-year-old A.J. and four-year-old A.T. Tr. at 8-9. In the fall of 2018, C.J. was a seventh grader with an IQ of 70. Tr. at 26, Ex. 3 at 54:40.

The alleged incident

On October 7, 2018, A.J. told Mother that he saw C.J. with his face close to A.T.'s butt, and Mother took the children to a local hospital. Tr. at 15, 34. Hospital staff contacted DCS, which in turn contacted law enforcement. Tr. at 16. A.T. underwent a sexual assault assessment, but no signs of assault or trauma were discovered. Tr. at 23. After meeting with a DCS caseworker and police, Mother returned home with all of her children. Tr. at 16.

The next day, Mother was contacted by Officer McAllister, a sex crimes investigator with IMPD. Tr. at 17, 38, 40. Mother took C.J., A.J., and A.T. to the police department. Tr. at 17, 24.

Officer McAllister placed C.J. in a small interrogation room with no windows, where he waited alone for 50 minutes. Ex. 3 at 4:20-53:15. Upon entering the room, C.J. immediately laid down on the bare floor in the fetal position. Ex. 3 at 4:30. At one point, C.J. put his arms inside his shirt and attempted to cover his entire body with his t-shirt while lying in the fetal position. Ex. 3 at 38:20, 39:50. C.J. sang songs and made explosion noises while waiting alone in the room. Ex. 3 at 27:00, 28:00, 39:00, 39:50, 41:20. Of the 50 minutes waiting alone in the interrogation room, C.J. spent more than two-thirds of that time on the floor despite having furniture in the room. Ex. 3 at 4:20-28:30, 37:00-46:30.

Before commencing the interrogation, Officer McCallister took Mother aside to a separate room and encouraged Mother to sign a waiver of C.J.'s constitutional rights. Tr. at 18, 22, 25-27. The officer also encouraged Mother to allow the officer to interrogate C.J. without her being present. *Id.*

The interrogation and waiver of constitutional rights

After C.J. spends 50 minutes alone, Mother enters the interrogation room in tears. Ex. 3 at 53:15. She looks to C.J. and says only that she is "sad at the whole situation." *Id.* Mother says nothing else to C.J before Officer McAllister enters the room. *Id*.

Officer McAllister acknowledges that C.J. is "tired and sleepy." Ex. 3 at 53:50. Officer McAllister tells C.J. it is "your decision," but explains that "I talk to people a lot" and "that's what I hope to do with you today." Ex. 3 at 54:00.

Officer McAllister does not begin by explaining C.J.'s *Miranda* rights. Instead, the interrogator proceeds to discuss school, video games, bikes, etc. for approximately ten minutes—establishing the guise of a "friendly" relationship with his 12-year-old interrogation target. Ex. at 53:50-1:02:00. Throughout this conversation, C.J.'s poor grammar and awkward speech patterns reflect a low-functioning 12-year-old with a 70 IQ. *Id.*

Confident that he has established a rapport with his suspect, Officer McAllister eventually gets down to business. Ex. 3 at 1:03:00. Officer McAllister emphasizes that "I think it would be good for you [C.J.] to talk to me." C.J. is told he needs to make a decision about whether to talk to the officer, and C.J. responds, "It doesn't matter to me." Ex. 3 at 1:04:45.

Officer McAllister introduces a waiver form, saying "I have a form I have to go through and I have to read a bunch of stuff to you." Ex. at 1:04:50. That "bunch of stuff," of course, is C.J.'s constitutional rights.

As if it is a forgone conclusion, Officer McAllister explains that "once this form is signed," C.J. can talk to Officer McAllister without his Mother present. Ex. 3 at 1:06:00. The officer assures both C.J. and his mother that it is "normal" to interrogate a juvenile without the parent present. *Id.*

Officer McAllister reads each line of the waiver form and waits for C.J. and Mother to state whether they understand. Ex. 3 at 1:08:00-1:11:50. Concerning the "right to remain silent," C.J. laughs and says he has heard that on television—Officer McAllister observes that television is not a realistic representation and that they "never read this stuff" on television. Ex. 3 at 1:08:27-1:08:50. With the focus and maturity of a 12-year-old, C.J. then digresses into a story about "Cops" and "Animal Planet." Ex. 3 at 1:08:27-1:09:50.

After Officer McAllister reads each of the six rights from the form, Mother and C.J. say that they understand. Ex. 3 at 1:08:00-1:11:50. Officer McAllister then explains that Mother and C.J. will go into a separate room to talk about the waiver. Ex. 3 at 1:12:00. The separate meeting between Mother and C.J.—in which Mother was expected to consult with C.J. regarding his constitutional rights—lasted 23 seconds. Ex. 3 at 1:15:10-1:15:33.

When Mother and C.J. re-enter the interrogation room, Officer McAllister says that he believes C.J. wants the interrogation to occur without his Mother, and C.J. simply replies "yes." Ex. 3 at 1:16:20.

Returning to the waiver form, Officer McAllister reads the last three lines of the form concerning waiver of rights. Ex. 3 at 1:17:00. When asked whether he understands the phrase "I expressly waive the above rights," C.J. says "No." Ex. 3 at 1:17:20. Officer McAllister says this means that C.J. understands his rights and is going to talk to Officer McAllister anyway. *Id.* C.J. then says "yes" mid-yawn. Ex. 3 at 1:17:40. C.J. and Mother sign the waiver. Ex. 3 at 1:18:10.

Mother leaves the room after telling C.J. "see you in a few minutes." Ex. 3 at 1:18:44. Over the next 40 minutes, amidst repeated accusations that C.J. is "not telling the truth" and that Officer McAllister "knows" what really happened, C.J. confesses to touching A.T.'s butt. Ex. 3 at 1:18:44-1:57:50.

After confessing to touching A.T., the officer asks C.J. why the touching was "wrong." Ex. 3 at 1:52:00. C.J. pondered the question for almost a full minute but was unable to provide any answer as to why his conduct was wrongful. Ex. 3 at 1:52:00-1:52:54.

C.J.'s arrest

After the interrogation, Officer McAllister exited the room to speak with Mother. Tr. at 48. According to Officer McAllister, Mother begged the officer to arrest C.J. because she was afraid the biological father would seek custody of A.T. if Mother brought C.J. home. Tr. at 48.

Two different officers then entered the interrogation room to arrest C.J. Ex. 3 at 3:17:45-3:18:30. While being handcuffed, C.J. asked where he is being taken. Ex. 3 at 3:18:20. When they tell C.J. he's being taken to a juvenile detention center, he asks "for how long?" Ex. 3 at 3:18:20.

Procedural history

C.J. was adjudicated a delinquent, based on allegations of Level 4 felony child molesting. Appellant's App. Vol. 2 at 167, 172-76. At the hearing, C.J. objected to admission of the confession. Tr. at 44, 47, 51, 63.

C.J. appealed, arguing that his *Miranda* waiver was not knowing, intelligent, and voluntary. The Court of Appeals held oral argument. A unanimous panel of the Court of Appeals held that C.J.'s waiver was invalid under the totality of the circumstances. *See C.J. v. State*, 19A-JV-255 (Ind. Ct. App. Jan. 23, 2020).

ARGUMENT

Indiana affords "special protection" to children when considering *Miranda* waivers. The Court of Appeals followed precedent and properly applied a totality of the circumstances analysis. The State misinterprets the substance and scope the Court of Appeals opinion, seeking to find conflicts in precedent where none exist. The State's petition is nothing short of a request to ignore the totality of the circumstances and cease giving special protection to juveniles in Indiana.

At the time of the interrogation, C.J. was a 12-year-old boy. He had an IQ of 70, which means he is borderline intellectually disabled. C.J. was not advised of the allegations or the consequences of a confession, and his behavior in the interrogation room reflected an immature child who did not comprehend the gravity of the situation. Before signing the waiver, C.J. had a 23-second *de minimis* "consultation" with his mother, who had an adverse interest to C.J. After briefing and oral argument, the Court of Appeals considered the totality of the circumstances and unanimously held C.J.'s waiver was not knowing, intelligent, and voluntary. The Court of Appeals reached the correct result. Transfer should be denied.

I. The State's Petition to Transfer seeks to lower the bar for juvenile waivers, contrary to this Court's promise of "special protection."

Indiana courts approach juvenile waivers with "special caution" and afford "special protection" to children whom police seek to interrogate. *D.M. v. State*, 949 N.E.2d 327, 333 (Ind. 2011) (quoting *In re Gault*, 387 U.S. 1, 45 (1967)); *Lewis v. State*, 259 Ind. 431, 437-39 (1972). The State's petition is an attempt to lower the bar and create case law that forces courts to rubber stamp *Miranda* waivers by children regardless of the circumstances.

The State exaggerates the scope of the Court of Appeals opinion, claiming it is now "impossible" to obtain a waiver from any juvenile in Indiana. The State is being hyperbolic. The Court of Appeals considered the totality of the circumstances in this one case. The sky is not falling.

Similarly, the State complains the opinion will "hamper the State's ability to [interrogate juveniles]." Even if that were true, the constitutional right to remain silent is not intended to benefit law enforcement. *See Miranda v. Arizona*, 384 U.S. 436, 480-81 (1966) (recognizing the "burdens" on law enforcement incident to *Miranda* holding); *Id.* at 516-17 (Harlan, J., dissenting) (recognizing that *Miranda* rights would impair law enforcement and decrease the number of confessions). Moreover, it is unclear why the State believes it is desirable for the

State to have carte blanche authority to interrogate intellectually disabled children.

The State invites this Court to disregard precedent and hold that all *Miranda* waivers by children are valid so long as an officer reads a waiver form out loud and obtains a signature. That is not the law, nor should it be. *See Berghuis v. Thompkins*, 560 U.S. 370, 384 (2010) (State must make an "additional showing" that accused understood *Miranda* rights); *Ringo v. State*, 736 N.E.2d 1209, 1212 (Ind. 2000) (when a signed waiver exists, State must still present "additional evidence" the waiver was voluntary); *Lewis*, 259 Ind. at 437-39; Ind. Code § 31-32-5-1.

The State asks this Court to ignore C.J.'s tender age; ignore his immaturity; ignore that C.J. was not advised of the alleged offense or the consequences; ignore the absence of meaningful parent-child consultation or attorney consultation; and ignore C.J.'s intellectual deficiencies. This Court is not obligated to abandon common sense and ignore the unique facts of the case. The totality of the circumstances overwhelmingly support the Court of Appeals' conclusion that the State failed to prove beyond a reasonable doubt that this child's waiver was knowing, intelligent, and voluntary.

II. *Miranda* rights and "special protection" for juveniles in Indiana.

The Indiana Constitution and U.S. Constitution guarantee to all citizens—including juveniles—the right to an attorney, to remain silent, and to be free from self-incrimination. U.S. Const. amend. V; U.S. Const. amend. VI; Ind. Const. art. 1, § 14. In addition to all protection afforded by our state and federal constitutions, Indiana Code section 31-32-5-1 provides specific safeguards and requirements for waiving a juvenile's constitutional rights.

All police interviews of a person suspected of a crime include "coercive aspects." *J.D.B. v. North Carolina*, 564 U.S. 261, 268 (2011). "[T]he pressure of custodial interrogation is so immense that it can induce a frighteningly high percentage of people to confess to crimes they never committed." *Id*. at 269 (citation omitted). The risk of false confessions is "more troubling" and "more acute" "when the subject of custodial interrogation is a juvenile." *Id.* (citing empirical studies that "illustrate the heightened risk of false confessions from youth").

A statement made during interrogation is not admissible unless the suspect "voluntarily, knowingly and intelligently" waived his rights. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). When the suspect is a juvenile, the Court should consider the question of voluntariness with "special caution." *D.M.*, 949 N.E.2d at 333 (quoting *In re Gault*, 387 U.S. at 45). This Court has recognized there should be "different standards for a juvenile" than for adults and that juveniles should be afforded "special protection." *Lewis*, 259 Ind. at 437-39.

A decision to waive constitutional rights must be "truly the product of free choice." *Miranda*, 384 U.S. at 457. It is the State's burden to prove beyond a reasonable doubt that the juvenile received all statutory and constitutional protections and that the juvenile knowingly, intelligently, and voluntarily waived his rights. *D.M.*, 949 N.E.2d at 334. The Court considers conflicting evidence favorable to the judgment, and also considers all uncontested evidence. *Id.* at 335. The question is ultimately one of constitutional law, which the Court reviews de novo. *See C.J. v. State*, 19A-JV-255, slip op. at 8 (Ind. Ct. App. Jan. 23, 2020) (citing *Brittain v. State*, 68 N.E.3d 611, 616-17 (Ind. Ct. App. 2017)).

III. C.J. did not have a full appreciation of his rights, and the Court of Appeals correctly concluded the waiver was not knowing, intelligent, and voluntary under the totality of the circumstances.

The State failed to prove beyond a reasonable doubt that C.J. knowingly and intelligently waived his *Miranda* rights. C.J. was only 12 years old. C.J. had an IQ of 70, which is far below average and represents serious cognitive deficiencies. The evidence also established C.J.'s lack of maturity and lack of comprehension of the consequences of his waiver. C.J. "consulted" with his mother—who had an adverse interest—for only 23 seconds. The Court of Appeals evaluated the totality of the circumstances and correctly held that C.J.'s waiver was invalid.

When reviewing the legitimacy of a waiver of rights, the Court must consider whether the waiver was "made with a full awareness of both the nature of the rights being abandoned and the consequences of the decision to abandon them." *D.M.*, 949 N.E.2d at 339 (citation omitted) (brackets omitted). Relevant considerations include:

> (1) the juvenile's mental and emotional maturity;
> (2) whether the juvenile understood the consequences of his statements;
> (3) whether the juvenile was informed of the delinquent act for which the juvenile was suspected;

> (4) the length of time the juvenile was held in custody before consulting with his parent;
> (5) whether there was any force, coercion, or inducement; and
> (6) whether the juvenile had been advised his *Miranda* rights.

Id. at 339-40. Additionally, "the extent to which the [parent-child] conversation aids in the [child's] waiver decision" (i.e. was the consultation beneficial) is relevant in determining whether a child knowingly and intelligently waived his rights. *Id.* at 336.

A. C.J.'s immaturity and intellectual deficiency prevented him from intelligently waiving his rights.

C.J.'s mental and emotional maturity are undeveloped and stymied his ability appreciate and intelligently waive his constitutional rights.

C.J. was only 12 years old at the time of the interrogation. Immediately before the interrogation, C.J. spent much of his time in the fetal position or face-down on the floor. At various times, C.J. attempted to fit his entire body in his t-shirt, sang songs, danced, and made explosion noises. These are the actions of an immature twelve-year-old—not an adult or even a mature teenager. The State presented no evidence that C.J. was sufficiently mature to understand his predicament and accomplish a valid waiver. In fact, the State concedes C.J.'s immaturity on appeal, suggesting that this Court completely abandon *D.M.'s* "maturity" factor.

As for intelligence and mental maturity, C.J.'s IQ is only 70, which is far below average.[1] C.J.'s low IQ places him on the low end of the borderline intellectual functioning category.[2] C.J.'s low IQ means his intelligence is significantly below average, and an IQ in that range may indicate an intellectual disability. C.J.'s below-average intelligence is a significant factor in this case.

"A defendant's mental capacity directly bears upon the question whether he understood the meaning of his *Miranda* rights and the significance of waiving his constitutional rights." *United States v. Garibay*, 143 F.3d 534, 538 (9th Cir. 1998) (holding State did not meet its burden of proving an intelligent waiver when the adult defendant's IQ was "borderline" intellectually disabled); *see also Cooper v. Griffin*, 455 F.2d 1142, 1144-46 (5th Cir. 1972) (holding two teenagers with low IQs

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[1] *See* Metro, *What's the average IQ?*, *available at* https://www.metro.us/lifestyle/whats-the-average-iq ("Anything below 70 is considered well below average and potentially indicative of a cognitive issue.").

[2] *See* VeryWellMind.com, *Borderline Intellectual Functioning*, *available at* https://www.verywellmind.com/what-is-borderline-intellectual-functioning-2161698 ("Borderline intellectual functioning refers to estimated intelligence quotient scores within the 70 to 75 range on an intelligence test with an average of 100 . . . Consistent scores within the 70 to 75 range . . . may indicate a mental disability.")

did not intelligently waive *Miranda* rights); *United States v. Aikens*, 13 F.Supp.2d 28, 34 (D.C.C. 1998) (holding 23-year-old with IQ of 71 did not intelligently waive *Miranda* rights).

Evidence of intellectual disability should carry even more weight when evaluating the waiver of a child. Research shows that a vast majority (78%) of children aged 11-13 are unable to understand and appreciate *Miranda* rights. *See* Jodi L. Viljoen et al., *Adjudicative Competence and Comprehension of Miranda Rights in Adolescent Defendants: A Comparison of Legal Standards*, 25 Behav. Sci. & Law 1 (2007). It follows that a child, like C.J., of below-average intelligence is even more unlikely to understand his rights. Juvenile Law Center's *amicus* brief amply supports this point with numerous sources.

The Court of Appeals considered C.J.'s immaturity and intelligence among the totality of the circumstances, and the panel reached the correct result.

B. C.J. was not informed of the suspected delinquent act, and he did not understand the consequences of a waiver or a confession.

C.J. did not appreciate the consequences of waiving his rights or the gravity of his situation. Generally, it would be a dubious assumption to say that a low-functioning 12-year-old understands the consequences of waiving constitutional rights and confessing to commission of a sex crime. Indeed, the *amicus brief* submitted by Juvenile Law Center establishes the fallacy of assuming children understand *Miranda* rights. As for this particular case, the evidence demonstrates that C.J. did not understand.

C.J. yawned throughout the reading of the waiver form and actually indicated his assent to waiver while yawning. After the interrogation ended, C.J. asked where he was being taken and for how long, showing he did not understand a confession would result in arrest and transportation to a detention facility. At the evidentiary hearing, Mother testified that "C.J. even told me he didn't [understand the waiver form]"—presumably during their brief "consultation." Tr. at 22

The State failed to present evidence that C.J. was "informed of the delinquent act for which he was suspected." What little is in the record indicates C.J. was not informed. Shortly before reviewing the waiver form, Officer McAllister asked, "Hey man, I think you know why you're here today," and C.J. responded "mhm." No explanation of the alleged delinquent act was actually given to C.J. prior to waiving his rights, nor an explanation of the potential consequences of committing the alleged delinquent acts.

During the interrogation, after confessing to touching A.T., the officer asked C.J. why the touching was wrong. C.J. pondered the question for a long time but was unable to provide any answer as to why his conduct was wrongful. C.J.'s inability to comprehend the wrongfulness of the alleged conduct shows that he was not fully informed of the delinquent (i.e. "criminal") act with which he was being accused. C.J.'s inability to comprehend the wrongfulness also demonstrates C.J.'s lack of mental and emotional maturity, which further weighs against waiver.

C. C.J. "consulted" with his mother for a mere 23 seconds before signing a form to waive his constitutional rights.

C.J. did not receive a meaningful, beneficial consultation with a parent prior to the waiver. C.J.'s "consultation" with his mother lasted a mere 23 seconds. Further, C.J.'s mother had an apparent adverse interest at the time of the waiver.

The amount of benefit—or lack of benefit—of a parent-child consultation is relevant in determining whether a child's waiver of constitutional rights is knowing and intelligent. *D.M.*, 949 N.E.2d at 336. Notably, the *amicus* brief makes clear that parent consultations offer little-to-no benefit. Even assuming *arguendo* that consultation with a non-attorney parent facilitates any understanding of a child's constitutional rights, the benefit in this case was nonexistent. The inordinately short period of consultation is disturbing and supports the conclusion that C.J. did not knowingly and intelligently waive his rights. *Id.* This was not—nor could it have been—a meaningful and beneficial consultation.

To make matters worse, C.J.'s mother had an adverse interest. She was the mother of the alleged victim. She drove C.J. to the interrogation and had no desire to be present or support C.J. during the interrogation. After the interrogation, the mother begged the officer to arrest C.J. because she was worried about losing custody of her other children to their biological father.

The Court of Appeals was correct when it cited this Court's decision in *D.M.* and held that the *de minimis* consultation in this case pointed to a conclusion that C.J.'s waiver was not knowing, intelligent, and voluntary.

IV. "Inappropriate action by law enforcement" is not required to conclude a child's waiver of rights was not knowing, intelligent, and voluntary.

The State claims transfer is needed because the Court of Appeals held a child's waiver was not knowing, intelligent, and voluntary without simultaneously finding "inappropriate" or illegal conduct by the interrogating officer. However, the State does not cite a single case that requires a finding of inappropriate police conduct. No such requirement exists. The issue here is whether the **<u>child</u>** understood his rights and made an intelligent waiver, not whether the officer did something illegal.

The validity of a child's *Miranda* waiver is a juvenile-focused inquiry. A waiver may be invalid for any number of reasons that have nothing to do with the interrogating officer. A juvenile waiver may occur, in conjunction with a parent, only if (1) there has been an adequate advisement; (2) the parent knowingly, intelligently, and voluntarily waives; (3) the parent has no interest adverse to the child; (4) meaningful consultation occurred between parent and child; and (5) the child knowingly, intelligently, and voluntarily waives. Ind. Code § 31-32-5-1(2); *D.M.*, 949 N.E.2d at 334. The only one of those requirements that is wholly reliant on police conduct is the presence of an advisement. Conversely, other requirements may be totally independent of the officer—for instance, whether a parent has an adverse interest or whether a child was capable of an intelligent waiver under the circumstances.

The constitutional and statutory safeguards at play are about protecting children and ensuring knowing, intelligent, and voluntary waivers. Indiana affords juveniles "special protection." *Lewis*, 259 Ind. at 437-39. This Court should decline the State's invitation to water-down that protection by focusing only on officer conduct rather than protecting the constitutional rights of juveniles in Indiana.

V. The State wrongly asserts that the Court of Appeals' opinion requires advisement of a specific criminal code section. The opinion says no such thing.

The State inaccurately claims that the Court of Appeals' opinion created a requirement "that police officers must provide juveniles with a specific criminal charge" and "specifically state what particular section of the criminal code a juvenile may have violated" to obtain a *Miranda* waiver. Pet. Transfer at 13-14. That is not what the Court of Appeals held.

What the Court of Appeals actually said was that "C.J. was never informed of the delinquent act of which he was suspected or of the potential consequences." *C.J.*, slip op. at 12. That is true. The State did not present evidence that C.J. was informed of the allegations or the consequences, and the interrogation video shows the officer did not give any advisements of that nature.

It makes sense for the Court of Appeals to consider that fact, because this Court has said that two factors in this analysis are "whether the juvenile . . . [was] informed of the delinquent act for which the juvenile was suspected" and whether he "understood the consequences." *D.M.*, 949 N.E.2d at 339. The Court of Appeals correctly considered and applied this Court's precedent.

CONCLUSION

C.J. respectfully requests that this Court deny transfer. Alternatively, C.J. requests that this Court set oral argument and hold that C.J.'s *Miranda* waiver was not knowing, intelligent, and voluntary.

Respectfully submitted,

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WORD COUNT CERTIFICATE

I verify that this brief contains no more than 4,200 words.

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I certify that a copy of this brief was served by electronic filing and via the Indiana e-filing system on April 9, 2020 as follows:

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