

IN THE
INDIANA SUPREME COURT

No. 19A-JV-255

C.J.,
Appellant-Defendant,

v.

STATE OF INDIANA,
Appellee-Plaintiff.

Appeal from the
Marion Superior Court,

No. 49D09-1810-JD-1192,

The Honorable Geoffrey Gaither,
Judge.

STATE'S REPLY BRIEF ON TRANSFER

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The juvenile waiver statute establishes additional protections, beyond the constitutional requirements, for juveniles who are subjected to custodial interrogations. Ind. Code § 31-32-5-1. The Court of Appeals' published opinion disregards the clear guidelines of the juvenile waiver statute as well as this Court's interpretation of that statute in *D.M. v. State*, 949 N.E.2d 327, 334 (Ind. 2011), in favor of an unworkable, retroactive totality of the circumstances analysis. *C.J. v. State*, ___N.E.3d___, No. 19A-JV-255, slip. op. at 10-14 (Ind. Ct. App. Jan. 23, 2020).

The Court of Appeals' interpretation of the juvenile waiver statute places an undefined requirement on police officers to ensure that private, constitutionally protected parent-child conversations are sufficiently meaningful in effecting waiver. It is impossible for police officers to accomplish that without trampling a parent's and child's fundamental liberty interests. It is equally impossible for a trial court to evaluate whether a police officer's undefined requirement to supervise a parent-child consultation was itself sufficient, much less whether the content of the parent-child consultation itself was sufficient in comporting with the juvenile waiver statute. The impossibility of such situations is why the law has never before required the Court of Appeals' approach.

This Court had the foresight to anticipate the problems created by the Court of Appeals' approach, which is why the *D.M.* Court announced a clear four-part test that focuses on the appropriateness of police conduct in providing a *Miranda* waiver and the *opportunity* of a parent-child consultation—not the content or ultimate result of that consultation. 949 N.E.2d at 334. In contrast, the Court of Appeals

ignored *D.M.* to solely focus on whether the juvenile—irrespective of a proper waiver explanation—was able to understand that waiver under the totality of the circumstances. *C.J.*, slip. op. at 10-14. As such, the Court of Appeals effectively permitted an after-the-fact totality of the circumstances analysis to swallow *D.M.*'s clear four-part test governing the admission of a juvenile statement following a proper advisement and waiver.

In so doing, not only has the Court of Appeals disregarded this Court's guidance in *D.M.*, it has also ignored the text and intent of the juvenile waiver statute. That statute protects juveniles by requiring parental consultation before police officers may lawfully question juveniles who are in custody. *See e.g.*, Ind. Code § 31-32-5-1. Under this Court's precedent, police officers are to provide a complete and full *Miranda* advisement, while a juvenile's parent or guardian are to provide the private consultation necessary for the juvenile to decide whether or not to waive *Miranda*. But to satisfy the Court of Appeals' view of the statute, police officers will need to insert themselves into that parental consultation to ensure that a juvenile understands a hosts of issues that will change on a case by case basis. But the repercussions do not end there. Now, not only must police officers embrace the dual roles of criminal investigator and compassionate guardian, they must do so in the absence of the clear instructions provided by the juvenile waiver statute and this Court's opinion in *D.M.* This result upends the purpose of the juvenile waiver statute.

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This Court should grant transfer to address a critical function of the juvenile justice system. In the absence of clear guidance from the juvenile waiver statute and *D.M.*, police officers and trial courts alike are unable to confidently procure and admit juvenile statements. This Court should accept transfer to clarify the requirements placed on police officers who are seeking to obtain statements from juveniles in custody; the requirements of parents or guardians in advising juveniles; and the metric by which trial courts are to evaluate the admission of such a statement.

CONCLUSION

For the foregoing reasons, this Court should grant transfer and affirm the trial court's judgment.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I verify that this Reply Brief on Transfer contains no more than 1,000 words. This reply brief contains 623 words. The word count was conducted by selecting all portions of the brief not excluded by Indiana Appellate Rule 44(C) and selecting Review/Word Count in Microsoft Word, the word-processing program used to prepare this brief.

/s/ Matthew B. MacKenzie
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CERTIFICATE OF SERVICE

I certify that on May 5, 2020, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS). I also certify that on May 5, 2020, the foregoing document was served upon opposing counsel via IEFS, addressed as follows:

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