No. 18-_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

D.A., PETITIONER

V.

D.P., II , RESPONDENT

On Petition for Writ of Certiorari

To The Indiana Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Questions

1. Did the Indiana Court of Appeals decision in this matter conflict with the due process standard which was declared in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876 (2009)?

2. Are the Eighth and Fourteenth Amendment violated when a magistrate issues a ruling while working under a judge who was counsel of record for a party during the trial, although the magistrate is also working under other judges as well?

Summary

In *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876 (2009), this Court stated that due process requires an objective inquiry into judicial bias, and where there is an objective risk of actual bias on the part of the factfinder, it is a due process violation. In *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1917 ((2016), this Court stated when the issue of bias of a judge is reviewed, participation of an interested judge is a defect not amenable to harmless error review. During trial in the matter below, Counsel for Respondent Father won election to become judge in the county, and at the time that the magistrate who was the factfinder issued his order, the magistrate was working as a magistrate under Respondent Father's counsel. The Indiana Court of Appeals denied Petitioner Mother's appeal, failing to apply the objective standard, in conflict of the standard enunciate by this Court in *Caperton*.

PARTIES TO THE PROCEEDING

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The trial court's decision is not published. The trial court's order is reproduced in the Appendix at App. A7.

JURISDICTION

28 U.S.C. § 1257(a)

On September 12th, 2016, the Elkhart Superior Court denied Petitioner Mother's Petition for Change of Venue under cause number 20D02-1412-DR-890, based in part on the Due Process Clause of the United States Constitution. The issue was again raised at trial on October 2nd, 2016, which the Elkhart Superior Court 2 again denied on March 31st, 2017. On February 12th, 2018, the Indiana Court of Appeals upheld the Elkhart Superior Court #2's decision denying Appellant Mother's Petition for Change of Venue, in *D.A. v. D.P*, No. 20A03-1705-PO-966. The Indiana Supreme Court entered its judgment on May 17th, 2018 denying Appellant Mother's Petition to Transfer. This Court has jurisdiction under 28 U.S.C. § 1257(a) to review the decision of a state's highest court that considers any title, right, privilege or immunity established or claimed under the Constitution of the United States.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT XIV, UNITED STATES CONSTITUTION

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

IND. STAT § 34-35-1

> Subdivision 1. "The Court or the Judge shall change the venue of any civil action upon the application of either party, made upon affidavit showing: (3) The opposite party has an undue influence over the citizens of the county, or an odium attaches to the applicant or the applicants cause of action or defense, on account of local prejudice."

* * * * *

STATEMENT OF THE FACTS

Respondent Father is a Deputy Prosecutor in Elkhart County, Indiana where he has been employed for over ten (10) years. The parties were married in April of 2007, and their daughter was born in June of 2008. Father began working for Curtis Hill, the elected Prosecutor of Elkhart County, in 2008.

Respondent Father, filed for a petition for dissolution of marriage on December 13th, 2014 in the Elkhart Superior Court 2. *App. A15.* The attorney who Father hired as counsel for his divorce was Michael Christofeno, who remained the attorney of record for Respondent Father from the initial filing of the dissolution through a majority of the trial in the matter, and withdrew after Respondent Father asked him to withdraw midway through the trial in the matter in December of 2016. *App. P. A86.* However, just prior to the trial, in November 2016, Mr. Christofeno was elected the Judge of

Elkhart Circuit Court. He took the bench as the elected judge in January 2017. *See App. P. A94-A95.* The order being appealed in this matter was issued on March 31st, 2017. As of the writing of this brief, Magistrate Burton, the finder of fact in this matter, is listed as the Magistrate for the Honorable Michael Christofeno. http://www.in.gov/judiciary/files/court-directory.pdf. (p. 10 of 48). Magistrate Burton is also the magistrate for five (5) other judges. (see above, p. 10-11).

During the pendency of the the dissolution, Mother obtained a protective order against Father. Mother made a report to the *Lagrange County* (the county where Petitioner Mother lived, adjacent to Elkhart County) Sheriff's Department that Father had violated the protective order. For some unknown reason, the report was not forwarded to the Lagrange County (Indiana) Prosecutor, but instead forwarded to the elected Prosecutor of *Elkhart County*, Curtis

Hill,[1] Respondent Father's boss, who subsequently wrote Mother a letter that she should pursue the matter in the protective order Court. *App. P. A82-A83*

After agreed provisional orders were entered in the divorce, but during the pendency of the dissolution proceedings, Mother filed for modified provisional orders, detailing report from the Child of sexual and physical abuse, requesting restricted visitation for Father, and a report was made to the Indiana Department of Child Services (DCS) that Respondent Father had molested the child of the marriage. *App. A16.* DCS, after substantiating the molest allegations, subsequently filed a Child In Need of Services Petition in the Elkhart Circuit Court. *App. P. A* 81. The Child in Need of Services (CHINS) cases was immediately transferred to the Marshall

[1] Curtis Hill is now the Attorney General of Indiana, and at the time of the letter was Respondent Father's boss, the elected Prosecutor of Elkhart County

County Circuit Court[2] after preliminary orders were issued. *App. P. A* 81. The Elkhart Circuit Court stated the reason for the transfer of the matter out of its court was because Respondent Father was a Deputy Prosecuting Attorney who practiced in that court.

After being transferred to the Marshall Circuit Court, and psychological evaluations completed on Respondent Father, Petitioner Mother, and the Child, DCS subsequently unsubstantiated the molest allegations against Respondent Father, but substantiated allegations of neglect on Petitioner Mother for child alienation. *App. P. A* 81. The Child was then placed in foster care. DCS subsequently unsubstantiated the allegations of child alienation against Mother, and the Marshall County CHINS matter was abruptly dismissed, and the Child returned to the custody of Petitioner Mother. The Child spent over eight (8)

[2] The Marshall Circuit Court is a Court in an adjacent Indiana county

months in licensed foster care, based on allegations that were unsubstantiated against both parents. *App. P. A* 81.

The dissolution matter having been on hold due to the Marshall County CHINS matter, and jurisdiction now rested back with the Elkhart Superior Court, Mother filed in Elkhart Superior Court 2 a Verified Motion for Change of Venue, arguing that under the Due Process Clause of the Indiana and United States' Constitutions, as well as pursuant to Indiana Code 34-35-1, that Elkhart County was an improper county for the dissolution proceedings to be venued. *(App. P. A106)*

A hearing was held on Mother's Verified Motion for Change of Venue on September 12th, 2016, in which the Honorable Judge Stephen Bowers of Elkhart Superior Court 2 denied the Motion. *(App. P. A3)* The Court's reasoning that Mother would be required to show that the Judge himself was biased, which the Court did not believe was shown. Subsequently, the

Honorable Stephen Bowers made an order assigning the evidentiary hearing for the divorce matter to be heard by Magistrate Dean Burton. *App. P. A84*

The Court began trial in the matter on October 4th, 2016, where Counsel for Mother again raised the issue of the Verified Motion for Change of Venue, this time in front of the Honorable Dean O. Burton, who was the trier of fact for the dissolution proceedings. *(See App. P. A8-Order of Dissolution)*

Counsel made an offer of proof for the Change of Venue, where he established that Mother made a police report in Lagrange County, Indiana, where she lives, in regards to communication via the "Linked In" website from Father in violation of the civil protective order. *App. P. A8*. Counsel admitted exhibit "B" for the offer of proof, which was a letter from the Elkhart County Elected Prosecutor Curtis Hill notifying Mother that Mr. Hill is in receipt of her reports made in

Lagrange County, and she should address the matters in either the dissolution or protective order matters in Elkhart County. *App. P. A8*. Counsel also submitted that Mother would testify that she was contacted by the Lagrange County Prosecutors office shortly before trial and notified that they were not informed of the report that was made in regards to violation of the protective order. *App. P. A86.*

During the period that Magistrate Dean Burton was hearing evidence in the trial, Respondent Father's attorney, Michael Christofeno, won election to become the judge of the Elkhart Circuit Court. (*App. P. A93-A94)* After presenting the case in chief for Respondent Father, Michael Christofeno moved to withdrawal his representation of Father, and was granted the ability to withdrawal. Respondent Father proceeded for the remainder of the trial without representation. (*App. P. A93-A94)*

The Honorable Michael Christofeno became the Judge of Elkhart Circuit Court on January 1st, 2017. On March 31st, 2017, the Elkhart Superior Court 2 issued its order in the dissolution proceeding, denying the motion for change of venue and granting split custody of the Child H.. (*App. P. A8)* The Court also issued its order dismissing Mother's protective order filed against Father.

On appeal, Petitioner Mother argued that a due process violation occurred by allowing the trial to proceed in that Court, due to Respondent Father's place in the community, the irregularities at the trial court level, as well as at the fact that Magistrate Dean Burton, who heard the evidence and issued the trial court's order, was now a magistrate for Michael Christofeno, who was Respondent Father's counsel throughout the majority of the trial, and was now the judge of the Elkhart Circuit Court. *(A89-A90)*

Respondent Father argued on appeal that Mother had not raised the any opposition or argument with respect to Magistrate Burton presiding over the trial, and therefore had waived the issue. *App. P. A92*

On February 12th, 2018, the Indiana Court of Appeals affirmed the trial court's order, finding there was no due process violation (assuming without declaring that Petitioner Mother had not waived the issue) in regard to her due process claim. *App. P. A94.*

The Indiana Court of Appeals stated that "bias and prejudice violate a party's due process right to a fair trial only where there is an undisputed claim or where the judge expresses an opinion of the controversy over which the judge is presiding" (citing the Indiana Supreme Court in *Everling v. State*, 929 N.E.2d 1281, 1287 (Ind. 2010) . *App. P. A90*

In the opinion, the Court of Appeals found that Mother had not shown a due process violation because

she had not shown that Magistrate Burton had acted in a manner that was biased, or that Mother was prejudiced, and finally because she had not objected to the Magistrate hearing the trial. *App. P. A95*.

The Court of Appeals also found that Mother had not shown that she was denied due process due to the allegations in regards to the procedural and factual irregularities in the CHINS matter, nor the letter from Curtis Hill from the allegation made in Lagrange County. *App. P. A 95.*

The Court of Appeals decision lays out the relevant timeline in regards to the due process argument:

> "The timeline reflects that Christofeno won the judicial seat in November 2016. The latter portion of the bifurcated dissolution trial took place in

December 6 through 13, 2016, and after Christofeno completed his examination of Father, he withdrew as counsel on December 6, 2017. Mother had an opportunity, after the election and before trial, to voice any concerns about Christofeno becoming the judge of Elkhart Circuit Court and any alleged potential conflict with Magistrate Burton stemming from Christofeno's newly-elected position; she did not do so. The last day of trial was December 13, 2016, and, over two weeks later, Christofeno was sworn in as judge of Elkhart Circuit Court on January 1, 2017. The record before us reveals that Mother voiced no

> objection to Magistrate Burton presiding over her trial, and she has not alleged, nor do we find, that Magistrate Burton acted in a manner that was biased or that Mother was prejudiced. Mother has failed to show that she was denied a fair trial because Magistrate Burton presided over her trial. "
>
> -Indiana Court of Appeals Decision *(App. P. A93-A94)*

After the Court of Appeals issued their decision on February 12th, 2018, Petitioner Mother timely filed with the Indiana Supreme Court a Petition to Transfer, again arguing that the Elkhart Superior Court 2 violated her Due Process rights by not changing venue.

The Indiana Supreme Court subsequently denied Petitioner Mother's Petition to Transfer on May 17th, 2018. *(See A-98).* This Petition for Writ of Certiorari now proceeds.

Petitioner now requests that this Court review and consider the boundaries at which lie the right to a fair trial, and the appearance of a fair trial, and ask the Court to remand the matter to the trial court, in order to transfer jurisdiction so Petitioner may have an opportunity for a trial in front of judge not objectively predisposed to rule against her.

REASONS FOR GRANTING THE PETITION

I. The Indiana Court of Appeals issued an important decision that is in conflict with this Court's ruling in *Caperton v. A.T. Massey.*

A. There are substantial interests at stake in this matter.

The Indiana Court of Appeals issued a decision stating that there is no due process violation when a magistrate rules on a matter in which one of the judges in which he works was counsel of record in the trial. The decision is in conflict with this Court's decision in *Caperton v. A.T. Massey* 556 U.S. 868, 876 (2009), because the Court did not apply an objective standard, but instead applied an old standard that does not uphold the due process promise of a objectively fair judiciary.

The liberty interest of a parent to

the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this Court. *Troxel v. Granville*, 530 U.S. 57, 65 (2000). Because this matter involved a dissolution of marriage, the Court that decided the matter was necessarily vested with the authority that would decide the care, custody, and control of the child to this marriage, a substantial and long recognized fundamental liberty interest.

B. Due Process Requires an objectively fair factfinder.

It is axiomatic that a fair trial in a fair tribunal is a basic requirement of due process. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876 (2009). However, most matters in regards to judicial qualification do not rise to a constitutional level. *Id.* At common law, the Due Process Clause only required that a judge must recuse himself when he has a direct, personal, substantial, pecutionary interest in a

case. *Id.* Also at common law, personal bias or prejudice alone would not be sufficient basis for imposing a constitutional requirement for recusal under the Due Process Clause. *Id.*

This Court has however identified additional instances which, as an objective matter, require recusal because experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable. *Id.*

In *Caperton*, Justice Stevens discussed two precedential scenarios where the Court went beyond the common law limitation of due process review of bias or prejudice, instances of intertwined financial interests, and scenarios where the decisionmaker previously took part in a proceeding that he subsequently issued decisions upon. *Id.* The first type discussed were situations where decsionmakers ruled on matters intertwined with indirect financial interests, but also where a judge could be seen to hold interests

that "tempt adjudicators to disregard neutrality". *Id at 878*.

The second type of conflict that Justice Stevens discussed was where the factfinder had earlier contact in a matter that, because of the circumstances of the case and the prior relationship, recusal of the factcfinder was necessary. *Id at 869.*

The fact and circumstances of this matter are more in line with the second type of matter, that requires recusal because of the factfinder's relationship with a matter, which make him a constitutionally improper factfinder.

Respondent Father's trial counsel, Michael Christofeno, was elected judge during the pendency of the trial. At the time that Magistrate Burton issued his ruling, his relationship with now Judge Christofeno was that of an employee-employer (although Magistrate Burton admittedly had five (5) other bosses

(elected judges) as well.)

Justice Stevens' opinion in *Caperton* discussed that in the situations where experience teaches us that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable, the Court is not required to find that the justice was in fact influenced, because the standard is an objective standard. *Id* .

Bias is easy to attribute to others, but difficult to discern in oneself. *Williams v. Pennsylvania*, 136 S. Ct 1899, 1905 (2016). The public, as well as the judiciary, are beginning to take notice of the areas in life, and the law, in which bias, even when it is not overt bias, effects the decision making process. See Project Implicit which explores the areas where we, as human beings, can be biased even when it is not conscious bias. https://implicit.harvard.edu/implicit/aboutus.html

Caperton established that due process requires that if the factfinder in a trial has an objective probability of actual bias, it is a constitutionally untenable circumstance that violates the right to a fair trial. *Caperton*, 556 U.S. 868, 876 (2009)

C. The Indiana Court of Appeals used the wrong standard in the opinion below.

The Indiana Court of Appeals, in reaching their decision, applied the incorrect standard of review in the matter. The Court of Appeals stated: "Bias and prejudice violate a party's due process right to a fair trial only where there is an undisputed claim or where the judge expressed an opinion of the controversy over which the judge was presiding" (*Indiana Court of Appeals Decision-App. P. A90-citing the Indiana Supreme Court case of Everling v. State*, 929 N.E.2d 1281, 1287 (Ind. 2010) *).*

This was not the correct standard

pursuant to the Fourteenth Amendment's requirement for due process of a fair tribunal. As stated above, the proper constitutional inquiry in these circumstances is whether the particular decisionmaker sitting in the case would offer a possible temptation to the average judge to lead him "not to hold the balance nice, clear and true." *Caperton*, 556 U.S. 868, 879 (2009) (quoting Justice Brennan in *Ward v. Monroeville* 409 U.S. 57, 93 (1972). The test is an objective test, not whether the decision maker is subjectively biased, but whether the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias. *Id. At 881*

The Indiana Court of Appeals got their analysis wrong. The decision found that Petitioner Mother "has not alleged, nor do we find, that Mother was biased or that Mother was prejudiced". *App. P. A94.*

They focused much of their analysis on whether Magistrate Burton

showed any actual bias, and whether Mother was prejudiced.

> "The record before us reveals that Mother voiced no objection to Magistrate Burton presiding over her trial, and she has not alleged, nor do we find, that Magistrate Burton acted in a manner that was biased or that Mother was prejudiced. Mother has failed to show that she was denied a fair trial because Magistrate Burton presided over her trial."
>
> *App. P. A95*

> "Both Judge Bowers and Magistrate Burton found that the letter from Hill, telling Mother to pursue her complaints in the pending protection order action in Elkhart Superior #2 or in the

> pending dissolution action, did not evidence undue influence or otherwise require a change of venue. We agree and find that Mother has not proven that she was prejudiced or denied a fair trial."
>
> *App. P. A95*

Instead of looking to whether any prejudice was proven, according to the objective standard enunciated in *Caperton,* the analysis of the Indiana Court of Appeals was whether any subjective prejudice was shown. The anlaysis should have been whether a factfinder in Magistrate Burton's situation was likely to be neutral, or whether because he was not likely to be neutral, the circumstances were constitutionally untenable.

This ruling is in conflict with this Court's ruling in *Caperton*, and therefore, appropriate for the grant of transfer

D. Magistrate Burton being the factfinder created an objective risk of actual bias.

Applying the correct standard, it becomes apparent that Magistrate Burton's presence of factfinder created a constitutionally untenable circumstance.

In briefing before the Indiana Appellate Courts, Counsel admitted, and the Indiana Court of Appeals noted, that Magistrate Burton was at all times courteous, thorough and fair during the trial proceedings. *App. P. A92* However, as Justice Stevens explained in *Caperton*, it isn't whether Magistrate Burton was subjectively biased, but whether a judge in his position is likely to be neutral. *See* *Caperton*, 556 U.S. 868, 876 (2009)

The fact that Magistrate Burton was working under then Judge Christofeno at the time that he issued his ruling, is an inescapable fact that leads to a probability of actual bias so

high on the part of Magistrate Burton, that it cannot be ignored, and it leads to an inescapable conclusion that this position that Magistrate Burton was in, created an unconstutional potential for bias, regardless of whether any explicit bias was apparent.

E. Harmless error does not apply to this analysis

This Court has stated that "some errors are so fundamental and pervasive that they require reversal without regard to the facts and circumstances of the case." *Young .v U.S. Ex Rel Vuitton*, 481 U.S. 787, 810; (1987). ("In a normal case where the harmless error rule is applied, the error occurs at trial, and is readily identifiable….an inquiry into a claim of harmless error would require, unlike most cases, unguided speculation.") *Id at 812-813.* An error is fundamental if it undermines confidence in the proceeding. *Id.*

A due process violation arising from the participation of an interested

judge is a defect not amenable to harmless error review. *Williams v. Pennsylvania*, 136 S. Ct 1899, 1909-1910 (2016). "When the objective risk of actual bias on the part of a judge rises to an unconstitutional level, the failure to recuse cannot be deemed harmless. *Id.*

Harmless error should not apply to a situation such as this, because Petitioner Mother has shown that there was a untenable risk of actual bias on the part of Magistrate Burton.

F. Other factors that were present prior to trial also lead to the conclusion that the Court in Elkhart County was not appropriate court for trial.

Though Petitioner Mother understands that the analysis falls on an objective test of whether a person in the factfinder's position would have been likely to be biased, there were also factors that raised the probability that this Court was not constitutionally

proper to be the factfinder in this matter.

Respondent Father was a deputy prosecutor in the County that he filed his Petition for Dissolution. Shortly after the Petition was filed, allegations of Father inappropriately touching the Minor Child were reported. These allegations were substantiated by the Elkhart County Department of Family and Child Services, and a Child In Need of Services case was opened in Elkhart Circuit Court. Petitioner Mother also contemporaneously filed for and received protective orders protecting both herself and the Minor Child from being contacted by Father.

After initial orders were entered, establishing that parents were required to complete a psychological evaluation, visitation was restiricted, and a protective order was established, the Child in Need of Services case was transferred to the Marshall County (Indiana) Circuit Court.

The psychological testing was completed by Dr. Anthony Berardi, who found that Minor Child had not been sexually abused, but instead that Mother's conduct was alienating the child from Father. *App. P. A94-A95.*

After Father had filed an appeal to the substantiation, and based upon Dr. Berardi's findings that the Child had not been sexually abuse, DCS found that the allegations against Father for molestation should be unsubstantiated, and instead substantiated against Petitioner Mother for parental alienation. *App. P. A81.*

The National Council of Juvenlie and Family Court Judges, in their publication entitled "A Judicial Guide to Child Safety in Custody Cases" stated that "Under relevant evidentiary standards, the court should not accept testimony regarding parental alienation syndrome." http://www.ncjfcj.org/sites/default/files/judicial%20guide_0_0.pdf. (P. 13 of 52).

After Mother was substantiated for parental alienation, the Minor Child was removed from her home, and placed in licensed foster care, where the Child remained for eight (8) months. The Child remained in foster care until DCS eventually unsubstantiated the allegations of alienation against Petitioner Mother, at which time the Marshall Circuit Court CHINS matter was abrudtly dismissed. *App. P. A81.*

During the above pendency of the CHINS matter, Mother had also submitted a police report to the Lagrange County Sheriff's department that Respondent Father, a Deputy Prosecutor in Elkhart County, had violated the civil protective order in their case. Curtis Hill, then elected Prosecutor of Elkhart County, had received the report of his deputy prosecutor, Respondent Father, violating a protective order in an adjoining county, and had issued a letter to Petitioner Mother that she should pursue the matter in her pending dissolution or protective order

matter.

Though the analysis is wholely objective about whether a jurist would be neutral, the surrounding factors around Petitioner Mother's experience also support the fact that Magistrate Burton was not a proper factfinder to hear the dissolution proceedings between Petitioner Mother and Respondent Father.

G. Mother has a right to a trial in front of an unbiased court.

Both the appearance and the reality of impartial justice are necessary to the public legitimacy of judicial rulings and therefore to the rule of law itself. *Williams v. Pennsylvania*, 136 S. Ct 1899, 1910 (2016).

When the objective risk of actual bias on the part of the judge rises to an unconstitutional level, the failure to recuse cannot be deemed harmless, then the person aggrieved is entitled to a proceeding in which she can present her

case with assurance that no member of the court is predisposed to find against her. *Id.*

Petitioner Mother has a fundamental right to a new trial, in front of an objectively unbiased judge, where she can present her case.

II. The bounds of where Due Process allows a judge to sit in judgment is something that is faced with small town judges often

Petitioner Mother asks this Court to grant transfer because the Indiana Court of Appeals has decided an important federal question, specifically, where is the point where federal due process should require a court to recuse itself, and has issued a ruling that is in conflict with the due process standard enunciated in *Caperton and Williams*.

This Court should grant transfer to both correct the Indiana Court of

Appeals' incorrect application of the standard enunciate in *Caperton,* as well as so the Court can have the opportunity to weigh in on whether and when the federal due process standards require a court to divest jurisdiction in order to maintain public confidence in decisions.

These are substantial questions which Petitioner Mother asks this Court to grant transfer and review.

The Court should grant certoriari in order to affirm the confidence that average people need to feel in the justice system. For these reasons, Petitioner respectfully requests that this Court grant certiorari in this case, and remand to the trial court in order to transfer the trial of the facts to a another jurisdiction.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the petition for writ of certiorari and review the decision of the Indiana Court of Appeals, lift such order, and remand the case for the transfer of jurisdiction, or any other just and proper remedy of the Court.

Respectfully submitted,

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