STATE OF INDIANA	)	IN THE ELKHART CIRCUIT COURT
	) SS:	
COUNTY OF ELKHART	)	CAUSE NO.: 20C01-1311-PC-77
		20C01-1210-MR-6
JOSE H. QUIROZ, JR.	)	
	)	
vs.	)	
	)	
STATE OF INDIANA	)	

STATE'S MOTION FOR MODIFICATION OF CONVICTION and DISMISSAL OF PETITION FOR POST-CONVICTION RELIEF WITH PREJUDICE

COMES NOW the State of Indiana, by Chief Deputy Prosecuting Attorney Vicki Elaine Becker, joined by Petitioner JOSE H. QUIROZ, by counsel Kathleen Cleary, Deputy State Public Defender, who hereby moves the Court to modify the Petitioner's conviction of Murder, a felony, and enter judgment of conviction for the crime of Burglary, a Class B felony, as an equitable remedy to Petitioner's attempt to obtain Post-Conviction Relief, and in support of said Motion, state as follows:

1. The Petitioner, Jose H. Quiroz, Jr., pled guilty to Felony Murder under cause 20C01-1210-MR-6 on November 15, 2012.

2. On December 13, 2012, this Court sentenced the Petitioner to the agreed-upon sentence of 55 years executed in the Indiana Department of Correction, with 10 of those years suspended on Reporting Probation.

3. On October 15, 2013, the Petitioner filed a Verified Petition for Post-Conviction Relief. The State timely answered. The Petition has since been amended.

4. That on or about the 18th day of September, 2015, the Indiana Supreme Court overturned convictions of Murder for the three co-defendants of Quiroz, namely Blake Layman, Levi Sparks, and Anthony Sharp. Notwithstanding the Supreme Court's actions, which the State has challenged as erroneous (see "State's Petition for Rehearing", attached hereto as Exhibit 1,

rehearing denied), the co-defendants have obtained a benefit not available for Quiroz given the circumstances of his plea, and the procedural limitations of Post-Conviction Relief.

5. The Petitioner has been informed by his attorney as to the advantages and disadvantages of proceeding on his post-conviction petition or resolving the case by agreement with the State of Indiana.

6. The Petitioner understands he could have continued to challenge his convictions on post-conviction, but will be giving up that right by the terms of this Joint Agreement.

7. The parties agree that there exists no evidence of, and this Joint Agreement is not premised upon, ineffective assistance of counsel or the lack of a knowing, intelligent or voluntary plea. Rather, there now exists a change of interpretation of the established law of Indiana by the Indiana Supreme Court which was not previously known, presented, or heard, that requires, from an equitable standpoint, the conviction and sentence in the subject case to be altered. Specifically, the Indiana Supreme Court, which holds the power in criminal appeals to review all questions of law and to review and revise the sentence imposed, exercised its absolute authority when it reversed the convictions of Quiroz's co-defendants and distinguished these facts from previously well-settled law on felony-murder. *Layman & Sparks v. State*, 2015 WL 5474389 (Sept. 18, 2015), *rehearing denied*; *Sharp v. State*, 2015 WL 5474393 (Sept. 18, 2015), *rehearing denied.*

8. Recently, the Indiana Supreme Court exercised that same authority in reversing the conviction of an individual, otherwise procedurally barred from obtaining relief due to belatedly seeking transfer, when the Supreme Court had reversed the convictions of her codefendants in companion cases. See *Young v. State*, 30 N.E.3d 719 (Ind.2015); and, *Lee v. State*, 2015 WL 6777117 (Nov. 5, 2015).

9. The Indiana Supreme Court has recognized the authority of prosecutors and petitioners to resolve post-conviction claims by agreement, and the courts to accept those agreements, when such agreements promote judicial economy in otherwise complex post-conviction issues. See *Johnston v. Dobeski*, 739 N.E.2d 121 (Ind.2000), *reversed on other grounds*. In this extraordinary circumstance, the parties agree this joint Motion, if approved, achieves an equitable result.

10. That in consideration of the information above, the Petitioner has, with the assistance of counsel, agreed as follows.

a. That the Petitioner, Jose H. Quiroz, DOB 10/19/95, is the defendant in the underlying cause 20C01-1210-MR-6.

b. That the Petitioner agrees that the Petition for Post-Convicion Relief filed under cause number 20C01-1311-PC-77 will be withdrawn with prejudice. With prejudice means he will give up the right to challenge his conviction in this cause.

c. The State agrees that the Petitioner's conviction will be modified from Murder, a felony, to Burglary, a Class B felony.

d. The parties agree that the Petitioner will be sentenced to ten (10) years executed in the Indiana Department of Correction, with all other terms (including costs, fines and restitution), to be at the Court's discretion.

e. The Petitioner agrees to waive his right to appeal the sentence.

11. The parties agree that this Joint Agreement is subject to the Court's approval.

12. If the Court does not see fit to accept the terms as herein set forth, the Court is respectfully requested to set this matter for a post-conviction evidentiary hearing at its earliest convenience.

13. If the criminal history or conduct history of the Petitioner substantially deviates from representations made by the Petitioner or counsel for the Petitioner concerning same, the State of Indiana reserves the right to withdraw any agreement contained herein at any time prior to the Court's approval of this Joint Agreement.

14. The Petitioner understands that if he is not a United States citizen, the conviction may affect his immigration status.

15. The Court, on approval of this Motion, will dismiss the Petition for Post-Conviction Relief with prejudice and issue an Amended Abstract of Judgment under this cause of action.

WHEREFORE, the Petitioner and the State of Indiana respectfully request the Court approve this Motion, modify the conviction and sentence as outlined above, dismiss the Petition for Post-Conviction Relief with prejudice, and for all other relief just and proper in the premises.

Dated this 11th day of February, 2016

STATE OF INDIANA:

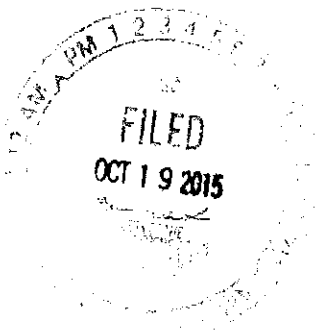
Vicki Elaine Becker, #19988-49
Chief Deputy Prosecuting Attorney

ATTORNEY FOR PETITIONER:

Kathleen Cleary
Attorney for Petitioner

PETITIONER:

Jose H. Quiroz, Jr.



IN THE
INDIANA SUPREME COURT
NO. ~~02~~20S04-1509-CR-548

BLAKE LAYMAN, and LEVI SPARKS, *Appellants-Defendants*, v. STATE OF INDIANA, *Appellee-Plaintiff*.	Appeal from the Elkhart Circuit Court, No. 20C01-1210-MR-7 (Layman) No. 20C01-1210-MR-5 (Sparks) Hon. Terry C. Shewmaker, Judge.

STATE'S PETITION FOR REHEARING

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IN THE
INDIANA SUPREME COURT

NO. 02S04-1509-CR-548

BLAKE LAYMAN,
and
LEVI SPARKS,

Appellants-Defendants,

v.

STATE OF INDIANA,

Appellee-Plaintiff.

Appeal from the Elkhart Circuit Court,

No. 20C01-1210-MR-7 (Layman)
No. 20C01-1210-MR-5 (Sparks)

Hon. Terry C. Shewmaker, Judge.

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IN THE
INDIANA SUPREME COURT

NO. 02S04-1509-CR-548

BLAKE LAYMAN, and LEVI SPARKS, *Appellants-Defendants,* v. STATE OF INDIANA, *Appellee-Plaintiff.*	Appeal from the Elkhart Circuit Court, No. 20C01-1210-MR-7 (Layman) No. 20C01-1210-MR-5 (Sparks) Hon. Terry C. Shewmaker, Judge.

STATE'S PETITION FOR REHEARING

Defendants and three other burglars planned and executed a home invasion of Rodney Scott's house, battering down a locked steel door, and then battering down a locked solid wood door, to gain entry. On entering, one invader armed himself with a knife. Scott attempted to frighten the intruders and, although one of them left, Scott saw two others who remained confronting him. Scott, who had armed himself with a pistol, fired it in a defensive manner. One of the intruders, Danzele Johnson, was unintentionally struck by a bullet and killed. While this Court reaffirmed its long-standing precedent that under Indiana's felony murder statute, the perpetrator of a listed felony is legally culpable for all deaths mediately or immediately caused by commission of the felony, this Court gave a new definition of "mediately or immediately caused" in cases where crimes result in the deaths of co-perpetrators. *Layman, et. al. v. State*, No. 20S04-1509-CR-548, slip op. at 6, 9-11 (Ind. Sept. 18, 2015). Without the assistance of the parties in evaluating the

evidence under the new standard, this Court determined that no rational jury could have found that the Defendants engaged in "dangerously violent" or "threatening" behavior and that their felony-murder convictions should be vacated. *Id.* at 9-11. But the evidence presented by the State is sufficient to show that Defendants engaged in violent or threatening, conduct that was the mediate or immediate cause of Johnson's death. The jury's verdict is well supported the reasoning behind the felony murder statute and surrounding case law, which this Court has reaffirmed. This Court should grant rehearing and affirm Defendants' felony-murder convictions.

STATEMENT OF THE ISSUE

Whether the evidence as a whole, including facts which this Court's opinion overlooked, is sufficient to sustain the jury's finding that Defendants were the mediate or immediate cause of Johnson's death.

ARGUMENT

I.
The jury could reasonably find that Defendants committed dangerous and threatening conduct to satisfy this Court's new rule restricting felony-murder liability for the deaths of co-perpetrators.

The jury could reasonably find that Defendants committed dangerously violent and threatening conduct to satisfy this Court's new rule restricting felony-murder liability for the deaths of co-perpetrators. This Court will consider only the evidence and inferences most favorable to the verdict. *Hoover v. State*, 918 N.E.2d 724, 731 (Ind. Ct. App. 2009). On sufficiency review, this Court will not intrude on the jury's "exclusive province to weigh conflicting evidence," *Delarosa v. State*, 938

N.E.2d 690, 697 (Ind. 2010), and will not overturn a verdict unless no rational person could have thought the defendant was guilty. *Davenport v. State*, 689 N.E.2d 1226, 1230 (Ind. 1997), *on reh'g. in part*, 696 N.E.2d 870 (Ind. 1998) ("[A] verdict upon which reasonable [persons] may differ will not be set aside"). The evidence and reasonable inferences which support the jury's verdict includes evidence showing that Defendants engaged in threatening and dangerously violent conduct. The jury was not being irrational when it found Defendants guilty of felony murder.

Defendants broke into Scott's home by battering down a locked steel door and then breaking through a locked wood door. Upon entry, one of the invaders armed himself with a knife. The intruders continued on with their felonious intent even after it was apparent that the home was occupied, thereby escalating an already dangerous situation and increasing their threat to Scott. A jury could reasonably conclude that this was dangerous or threatening conduct which satisfies this Court's new meaning of mediate or immediate cause for co-perpetrators' deaths.

Under this new definition of mediate or immediate cause, this Court now requires that the State prove that defendants or their cohorts engaged in "'dangerously violent and threatening conduct'" which "'created a situation that exposed persons present to the danger of death at the hands of a non-participant who might resist or respond to the conduct.'" *Layman*, slip op. at 10 (quoting *Jenkins v. State*, 726 N.E.2d 268, 271 (Ind. 2000)). As applied by this Court, it appears that when a co-perpetrator is killed by a victim the State must show one or more of the co-perpetrators engaged in violent and threatening conduct beyond, or

in addition to, the elements of the target felony before a co-perpetrator's death can be "foreseeable." *Id.* at 11. Below, the State explains why the new requirement is inconsistent with the language of the statute and case law. But even applying the new requirement, the evidence is more than sufficient to show additional "threatening" or "dangerously violent" conduct.

As this Court noted, the "evidence is clear that Layman, Sparks, and three co-perpetrators participated in a home invasion." *Id.* at 9. The invaders used great force to kick down Scott's locked back doors (Tr. 644-46; Exs. 17- 19). The first locked door was made of steel (Tr. 1053). The defendants broke through the locked steel door (Tr. 642-46, 648; Exs. 117-19). Past that steel door was a locked, solid wood door which led into the kitchen (Tr. 642-46, 1053). Defendants broke through this locked door as well (Tr. 642-46, 648, 1053; Exs17-19). Scott later recalled that the invaders' entry caused repeated, loud "boom[s" such that the "whole house just shook" with the force of the burglars' repeated blows to the doors (Tr. 1058-59).

Alarmed by the violent attack on his residence, and concerned that a burglary was in progress, Scott went downstairs: "I'm the type of person that if I hear a noise in my house, I have to go find out what it is. . . . I was only thinking about trying to find out what in the world was that [that] made my house shake like that." (Tr. 1062). A confrontation with homeowners is precisely the risk Defendants acknowledged when they scouted homes in the area; it is also a risk which they accepted, nonetheless, when they chose to batter down Scott's doors (Tr. 875, 9222, 924). *See Exum v. State*, 812 N.E.2d 204, 206 (Ind. Ct. App. 2004) (holding that an

owner's confrontation with burglars and consequent defense of his home are easily-foreseeable risks to burglars). Indeed, Defendants and their companions had arranged for Sparks to serve as a lookout, equipped with a cell phone to contact Quiroz, so that the group could respond to police or a visitor arriving at Scott's house (Tr. 573-74, 934-35; Exs. 14A & 14B). The four young men would likely have outnumbered any occupant they might encounter in the home, and Sharp armed himself with a knife that he took from a knife block in Scott's kitchen (Tr. 593-94, 606, 612-13, 640, 646-49, 1079-1081; Exs. 11, 21-22)[1]. The intruders also saw Scott's wallet and his wristwatch, which he had left on the kitchen counter, and took them as well (Tr. 678-82, 1080-83; Exs. 38-A, 38-B). Defendants therefore had good cause to think the house they had entered was occupied (Tr. 678-82, 1080-83; Exs. 38-A, 38-B).[2]

Although he was armed with a pistol, Scott decided to try and frighten away anyone who had entered his home (Tr. 1063-65). He went loudly down the ten or twelve uncarpeted, wooden steps from his second-floor bedroom onto the first floor of the house, making a lot of noise as he did so (Tr. 1063-64, 1093). Continuing to stomp his feet, Scott slowly walked into the living room of his house, looking to see

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[1] Sharp later fled the house while carrying the knife (Tr. 593-94, 640, 646-47, 1081). "[W]hen determining whether an element [of an offense] exists, the jury may rely on its collective common sense and knowledge acquired through everyday experiences." *Halesma v. State*, 823 N.E.2d 668, 673 (Ind. 2005). It was reasonable for the jury to infer that Sharp did not arm himself so that he could run away; persons arm themselves when they foresee the need to use a weapon.

[2] These items were later found in the bedroom closet where the Defendants had taken them after Scott shot his firearm (Tr. 678-82, 1080-83; Exs. 38-A, 38-B).

if anyone was on the first floor (Tr. 1065, 1094). He then walked through the living room, looking back and forth, "a pretty good distance" until he came to the dining room (Tr. 1064-65). There, Scott saw someone in the kitchen turning away from him and leaving through the back door (Tr. 1066). Scott "saw two guys standing there at the bedroom door" (Tr. 1065-66). Scott said "hey" (Tr. 1108). The intruders turned their heads to look at Scott, but did not try to leave (Tr. 1065-66, 1096-97, 1108-09). Scott later recalled what he felt at that moment: "It was fear. I mean, because when you see that many people in your house that you did not invite into your house, fear comes over you, and you don't know if you're going to get hurt or if you're going to get killed" (Tr. 1066). Scott was outnumbered. Concerned that the intruders confronting him may have had guns, and that the man he saw leaving the kitchen might return.[3] Scott decided to fire his gun in a defensive manner (Tr. 1066-68).[4]

As this Court has held, "Kicking down a locked door . . . support[s] a reasonable inference that the defendant intended to commit a violent attack by his method of entry into the home." *Mayo v. State*, 681 N.E.2d 689, 691 (Ind. 1997). Defendants' conduct was therefore "dangerously violent" and "threatening."

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[3] Scott's fear was well founded. After Scott had trapped the intruders in the bedroom closet, Quiroz used his cell phone to summon Sparks, who went into Scott's home in an attempt to distract or confront Scott and help Quiroz and the others escape (Tr. 935). Sparks entered the home, but fled after seeing Scott (Tr. 935).

[4] A homeowner is justified in using defensive force when confronted by three invaders who have broken into his house. Ind. Code § 35-41-3-2(d) (2012). Scott was justifiably fearful for his life due to defendant's actions, and must live with his involvement in Johnson's death (Tr. 1083). Under this Court's opinion, however, those who are culpably responsible for Scott's death receive no consequence at all.

Defendants did not merely commit burglary, which is the simple breaking and entering of a residence with the intent to commit any felony. *See, e.g., Creasy v. State*, 518 N.E.2d 785, 786 (Ind. 1988) (holding that burglary occurs when a defendant opens an unlocked door, or pushes open a door that is ajar, in order to enter a residence and commit a felony). Defendants committed a "home invasion," a shattering, violent attack on Scott's home. *Layman*, slip op. at 9. Defendants' conduct was threatening; it communicated to Scott that they intended to commit a violent attack. *See Mayo*, 681 N.E.2d at 691.

The cases from which this Court fashioned the new requirement of additional threatening and dangerously violent conduct show that the evidence presented to the jury was sufficient to sustain their verdicts against the Defendants. In *Forney v. State*, 742 N.E.2d 934 (Ind. 2001), Forney and two others robbed the victim at gunpoint; the victim attempted to seize a co-perpetrator's gun, causing it to fire and kill a second co-perpetrator. *Id.* at 936. Forney was convicted of conspiracy to commit robbery and felony murder. *Id.* This Court upheld Forney's felony-murder conviction because the first co-perpetrator had aimed a gun at the victim. *Layman*, slip op. at 10-11 (discussing *Forney*, 742 N.E.2d at 936). The only other "threatening" or "dangerously violent" conduct noted by the Court was that Forney had instructed the co-perpetrators to get the victim's money. *Id.* In *Palmer v. State*, 704 N.E.2d 124 (Ind. 1999), the "dangerously violent" additional conduct required by this Court occurred after Palmer and his co-perpetrator had already committed the target felony by kidnaping a police officer. *Layman*, slip op. at 9-10 (discussing

Palmer, 704 N.E.2d at 126). The "threatening" or "violently dangerous" conduct noted by this Court's quotation from *Jenkins, supra*, occurred when defendants terrorized the victims in order to locate money during a robbery. *Layman*, slip op. at 10 (quoting *Jenkins*, 726 N.E.2d at 270).[5]

The jury heard Scott testify about the dangerous and threatening situation unfolding in his house. The jury was able to view the Defendants and hear the events of that tragic day. The jury was correctly instructed on the law, including mediate and immediate causation, as follows:

> Where the accused reasonably should have foreseen that the commission of or attempt to commit the contemplated felony would likely cause a situation which would expose another to the danger of death at the hands of a nonparticipant in the felony, and where death in fact occurs as was foreseeable, the creation of such a dangerous situation is a mediate or immediate cause of the death of the victim

(App. 73).[6] The attorneys argued at length about the sufficiency of the evidence to prove the elements of felony murder. The jury deliberated and found that Defendants' felonious conduct was the mediate or immediate cause of Johnson's death. Yet, this Court determined that no rational jury could find that Defendants' conduct was "dangerously violent and threatening" apparently because only one of

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[5] The selection from *Jenkins* quoted by this Court continues: "The two assailants took the hot spoon over to Rogers, and Lawson, thinking that they were going to burn her with it, divulged that he had money hidden under a mattress upstairs." *Jenkins*, 726 N.E.2d at 270. This conduct led the *Jenkins* perpetrators to $300. *Id.* The *Jenkins* perpetrators engaged in subsequent violent conduct that was not discussed by this Court, *Layman*, slip op. at 10, and does not appear to have been calculated to obtain money from the victims. *Jenkins*, 726 N.E.2d at 270.

[6] The jury was also correctly instructed on the elements of felony-murder and the elements of burglary (App. 69).

the Defendants was armed. *Layman*, slip op. at 11. But even under this Court's new, additional requirements for felony-murder liability when a co-perpetrator is killed, the evidence was sufficient for the jury to find Defendants guilty.

II.
Affirming the jury's verdict in this case is supported by the reasoning and language of the felony murder statute and Indiana case law.

Although the evidence is sufficient to meet the standard this Court newly gleaned from the case law, this Court need not apply this judicial gloss to the statute. Rather, the statute and the case law support a rule that equally applies no matter what the role the decedent had during the felony. The jury's verdict here is consistent with the rationale and the language of the statute as applied by the case law.

By enacting the felony-murder statute, "the Legislature clearly has stipulated Indiana's policy to be that any person causing death while committing certain inherently violent felonies that have the proven potential to cause death can be guilty of murder even though that person may not have acted with the specific intent to kill." *Head v. State*, 443 N.E.2d 44, 61 (Ind. 1982). Burglary is inherently dangerous and violent conduct. *N.W. v. State*, 834 N.E.2d 159, 165 (Ind. Ct. App. 2005), *trans. denied*; *see also* Ind. Code § 35-50-1-2 (2012) (declaring residential burglary to be a "crime of violence"). Given Indiana's strong and consistent recognition of the rights of police and homeowners to use force in response to a home invasion, courts have held burglars liable for felony murder when their crime foreseeably provokes lawful resistance that results in a co-perpetrator's death.

Exum, 812 N.E.2d at 206-08; *accord Palmer*, 704 N.E.2d at 126 ("'Where the accused reasonably should have ... foreseen that the commission of or attempt to commit the contemplated felony would likely create a situation which would expose another to the danger of death at the hands of a nonparticipant in the felony ... the creation of such a dangerous situation is ... a mediate contribution to the victim's killing'") (quoting *Jenkins*, 726 N.E.2d at 269). This is true even if the co-perpetrators had fled the residence, or were running away, when the fatal shot was fired. *Exum*, 812 N.E.2d at 206-08. Until this Court's opinion in this case, perpetrators were held liable for the foreseeable deaths of anyone involved. Now, perpetrators are held liable under a different standard when one of their co-perpetrators is killed. *Layman*, slip op. at 11.

This new standard is contrary to the reason animating the felony murder statute. It is also internally flawed and will produce inconsistent, even quixotic, results. The new standard will punish defendants for felony murder simply because one of them may have engaged in speech which was not necessary to commit the target crime but which could be considered "threatening." *Layman*, slip op. at 10 (discussing *Forney*, 742 N.E.2d at 936). The new standard will impose felony-murder liability on only some robbers, and not on others, depending on whether a robbery is committed in a "dangerously violent" and "threatening" manner going beyond the violence of the robbery itself. *Layman*, slip op. at 9-10 (discussing *Jenkins*, 726 N.E.2d at 270). The new standard will impose felony-murder liability on some kidnappers, but not others, depending on whether

their "dangerously violent" and "threatening" conduct occurred after removing the victim from one place to another. *Layman*, slip op. at 10 (discussing *Palmer*, 704 N.E.2d at 126). The result of this Court's new requirement is to exempt criminals from felony-murder liability *precisely because* they committed the target crime, so long as they have not engaged in other "threatening" or "dangerously violent" conduct. The Legislature did not intend to make felony-murder liability depend on fine arguments about whether "threatening" or "dangerously violent" conduct was 'necessary' to commit a target crime. *Head*, 443 N.E.2d at 61.

The Legislature's intent was to punish, with equal weight, defendants whose commission of uniquely-dangerous target felonies foreseeably results in the death of *any* person. Ind. Code § 35-42-1-1(2). The felony-murder state applies to the death of "another human being" without distinctions between co-perpetrators, bystanders, or victims of the target crime or distinctions showing that one robbery, rape, or burglary was unusually "dangerous" and or "threatening". By limiting felony-murder liability for co-perpetrators' deaths, this Court's opinion says that the culpable deaths of criminals is less worthy of the law's notice and less deserving of punishment than a "real" crime. *Layman*, slip op. at 10-11. On October 9, 2012, Danzele Johnson was a criminal. But he was also a son, cousin, and grandson (Tr. 925, 970). The evidence already shows that Defendants and their cohorts culpably led Johnson to his death by planning and executing a violent and threatening "home invasion." *Id.* at 9. Our Legislature did not intend Indiana's courts to close their eyes to such tragedies. To the contrary, the Legislature intended that those

responsible for such deaths be punished with felony murder convictions and sentences.

CONCLUSION

For the foregoing reasons, the State respectfully urges that this Court grant rehearing and affirm Defendant's convictions for felony murder.

Respectfully submitted,

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By: _____
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WORD COUNT CERTIFICATE

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

_____
Ian McLean
Deputy Attorney General

CERTIFICATE OF SERVICE

I swear under the penalties for perjury that on October 19, 2015, the foregoing document was served on the following person(s) by first-class U.S. mail, postage prepaid:

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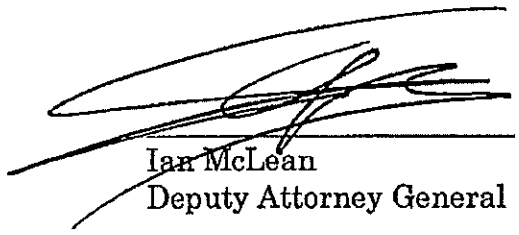

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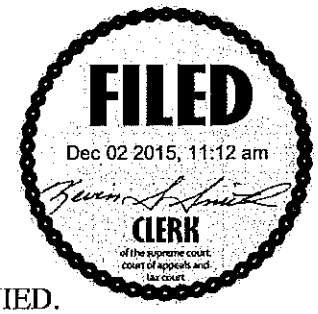
In the
Indiana Supreme Court

Blake LAYMAN; Levi SPARKS, Appellant(s), v. STATE OF INDIANA, Appellee.	)	Supreme Court Case No. 20S04-1509-CR-00548



Order

Appellee's Petition for Rehearing is hereby DENIED.

Done at Indianapolis, Indiana, on 12/2/2015.

Loretta H. Rush
Chief Justice of Indiana

All Justices concur.