



**FOR PUBLICATION**

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**IN THE  
COURT OF APPEALS OF INDIANA**

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BRANDON BRUMMETT,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 49A02-1304-CR-378

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Marc T. Rothenberg, Judge  
Cause No. 49G02-1206-FB-42411

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**August 20, 2014**

**MEMORANDUM DECISION ON REHEARING – FOR PUBLICATION**

**BAKER, Judge**

The State seeks rehearing following our opinion, Brummett v. State, 10 N.E.3d 78 (Ind. Ct. App. 2014), arguing that this Court failed to apply an appropriately high standard for fundamental error when reversing appellant-defendant Brandon Brummett's convictions for child molesting due to prosecutorial misconduct. The State argues that this Court should apply the fundamental error standard as recently articulated by our Supreme Court in Ryan v. State, 9 N.E.3d 663 (Ind. 2014), handed down June 3, 2014. We issue this opinion on rehearing but re-affirm our original decision in all respects, finding that the prosecutorial misconduct present in this case was much more egregious than that in Ryan and concluding that the prosecutor's misconduct did amount to fundamental error under the standard now to be used. Although we have granted rehearing, we reverse and remand for further proceedings.

VAIDIK, J., concurs, and BAILEY, J., concurs in result.