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IN THE
COURT OF APPEALS OF INDIANA

No. 26A-CR-33

CRAIG R. HENDRY, *Appellant-Defendant*, v. STATE OF INDIANA, *Appellee-Plaintiff*.	Appeal from the Greene Superior Court, No. 28D01-2403-CM-000100, The Honorable Dena A. Martin, Judge.

STATE'S BRIEF OF APPELLEE

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STATEMENT OF THE ISSUE

Whether the trial court properly denied Defendant's motion to dismiss the charge of Class B misdemeanor false informing.

STATEMENT OF THE CASE

Nature of the Case

Craig Hendry ("Defendant") appeals his Class B misdemeanor false informing conviction by challenging the constitutionality of Indiana Code Section 35-44.1-2-3(d)(5).

Course of Proceedings

The State charged Defendant on March 18, 2024, with Class B misdemeanor false informing (App. Vol. II 16). Defendant moved to dismiss the charge on October 11, 2025 (App. Vol. II 25-28). The trial court held a hearing on October 30, 2025, took the motion under advisement, and denied it on October 31, 2025 (App. Vol. II 29; Tr. Vol. II 26-42).

A jury found Defendant guilty of Class B misdemeanor false informing on December 2, 2025 (App. Vol. II 83, 86; Tr. Vol. II 89-229). On December 16, 2025, the trial court sentenced Defendant to 160 days in jail and imposed a $100 fine (Tr. Vol. II 87-88; Tr. Vol. II 243-44). Defendant filed a notice of appeal on January 7, 2026 (Docket).

STATEMENT OF THE FACTS

Shortly after 10:00 p.m. on July 26, 2022, Linton Police Officers Cayden Walker and Janzen Franklin, along with Greene County Sheriff's Deputy Michael

Stanley, approached Defendant's residence at 55 Mobile Manor in Linton to arrest Defendant on a Vigo County warrant (Tr. Vol. II 162-64, 178, 183). Officer Walker approached the front door and knocked but no one answered (Tr. Vol. II 163, 178, 183; State's Ex. 3). This was the first time the officers had been there that day, and the front door was undamaged (Tr. Vol. II 165-66, 179, 181, 184-85). Because lights were on inside the residence, the TV was on, a male voice was heard from inside, and Defendant's vehicle was parked nearby, the officers believed that Defendant was inside the residence (Tr. Vol. II 163, 165, 178, 183).

The officers applied for a warrant to enter the residence to execute the arrest warrant; the officers remained on scene during the hour-long process and saw no one leave or enter the residence (Tr. Vol. II 166-67, 170-71, 176, 179, 183). When the warrant to enter was issued, the officers again approached the undamaged front door and knocked (Tr. Vol. II 168, 171-73, 183, 202-03; State's Ex. 4, 5-7). The officers warned Defendant that if he did not answer, they would kick in the front door (Tr. Vol. II 168; State's Ex. 4). Defendant opened the front door, and he was peacefully arrested (Tr. Vol. II 168, 179, 183; State's Ex. 4). The officers took note of Defendant's cats inside and latched the door closed behind them (Tr. Vol. II 168). Defendant told the officers that he heard them knocking earlier (Tr. Vol. II 170).

At no time did an officer kick in Defendant's front door (Tr. Vol. II 174, 184-85). After the officers verified that there were no children inside, Defendant was transported by Officer Franklin to a nearby Vigo County officer (Tr. Vol. II 183-84;

State's Ex. 4). Defendant was in the custody of Linton police for about 30 minutes (Tr. Vol. II 184).

The following November of 2023, about 16 months after Defendant's arrest by Linton police, Defendant called Linton Police Chief Paul Clark and claimed that Linton officers "kicked the door in" when they served his Vigo County warrant, and the door was "completely dilapidated" and unsecure (Tr. Vol. II 130-33, 142-43; State's Ex. 1). Chief Clark did not know anything about it, so he investigated the claim by reviewing the officers' body cam videos from the incident (Tr. Vol. II 132). He determined that Defendant's door had not been "kicked in" or otherwise damaged during the July arrest (Tr. Vol. II 132).

On March 11, 2024, about a year and a half after his arrest, Defendant attended the Linton city council meeting (Tr. Vol. II 133-34, 187; State's Ex. 2). The Linton city council employes the police officers and can fire them for misconduct (Tr. Vol. II 187-188, 190). During the public comment section of the meeting, Defendant told the council that "armed thugs" in the form of Linton police officers showed up at his home when he was not there, "kicked in" his door, and searched his home looking for him (State's Ex. 2). After he returned home around midnight, the "aggressors" returned; he was "kidnapped" by them and "hauled to a concrete cage where they kept [him] against [his] will for 45 days" (Tr. Vol. II 187; State's Ex. 2). Defendant stated that the police department was a "terrorist organization" sponsored by taxpayer money, and he requested that the city council abolish the department (State's Ex. 2). Mayor John Preble was shocked by the allegations of

misconduct by the officers (Tr. Vol. II 187-89). When asked by the council to respond, Chief Clark stated that the public records of Defendant's case spoke for themselves, specifically the probable cause affidavit and warrants (State's Ex. 2). One of the council members explained to Defendant that if there was a problem, it would be a civil matter and the board of public works and safety would address it (State's Ex. 2). Defendant recorded the incident and posted it on his YouTube channel (Tr. Vol. II 134, 187; State's Ex. 2).

The State charged Defendant with Class B misdemeanor false informing under Indiana Code Section 35-44.1-2-3(d)(5) for knowingly making a false statement of police misconduct to the Linton city council (App. Vol. II 16). Defendant moved to dismiss the charge as a general violation of his First Amendment rights and as unconstitutionally vague (App. Vol. II 25-28; Tr. Vol. II 27-29, 40-42). The trial court denied the motion (App. Vol. II 29; Tr. Vol. II 26-42).

Pretrial and at trial, Defendant claimed that his statements at the city council meeting were true and "absolutely genuine" (Tr. Vol. II 64, 75-79, 125-29, 212-17). Defendant presented testimony from his neighbor that he saw police arrive earlier in the day, heard a "loud bang," and watched two Linton police officers enter Defendant's home when Defendant was not there (Tr. Vol. II 192-96). The jury found Defendant guilty of Class B misdemeanor false informing (App. Vol. II 83, 86; Tr. Vol. II 229).

SUMMARY OF THE ARGUMENT

The trial court properly denied Defendant's motion to dismiss the false informing charge. Defendant fails to meet his heavy burden to show that the false informing statute is unconstitutional on its face. The statute criminalizes false and defamatory statements against a police officer, which is unprotected speech under the First Amendment. Even if the statute incidentally impacts protected speech, the statute meets two of three exceptions enunciated by the United States Supreme Court in *R.A.V. v. City of St. Paul,* 505 U.S. 377 (1992), and survives intermediate scrutiny. Last, the statute does not impermissibly discriminate based on viewpoint. Including false statements in support of police officers under the statute would implicate protected speech and not meet the definition of defamation. The statute narrowly criminalizes only unprotected speech.

The false informing statute was constitutional as applied to Defendant. Defendant waived this claim by not alleging below that his speech was "hyperbolic rhetoric;" rather, his claim below was that his statements were true and thus he did not commit the elements of the offense. Waiver aside, Defendant's speech was defamatory, not merely hyperbole. Both "kicked in the door" and "kidnapped" fell within the definition of defamation, and both are susceptible of being true or false. Both were proven false at trial.

The false informing statute is not unconstitutionally vague. The elements of the offense give reasonable notice that a person who makes defamatory statements against a police officer to his employer, knowing those statements are false,

commits the crime under Subsection (d)(5). The statute does not invite arbitrary or discriminatory enforcement because it is narrow in scope. The scarcity in which the statute has been used to prosecute speaks not only to its narrow applicability, but to prosecutor discretionary restraint in analyzing the First Amendment issues. This Court should affirm the trial court's denial of Defendant's motion to dismiss and affirm Defendant's conviction.

ARGUMENT

The subsection of the false informing statute that prohibits making knowingly false complaints of police misconduct to the state or municipality is constitutional.

The trial court properly denied Defendant's motion to dismiss his Class B misdemeanor false informing charge as to claims that the statute was facially unconstitutional under the First Amendment, unconstitutionally applied to Defendant, and unconstitutionally vague under due process (App. Vol. II 25-28, 29). The State charged Defendant with false informing under Indiana Code Section 35-44.1-2-3(d)(5) (2012), which provides:

> (d) A person who:
>
> > (5) makes a complaint against a law enforcement officer to the state or municipality … that employs the officer:
> >
> > > (A) alleging the officer engaged in misconduct while performing the officer's duties; and
> > >
> > > (B) knowing the complaint to be false: …
>
> commits false informing, a Class B misdemeanor …

"Misconduct" is defined in the statute as "a violation of a departmental rule or procedure of a law enforcement agency." I.C. § 35-44.1-2-3(b). The charge against Defendant provided:

> … on or about March 11, 2024 in Greene County, State of Indiana, Craig Robert Hendry did make a complaint against a law enforcement officer to the state or municipality that employs the officer alleging that the officer engaged in misconduct while performing the officer's duties, knowing the complaint to be false, to-wit: made an oral complaint to the Linton City Council and Mayor that Linton Police Officers kicked in his door without legal justification and later returned and kidnapped him on July 26, 2022, …

(App. Vol. II 16).

A. The standard of review.

This Court reviews a trial court's ruling on a motion to dismiss a charging information for an abuse of discretion. *State v. Larkin*, 100 N.E.3d 700, 703 (Ind. 2018) (citing *State v. Thakar*, 82 N.E.3d 257, 259 (Ind. 2017)). A trial court abuses its discretion when it misinterprets the law. *Larkin*, 100 N.E.3d at 703.

Generally, a statute is presumed constitutional until the party challenging the statute clearly overcomes this presumption by a contrary showing. *Sims v. U.S. Fid. & Guar. Co.*, 782 N.E.2d 345, 349 (Ind. 2003) (citing *Boehm v. Town of St. John*, 675 N.E.2d 318, 321 (Ind. 1996)). This Court may nullify a statute on constitutional grounds only where such a result is clearly rational and necessary. *Id*. Whether a statute is constitutional on its face is a question of law. *State v. Moss-Dwyer,* 686 N.E.2d 109, 110 (Ind. 1997). When the issue presented on appeal is a question of law, this Court reviews the matter de novo. *Id*.

This Court's primary goal in interpreting statutes is to determine and give effect to the Legislature's intent. *Adams v. State*, 960 N.E.2d 793, 798 (Ind. 2012) (citing *State v. Oddi–Smith,* 878 N.E.2d 1245 (Ind. 2008)). Courts must consider the goals of the statute and the reasons and policy underlying the statute's enactment. *Hall Drive Ins, Inc. v. City of Fort Wayne*, 773 N.E.2d 255, 257 (Ind. 2002). The best evidence of legislative intent is a statute's text. *Adams*, 960 N.E.2d at 798. The first step is therefore to decide whether the Legislature has spoken clearly and unambiguously on the point in question. *Id.* (citing Sloan v. State, 947 N.E.2d 917 (Ind. 2011)). When a statute is clear and unambiguous, this Court must apply the plain and ordinary meaning of the language, and there is no need to resort to any other rules of statutory construction. *Adams*, 960 N.E.2d at 79.

B. First Amendment principles.

The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws "abridging the freedom of speech." *State v. Katz*, 179 N.E.3d 431, 451-52 (Ind. 2022) (citing *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (quoting U.S. Const. amend. I)). This means, as a general matter, that the government has "no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Id.* at 452 (quoting *United States v. Alvarez*, 567 U.S. 709, 716 (2012)).

But First Amendment principles are not absolute. *Katz*, 179 N.E.3d at 452 (citing *Ashcroft v. Am. Civ. Liberties Union*, 535 U.S. 564, 573 (2002)). The United States Supreme Court has "long recognized that the government may regulate

certain categories of expression consistent with the Constitution." *Id.* (quoting *Virginia v. Black*, 538 U.S. 343, 358 (2003)). These unprotected categories have "such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." *Id.* at 453 (citing *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382-83 (1992)). Defamation is one historically recognized category of "unprotected speech" under the First Amendment that can consistently be regulated. *Free Speech Coalition, Inc. v. Paxton*, 606 U.S. 461, 471 (2025); *United States v. Stevens*, 559 U.S. 460, 468 (2010); *R.A.V.*, 505 U.S. at 383-84; *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); *Katz*, 179 N.E.3d at 453. A defamatory communication is one that tends to harm a person's reputation by lowering the person in the community's estimation or deterring third persons from dealing or associating with the person. *Baker v. Tremco Inc.*, 917 N.E.2d 650, 657 (Ind. 2009).

C. The statute is facially constitutional.

Defendant faces a heavy burden to show that the false informing statute is unconstitutional on its face (Appellant's Br. 16-19; Amicus Br. 11-14). "When a party claims that a statute is unconstitutional on its face, the claimant assumes the burden of demonstrating that there are no set of circumstances under which the statute can be constitutionally applied." *Meredith v. Pence*, 984 N.E.2d 1213, 1218 (Ind. 2013) (citing *Baldwin v. Reagan*, 715 N.E.2d 332, 337 (Ind. 1999)).

1. The statute proscribes defamation.

As relevant to Defendant's statements to the city council, a communication is defamatory if it imputes criminal conduct or misconduct in a person's trade, profession, office, or occupation. *Baker*, 917 N.E.2d at 657. To establish a defamation in Indiana, a plaintiff must prove four elements: (1) a communication with defamatory imputation; (2) malice; (3) publication; and (4) damages. *Id*. (citing *Schrader v. Eli Lilly and Co.*, 639 N.E.2d 258, 261 (Ind. 1994)). The elements of the false informing statute satisfy the elements of defamation. The elements of the offense require the State to prove that "a person" made a "complaint" (communication) of law enforcement officer "misconduct" (defamatory imputation) to the state or municipality that employs the officer (publication) knowing that the complaint was false (actual malice). I.C. § 35-44.1-2-3(d)(5). Defined by the statute, "misconduct" includes "a violation of a departmental rule or procedure of a law enforcement agency." I.C. § 35-44.1-2-3(b). This kind of claim would affect the officer in his trade, profession, office, or occupation and possibly detrimentally affect the operations of the relevant law enforcement agency by providing false information about the agency's methods or personnel. This could produce incompetent or counterproductive policing methods or policies. And the statute requires the actual malice standard for defamation of a public official. *See New York Times*, 376 U.S. at 279-80 (defamatory statement against a public official must be made with knowledge it was false or with reckless disregard of whether the statement was true or false). This statute is in alignment with other state's

statutes proscribing defamatory statements of misconduct against police officers. *See e.g., State v. Crawley*, 819 N.W.2d 94, 107-09 (Minn. 2012) (finding state statute constitutional under a First Amendment challenge), *cert. denied*; *Los Angeles Police Protective League v. City of Los Angeles*, 578 P.3d 460 (Cal. 2025) (finding state statute unconstitutional under a First Amendment challenge).

2. The statute survives constitutional scrutiny.

Even though defamation may be restricted without violating the First Amendment, content-based distinctions drawn within unprotected categories of speech, like defamation, are presumptively invalid. *R.A.V.*, 505 U.S. at 382. A content-based restriction is one "that applies to particular speech because of the topic discussed or the idea or message expressed." *Katz*, 179 N.E.3d at 454-55 (quoting *Reed*, 576 U.S. at 163). The subsection of the false informing statute at issue here is content-based, as it criminalizes defamation which is critical of police officers. It also penalizes false and distorting reports of police operations. The state is prohibited from discriminating on the basis of content within the unprotected category of defamation—*i.e.*, a subset of defamatory speech alleging misconduct against a police officer to his employer—unless one of the three exceptions outlined in *R.A.V.,* 505 U.S. at 384, 388-90, apply.

Of the three exceptions in *R.A.V.*, two are applicable here to justify the content-based distinction in the false informing statute. The first applicable exception is that "the subclass happens to be associated with particular 'secondary effects' of the speech, so that the regulation is 'justified without reference to the

content of the … speech." *R.A.V.*, 505 U.S. at 389 (quoting *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41, 48 (1986)).

Knowingly false complaints of misconduct against police officers have substantial secondary effects. First, the knowingly false complaint triggers the expenditure of public resources to conduct investigations, as Amicus notes (Amicus Br. 12-13). *Crawley*, 819 N.W.2d at 112-13; *Chaker v. Crogan*, 428 F.3d 1215, 1225 (9th Cir. 2005), *cert. denied* (agreeing with the state that knowingly false complaints cause valuable state resources to be expended investigating false claims rather than valid claims); Ind. Code §§ 36-8-3-2, 3-4 (duty of the local safety board to discipline law enforcement officers). This expenditure, which comes at a time when public resources dedicated to law enforcement agencies are debated, diverts police time and attention away from legitimate matters. It also erodes at public trust, a "critical interest" of the State (Appellant's Br. 18). Last, knowingly false complaints may lead to unwarranted sanctions against the officer and misguided or misdirected policies and procedures, which cut against the State's interest in preventing potential discipline against innocent officers. *Los Angeles Police Protective League,* 578 P.3d at 476; *Chakar*, 428 F.3d at 1226. All of these secondary effects justify the regulation without reference to the content of the speech.

The second applicable exception is a general exception that allows distinguishing a subclass even without identifying "any particular 'neutral' basis, so long as the nature of the content discrimination is such that there is no realistic

possibility that official suppression of ideas is afoot." *R.A.V.*, 505 U.S. at 390. The false informing statute does not pose a threat of officially suppressing ideas. *Id.* It is narrow in application: it applies to knowingly false statements of fact that fall under the statutory definition of misconduct—that conduct which violated a departmental rule or procedure of a law enforcement agency. *See* I.C. § 35-44.1-2-3(b). For example, it would not apply to criminalize Defendant's claim that the Linton police officers acted like "thugs" (State's Ex. 2) or to generalized complaints about local police attitude or slow response times (Amicus Br. 13). Those are opinions critical of overall police work or departments. The statute addresses maliciously-false reports of an officer's action or inaction, which is something measurably true or false. The statute is also broadly drawn to include knowingly false complaints by anyone—the public, other officers, witnesses, judges, or public officials. The complaint is required to be made directly to the state or municipality in the manner chosen by the complainant, not to the police department associated with the officer. This offers insulation from any fear of retaliation and removes an intimidating complaint process. The statute as a whole does not operate to suppress speech. The statute reaches only defamatory speech not protected by the First Amendment, and it falls within two exceptions in *R.A.V.*

Los Angeles Police Protective League, 578 P.3d 460, upon which Amicus relies, is factually distinguishable. The California statute made it a crime to file a knowingly false accusation of misconduct against a peace officer, and the complainant was required to sign an advisory warning that a false accusation was a

crime. *Id*. at 462. The California Supreme Court found that the statute scheme violated the First Amendment because numerous characteristics of that law incidentally burdened protected speech. *Id*. at 408. The Indiana statute does not suffer from many of the California law's characteristics, such as the requirement of reporting to the police department, the requirement to sign an advisory warning of criminal prosecution, the entity complained to will be the investigating entity, undefined "misconduct," and an inexact advisory warning. *Id*. 478-82. The California statutory scheme was thus very different from the Indiana statute. *Los Angeles Police Protective League* is simply not persuasive authority.

3. The statute survives intermediate scrutiny.

Even if the false informing statute has an incidental burden on protected forms of speech, it does not directly regulate any protectable form of speech on its face or in its justification. *See Free Speech Coalition,* 606 U.S. at 482-83. Thus, the only concern at play is that the means by which the legislature has selected to regulate this unprotected form of speech carries a risk of deterring citizens from engaging in protected forms of speech. Under these circumstances, intermediate scrutiny is the appropriate standard of review. *Free Speech Coalition,* 606 U.S. at 482-83, 485 (stating that strict scrutiny cannot apply to laws which are not thought to raise significant First Amendment issues). A statute survives intermediate scrutiny if it "advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests." *Id*. at 495-96.

It is generally recognized that the State has a significant interest in deterring knowingly false complaints of misconduct against police officers. *Los Angeles Police Protective League,* 578 P.3d at 492; *Crawley*, 819 N.W.2d at 112-13; *Chaker*, 428 F.3d at 1225-26. This includes causing professional and reputational harm to police officers, the unnecessary expenditure of public funds to investigate false claims, and the erosion of public trust. *Los Angeles Police Protective League*, 578 P.3d at 492; *Crawley*, 819 N.W.2d at 112-13; *Chaker*, 428 F.3d at 1225-26.

The false informing statute is "narrowly tailored" and does not burden more speech than necessary. The statute requires knowingly false statements of fact that constitute defamation, and it would not apply to generalized complaints or hyperbolic language. The complaint is made to the state or municipality and not to the police department, thus insulating the complainant from an intimidating atmosphere and reducing fear of retaliation. Anyone can be a complainant, and "misconduct" is narrowly defined by the statute. The statute does not burden more speech than necessary to meet the State's significant interests. The statute survives intermediate scrutiny.

4. The statute does not discriminate based on viewpoint.

Defendant's claim that the statute impermissibly discriminates based on viewpoints that are only negative of police is unpersuasive (Appellant's Br. 17-19; Amicus Br. 14-15). Speech that is supportive of police officers would not satisfy the elements of defamation; it would not harm the officer's reputation or lower his reputation in the community. *See Crawley*, 819 N.W.2d at 109. In this way, the

exempted speech—false praise—does not implicate the same concerns as false statements of misconduct. As the *Crawley* Court noted, "if the statute were to reach pro-government speech as well as defamation, the statute would punish a substantial amount of protected speech and be facially unconstitutionally overly broad." *Id*. Moreover, the statute only discriminates against viewpoints that are *maliciously* false; it does not discriminate against viewpoints that are true or not malicious. In this way, Defendant is confusing viewpoints as critical verses supportive, but the statute adds a second required layer of malice. The false informing statute that punishes only defamatory statements, an unprotected category under the First Amendment, does not discriminate based on viewpoint, but rather is narrowly applicable to only historically-unprotected speech.

Defendant's reliance on *Chaker*, 428 F.3d 1215, is misplaced. The *Chaker* Court, which struck down a California statute that prohibited citizen false reports of police misconduct, did not apply any of the exceptions announced *R.A.V.*, thus misunderstanding and misapplying that precedent. *Chaker*, 428 F.3d at 1226-28. Moreover, the statute in *Chaker* specifically applied to *citizen* complaints, while leaving unregulated the knowingly-false speech of officials, police, legal professionals and others with specific roles in the legal system or government. *See Id*. at 1226 (noting that the California statute left "unregulated the knowingly false speech of a peace officer or witness"). The California statutory scheme also required the citizen complainant to read and sign an advisory warning of the misdemeanor. *Id*. at 1221. The Indiana statute applies to "a person," and thus applies to anyone

who makes a knowingly false complaint against a police officer. I.C. § 35-44.1-2-3(d)(5). There is no advisory warning attached to the complaint to deter reporting. *Chaker* is both factually and legally distinguishable.

D. The statute was constitutional as applied to Defendant.

Defendant's claim on appeal that the false informing statute was unconstitutionally applied to him because he characterizes his speech as "hyperbolic rhetoric" is waived. A party generally waives appellate review of an issue or argument unless that party presented that issue or argument before the trial court. *See Shabazz v. State*, 274 N.E.3d 114, 119 (Ind. 2026) (finding constitutional argument waived). Defendant did not make an argument below that his speech was protected under his First Amendment rights because he engaged in rhetorical hyperbole; rather, his argument was that his statements were true and thus protected speech (App. Vol. II 25-28; Tr. Vol. II 27-29, 40-42). That defense is inconsistent with his appellate claim that his speech was just exaggerated, over-the-top language that no one would consider to be actual facts. Defendant has waived this issue.

Waiver aside, those challenging a statute as applied "need only show the statute is unconstitutional on the facts of the particular case." *State v. S.T.*, 82 N.E.3d 257, 259 (Ind. 2017). Defendant's claim of hyperbolic rhetoric is meritless (Appellant's Br. 11-15). The law is clear that "loose, figurative, or hyperbolic language" are entitled to First Amendment protection to ensure that "public debate will not suffer for lack of 'imaginative expression' or the 'rhetorical hyperbole' which

has traditionally added much to the discourse of our Nation." *Milkovich v. Lorain Journal, Co.*, 497 U.S. 1, 20-21 (1990). The general tenor of this kind of protected speech sufficiently negates any impression that the speaker is asserting actual facts. *Id.* at 21.

At the heart of Defendant's free-speech challenge to his conviction is a sufficiency claim. *See Brewington v. State*, 7 N.E.3d 946, 955 (Ind. 2014). But because of the heighted First Amendment concerns, this Court "make[s] an independent examination of the whole record, so as to assure ourselves that the [conviction] does not constitute a forbidden intrusion on the field of free expression." *Id*. (quoting *Journal-Gazette Co. v. Bandido's, Inc.*, 712 N.E.2d 446, 455 (Ind. 1999)); *Baker*, 917 N.E.2d at 657 (stating that whether a communication is defamatory is a question of law but if the communication is susceptible to either a defamatory or non-defamatory interpretation, the matter may be submitted to the jury). The dispositive question is whether a reasonable factfinder could conclude the challenged statements imply an assertion that "is sufficiently factual to be susceptible of being proved true or false." *Milkovich*, 497 U.S. at 21; *Sasser v. State Farm Ins. Co.*, 172 N.E.3d 313, 321 (Ind. Ct. App. 2021) (stating that for a statement to be actionable as defamation, it must be clear that it contains objectively verifiable fact regarding the plaintiff), *trans. denied*.

Defendant was charged with Class B misdemeanor false informing for making two specific statements of police misconduct: 1) Linton police officers kicked in his door without legal justification; and 2) the officers kidnapped him (App. Vol.

II 16).[1] Defendant's allegation that the Linton police officers kicked in his door without legal justification is susceptible of being proven true or false. It was an articulation of an objectively verifiable fact. Defendant made that same factual assertion to Chief Clark in his November call and alleged it caused significant damage to his front door that he believed warranted redress (Tr. Vol. II 30-32, 131-32; State's Ex. 1). Chief Clark took the allegation seriously and promptly reviewed the body cam videos of the officers from that day to see if the officers had, in fact, kicked in Defendant's door and damaged it (Tr. Vol. II 132-33). Chief Clark found no evidence to support Defendant's claim (Tr. Vol. II 30-31, 132, 135). Nevertheless, Defendant made a public complaint to the same effect directly to the Linton city council in a factual and reasonable manner (State's Ex. 2). The allegation was proven false at trial through officer testimony, the body cam videos, and the issuance of a warrant to enter the residence to effectuate the Vigo County arrest warrant (Tr. Vol. II 163-76, 178-81, 183-85; State's Ex. 3, 4, 5-9, 10). Defendant's statement was a factual assertion that was proven false and was therefore a defamatory statement that fell outside First Amendment protection. *See*

[1] The remainder of Defendant's admittedly "incendiary statements" were not alleged to be false statements of misconduct (Appellant's Br. 13). Indeed, Defendant's statement that the officers were "thugs" and a "terrorist organization" were clearly his opinion not subject to a defamation claim. But the existence of this co-mingled rhetoric did not mean that other specific factual claims of misconduct fell within constitutional protection. Defendant provides no authority to support the idea that the speech must be either all hyperbole (to fall within the First Amendment) or false statements of fact (to possibly fall outside the First Amendment).

Brewington, 7 N.E.3d at 906 (stating that a defamatory statement conveys a defamatory imputation *of fact*) (emphasis in original).

Defendant's second complaint of misconduct was that the Linton officers "kidnapped" him because in his view they unlawfully arrested him (App. Vol. II 16; Tr. Vol. II 76-77; State's Ex. 2). "A person who knowingly or intentionally removes another person, by fraud, enticement, force, or threat of force, from one place to another, commits kidnapping." Ind. Code § 35-42-3-2(a). A communication is defamatory if it imputes criminal conduct, and it was an objectively verifiable fact whether police officers kidnapped Defendant. *Baker*, 917 N.E.2d at 657. Again, the question is whether a reasonable factfinder could conclude that the "kidnapped" statement implied an assertion sufficiently factual to be being proven true or false. *Milkovich*, 497 U.S. at 21. Defendant explained that he used this statement to describe what he concluded was an unlawful arrest, but that claim would also subject the officer to disciplinary action (Tr. Vol. II 76-77). But whether couched as "kidnapping" for forcible removal or an arrest unsupported by legal justification, it was sufficiently factual to be proven false. The evidence at trial showed that the Linton police officers had an arrest warrant and a warrant to enter to secure Defendant's arrest (Tr. Vol. II 162-64, 167-68, 178-79, 183; State's Ex. 10). *See Milkovich*, 497 U.S. at 21 (finding an allegation of perjury outside hyperbolic language and sufficiently factual to be susceptible of being proved true or false). Defendant's false allegation of kidnapping was a defamatory statement that fell

outside the purview of First Amendment protection. *See Brewington*, 7 N.E.3d at 906.

Defendant's focus on the actual reaction by the city council members to show that he only made exaggerated claims of opinion—and not false statements of misconduct—is misguided (Appellant's Br. 13-14). The question is whether a reasonable factfinder would find the statement sufficiently factual to be true or false. The Linton city council, which recorded Defendant's name and his statement, was under no obligation to engage in an investigation at that meeting or express dismay at Defendant's claims. But the city council did do something; it asked Chief Clark to respond, and he did (State's Ex. 2). And one of the council members explained to Defendant that his complaint was a civil matter that the board of public works and safety could address (State's Ex. 2). Mayor Preble was surprised and shocked at Defendant's allegations, which he perceived as a claim of misconduct (Tr. Vol. II 187-89). And even if there was a question of whether the "kidnapping" statement was susceptible of both defamatory and non-defamatory meanings, it was a question for the jury. *Brewington*, 7 N.E.3d at 961. The jury here concluded that this statement was a false statement of misconduct. Because Defendant's statements fell within the confines of the false informing statute, the statute was not unconstitutionally applied to him.

E. The statute is not unconstitutionally vague.

Due process principles advise that a penal statute is void for vagueness if it does not clearly define its prohibitions. *Brown v. State*, 868 N.E.2d 464, 467 (Ind.

2007). This Court reviews such claims de novo. *Gates v. State*, 192 N.E.3d 222, 225 (Ind. Ct. App. 2022). But this review is highly restrained and very deferential and begins with a presumption of constitutional validity. *Id.* Therefore, the party challenging the constitutionality of the statute bears a "heavy burden" to show that the statute is unconstitutionally vague. *Id.*

A criminal statute can be found unconstitutionally vague: (1) for failing to provide notice enabling ordinary people to understand the conduct that it prohibits; or (2) for the possibility that it authorizes or encourages arbitrary or discriminatory enforcement. *Coleman v. State*, 149 N.E.3d 313, 319 (Ind. Ct. App. 2020), *trans. denied*. A statute, however, "need only inform the individual of the generally proscribed conduct; it need not list with exactitude each item of prohibited conduct." *Baumgartner v. State*, 891 N.E.2d 1131, 1136 (Ind. Ct. App. 2008) (citing *State v. Lombardo*, 738 N.E.2d 653, 655 (Ind. 2000)).

1. The statute provides adequate notice of prohibited conduct.

The false informing statute meets the notice requirement, as ordinary people understand that the prohibited conduct is the making of knowingly false statements of misconduct by a police officer to the state or municipality that employs the police officer. The elements are not complicated: 1) making a complaint against a law enforcement officer; 2) to the state or municipality that employs the officer; 3) alleging the officer engaged in misconduct; 4) the misconduct is a violation of a departmental rule or procedure; 5) the misconduct occurred while the officer was

performing his/her duties; and 6) the person knows the complaint is false. I.C. §§ 35-44.1-2-3(b), (d)(5).

The term "complaint" is not ambiguous (Amicus Br. 8). Ordinary people understand that a "complaint" *to* a state or municipality would be an oral or written statement, not a remark at a bar or a shout out on social media. It certainly would constitute an oral statement made during a public meeting of a city council, which is memorialized for public record (App. Vol. II 19). But the crux of Amicus's claim is not what constitutes a "complaint" but what grievances fall within the statute (Amicus Br. 8-9). The statute sufficiently limits the scope of grievance to knowingly false statements of misconduct, which is a high bar set by defamation law; this language eliminates hypothetical "minor gripe[s] in passing" or "trivial" statements about police conduct (Amicus Br. 8; Appellant's Br. 20). The language of the statute places fair notice on ordinary citizens as to what constitutes false informing under this subsection. Defendant cannot sustain his high burden on this prong.

2. The statute does not invite improper enforcement.

The false informing statute also does not invite arbitrary or discriminatory enforcement. A statute may be impermissibly vague if its terms invite arbitrary or discriminatory enforcement. *Brown*, 868 N.E.2d at 467 (citing *Klein v. State*, 698 N.E.2d 296, 299 (Ind. 1998)). There must be something in the criminal statute in question to indicate where the line is to be drawn between trivial and substantial things, so that erratic arrests and convictions for trivial acts and omissions will not occur. *Id*. A statute is problematic when it vests "virtually complete discretion" in

the hands of the police to determine whether the suspect has satisfied the statute. *W.C.B. v. State*, 855 N.E.2d 1057, 1062 (Ind. Ct. App. 2006) (citing *Kolender v. Lawson,* 461 U.S. 352, 358 (1983)), *trans. denied*.

The specific requirements of making a knowingly false statement of police conduct that violates a departmental rule or procedure sufficiently narrows the scope of the statute to preclude arbitrary or discriminatory enforcement. The statute addresses only statements meeting the definition of defamation, not opinion or political hyperbole that may be constitutionally protected. The statement of fact must also be about the violation of a departmental rule or procedure. The scope of the statute is thus narrow, which greatly limits arbitrary or discriminatory enforcement.

Prosecutors have broad discretion in deciding what crimes to prosecute, *W.C.B.*, 855 N.E.2d at 1062, and a charge brought under the statute will, by its very nature, require First Amendment analysis. The infrequency of charges brought under this statute speaks to that discretion, not arbitrary or discriminatory enforcement. But the fact that Defendant was prosecuted after making knowingly false statements of egregious police misconduct to the Linton city council does not show discriminatory enforcement based on animus. It shows that his conduct rose to the level of meeting the statutory elements of the offense. Last, Defendant misconstrues the probable cause affidavit to suggest that he was treated differently by Linton authorities for being prosecuted under the statute (Appellant's Br. 23). A quick review of the probable cause affidavit suggests nothing of the sort (App. Vol.

II 17-21). This Court should find the statute constitutional and affirm Defendant's conviction for Class B misdemeanor false informing.

CONCLUSION

This Court should affirm the trial court's judgment.

Respectfully submitted,

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WORD COUNT CERTIFICATE

I verify that this brief contains no more than 14,000 words.

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CERTIFICATE OF SERVICE

I certify that on May 4, 2026, I electronically filed the foregoing using the Indiana Electronic Filing System (IEFS), and that on the same date the foregoing document was served upon counsel via IEFS.

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