DON'T FORGET TO KNOCK: ELIMINATING THE TENSION BETWEEN INDIANA'S SELF DEFENSE STATUTE AND NO-KNOCK WARRANTS

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INTRODUCTION

On January 14, 2003, a police SWAT team dressed in black masks and camouflage outfits conducted a raid on the home of Jillian D. King's boyfriend in Muncie, Indiana.[1] The officers were executing a no-knock warrant after finding cocaine inside the car of another resident of the house.[2] After seeing the police officers approach the house and fearing they were intruders, King, who had previously been robbed at gunpoint, fired at the officers.[3] King was charged with felony criminal recklessness and drug possession.[4]

King originally pled guilty to the charges, but after a judge refused the terms of the guilty plea, her case went to trial.[5] At trial, King explained she "saw what appeared to be a burglar jerking at the door," and then "ran down and got a gun and shot out a window."[6] King further stated she "would have opened the door" if she had known the intruders were police.[7] The prosecutor trying King's case described her as having "an itchy trigger finger."[8] While the Muncie SWAT team testified they had announced themselves before entering, video of the raid showed officers prying open the door before knocking or announcing their presence.[9] The jury ultimately deadlocked on the issue of King's guilt and the validity of her self-defense claim.[10]

It is fortunate that no one was injured during the police raid in which King was involved.[11] Despite this good fortune, King's case raises an interesting question on what the result would have been had she injured or killed one of the police officers. Mainly, would the jury have been deadlocked if King had

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1. RADLEY BALKO, OVERKILL: THE RISE OF PARLIAMENTARY RAIDS IN AMERICA 68 (2006), *available at* http://www.cato.org/pubs/wtpapers/balko_whitepaper_2006.pdf, *archived at* http://perma.cc/R444-3Z83.
2. *Id*.
3. *Id*.
4. *Id*.
5. *Id*.
6. *Id*.
7. *Id*.
8. *Id*.
9. *Id*.
10. *Id*.
11. *Id*.

successfully shot, or even killed one of the police officers? Does it matter that the police officers failed to announce their presence until after prying open the door? Finally, did King have a valid defense under Indiana law to use force, including deadly force, to resist the police officers intrusion into her home, even when the officers had a valid warrant?

An individual's right to resist unlawful arrest originated from English common law and was adopted early in America's history.[12] Beginning in the twentieth century, the right to resist unlawful arrest began to draw criticism from both legal scholars and judges.[13] They argued the rationale behind the law was one's ability to protect oneself from the state's overarching police powers when the individual was in fact innocent.[14] With the advent of avenues such as bail, suppression of evidence, and civil remedies against unlawful and excessive police power, proponents of abolishing the right to resist unlawful arrest argued the law was out of date and no longer necessary.[15] As a result, many states began to eliminate the right to resist unlawful arrest altogether.[16] Recently, however, many states have started to reinforce an individual's right to resist unlawful arrest by codifying the common law doctrine.[17]

Along with codifying an individual's right to resist unlawful arrest, state legislatures have also begun to codify the "castle doctrine."[18] The old adage, "a man's home is his castle," conveys the notion that an individual's home is his sanctuary and he can defend it against an intruder at all costs.[19] The right to protect oneself and others, with deadly force if necessary, dates back to the beginning of English common law.[20] The "castle doctrine" created an exception to the general rule that before someone could make a claim of self-defense, he first had to try to disengage or retreat from the attacker.[21]

As a citizen's ability to resist unlawful arrest and protect himself and his property has increased, so too has police officials' ability to conduct search and seizures of an individual's property.[22] Specifically, courts have loosened the

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12. Craig Hemmens & Daniel Levin, '*Not a Law at All*': *A Call for a Return to the Common Law Right to Resist Unlawful Arrest*, 29 SW. U. L. REV. 1, 13 (1999).

13. *Id*. at 18.

14. *Id*.

15. *Id*. at 18-24.

16. *Id*. at 24.

17. *Id*.

18. STEVEN JANSEN & M. ELAINE NUGENT-BORAKOVE, EXPANSIONS TO THE CASTLE DOCTRINE: IMPLICATIONS FOR POLICY AND PRACTICE 3 (2008), *available at* http://www.ndaa.org/pdf/Castle%20Doctrine.pdf, *archived at* http://perma.cc/CRA4-7L4Y.

19. *Id*.

20. *Id*.

21. *Id*.

22. *See* G. Todd Butler, Note, *Recipe For Disaster: Analyzing The Interplay Between the Castle Doctrine And The Knock-And-Announce Rule After Hudson v. Michigan*, 27 MISS. C. L. REV. 435 (2008).

requirements necessary to obtain and execute no-knock warrants.[23] Furthermore, "[t]he proliferation of SWAT teams, police militarization, and the Drug War [has] given rise to a dramatic increase in the number of 'no-knock' or 'quick-knock' raids on suspected drug offenders."[24] These no-knock raids are notoriously unreliable because they are often based on tips from unreliable, confidential informants and often result in a SWAT-style raid on the wrong home or on the homes of nonviolent, misdemeanor drug users.[25] Such highly volatile and confrontational search tactics cause an extreme amount of disturbing terror for the individual whose home is being broken into.[26] Beside the fear no-knock warrants induce in the individuals whom are subject to the raids, what is even "more disturbing are the number of times such 'wrong door' raids unnecessarily lead to the injury or death of suspects, bystanders, and police officers."[27]

Indiana is among states that have codified the right for citizens to resist unlawful arrest and unlawful entry into their homes.[28] Indiana case law has also loosened the rules pertaining to no-knock warrants, following the national trend of allowing greater police discretion when executing these warrants.[29] While Indiana's codification of the right to resist unlawful arrest and the "castle doctrine" are similar to many other states following the same path, Indiana's law differs in that it allows citizens to use deadly force against police officers.[30]

This Note examines the tension between Indiana's newly codified self-defense statute—Indiana Code section 35-41-3-2—and recent Indiana court decisions liberalizing the requirements necessary for police officials to execute a no-knock warrant. The main contention of this Note is that, through the increase of a militarized police force, combined with the advent of lessening the knock-and-announce requirement and the codified right of Indiana's citizens to use force against police officers to protect their homes, the Indiana courts and legislature have placed both its citizens and police officers in a dangerous position which may lead to deadly results. Part I of this Note gives a historic overview of how and why Indiana's self-defense statute, section 35-41-3-2, was modified to include police officers as a class of individuals for whom the defense applied, as well as the Indiana court decisions that allow greater police powers to execute no-knock warrants. Next, Part II analyzes the text of section 35-41-3-2

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23. *See id*.

24. Kiriath Jearim, *Botched Paramilitary Police Raids: An Epidemic of "Isolated Incidents*," FREE REPUBLIC BROWSE (Nov. 27, 2006, 1:12 PM), http://www.freerepublic.com/focus/news/1744654/posts (quoting BALKO, *supra* note 1).

25. *Id*.

26. *Id*.

27. *Id*.

28. *See* IND. CODE § 35-41-3-2 (2012).

29. *See* Lacey v. State, 946 N.E.2d 548 (Ind. 2011) (holding that Indiana's state constitutional provision prohibiting unreasonable searches and seizures does not require prior judicial authorization for the no-knock execution of a warrant when justified by exigent circumstances, even if such circumstances were known by police when the warrant was obtained).

30. IND. CODE § 35-41-3-2(k).

to determine whether the new law may offer an affirmative defense to a citizen who wrongfully uses deadly force against a police officer executing a no-knock warrant. Finally, Part III offers different proposals on how to protect both citizens and police officers from the violence and destruction the tension between the two laws create.

I. BACKGROUND: INDIANA'S "CASTLE DOCTRINE" AND KNOCKING WITH WARRANTS

The Indiana defense of person and property statute, section 35-41-3-2, allows Indiana citizens to use reasonable force, including deadly force, against another person or a police officer.[31] In regard to using force against a police officer, section 35-41-3-2 provides:

> A person is justified in using reasonable force against a public servant if the person reasonably believes the force is necessary to:
> (1) protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force;
> (2) prevent or terminate the public servant's unlawful entry of or attack on the person's dwelling, curtilage, or occupied motor vehicle; or
> (3) prevent or terminate the public servant's unlawful trespass on or criminal interference with property lawfully in the person's possession, lawfully in possession of a member of the person's immediate family, or belonging to a person whose property the person has authority to protect.[32]

With regard to deadly force, section 35-41-3-2 states:

> A person is not justified in using deadly force against a public servant whom the person knows or reasonably should know is a public servant unless:
> (1) the person reasonably believes that the public servant is:
> (A) acting unlawfully; or
> (B) not engaged in the execution of the public servant's official duties; and
> (2) the force is reasonably necessary to prevent serious bodily injury to the person or a third person.[33]

Before section 35-41-3-2 was amended in May 2012, the statute was silent on whether the defense was applicable to police officers. The changes allowed for deadly force to be justified against a public servant under certain circumstances and were the state legislature's response to the highly controversial Indiana Supreme Court decision *Barnes v. State*.[34]

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31. *See* IND. CODE § 35-41-3-2.
32. *Id.* § 35-41-3-2(i).
33. *Id.* § 35-41-3-2(k).
34. *See* IND. GEN. ASSEMBLY, FINAL REPORT OF THE LEGISLATIVE COUNCIL BARNES V.

A. The Barnes Decision

Few cases decided by the Indiana Supreme Court have grasped and provoked the attention of Indiana citizens as much as the *Barnes v. State* decision.[35] On November 18, 2007, police officers were dispatched to the home of Richard Barnes in response to a possible domestic battery.[36] When arriving on the scene, police officers found Barnes to be agitated and yelling very loudly in the parking lot of his apartment complex.[37] When Barnes's wife entered their apartment, Barnes followed her to the doorway and then blocked the police officers from entering.[38] When an officer attempted to move around Barnes and enter the apartment, Barnes got physical and pushed the police officer.[39] Barnes was arrested and charged with Class A misdemeanor battery on a police officer, Class A misdemeanor resisting law enforcement, Class B misdemeanor disorderly conduct, and Class A misdemeanor interference with the reporting of a crime.[40]

Before his trial, Barnes tendered a jury instruction that he had the common law right to reasonably resist unlawful entry by police officers into a citizen's home.[41] Barnes's instruction read: "[w]hen an arrest is attempted by means of a forceful and unlawful entry into a citizen's home, such entry represents the use of excessive force, and the arrest cannot be considered peaceable. Therefore, a citizen has the right to reasonably resist the unlawful entry."[42] The trial court refused Barnes's instruction, and he was convicted of battery on a police officer, resisting law enforcement, and disorderly conduct, all of which he appealed.[43] On appeal, the court found the trial court's refusal to proffer Barnes's jury instruction was not a harmless error and ordered a new trial on the battery and resisting charges.[44] The Indiana Supreme Court then granted transfer.

In *Barnes v. State*, the Indiana Supreme Court found Barnes was not entitled to the jury instruction he requested, and there was sufficient evidence to find him guilty of his convictions.[45] In its reasoning, the court determined the right to

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STATE SUBCOMMITTEE, at 1 (2011), http://www.in.gov/legislative/interim/committee/reports/LCBSEB1.pdf, *archived at* http://perma.cc/LX7Z-FDCP [hereinafter LEGISLATIVE REPORT] ("The Legislative Council directed the Subcommittee to review the Supreme Court's opinion in *Barnes v. State* . . . and consider a possible legislative response.").

35. Joel M. Schumm, *Recent Developments in Indiana Criminal Law and Procedure*, 45 IND. L. REV. 1067, 1073 (2012).

36. Barnes v. State, 946 N.E.2d 572, 574 (Ind.), *aff'd on reh'g*, 953 N.E.2d 473 (Ind. 2011).

37. *Id*.

38. *Id*.

39. *Id*.

40. *Id*. at 574-75.

41. *Id*. at 575.

42. *Id*. at 575 n.1.

43. *Id*. at 575.

44. *Id*.

45. *See id*. at 576-78.

resist lawful and unlawful entry by police officers into one's home is against public policy.[46] Instead of physically resisting officers, the court thought other alternatives such as bail, suppression of evidence, and civil remedies were appropriate steps aggrieved individuals could take against police officers who overstepped their boundaries.[47] At the end of its analysis, the court stated the "right to reasonably resist an unlawful police entry into a home is no longer recognized under Indiana law."[48]

The initial *Barnes* ruling brought a multitude of reactions from both the legal and greater Indiana community.[49] What caused such stir and debate was not the court's decision, but rather the language it used to address the issue.[50] Many in the legal profession felt the court's ruling went too far and would have unforeseen consequences.[51] In light of such critical attention, the court agreed to rehear the case.

In the rehearing of *Barnes*, the court affirmed its prior decision.[52] In clarifying its position, the court held Indiana courts would not recognize the common law right of the "castle doctrine" as a defense to the statutory charge of battery or other violent acts on a police officer.[53] The court reiterated its ruling was statutory and not constitutional, and it did not change the law regarding citizens' Fourth Amendment rights to be secure in their persons, houses, and papers against unreasonable searches and seizures.[54]

In response to the court's ruling on rehearing, the Indiana legislature amended section 35-41-3-2 to circumvent the *Barnes* decision.[55] With the new language adding police officers as a class of individuals to whom the self-defense statute now applies, an individual charged with shooting a police officer during a raid may be able to argue that section 35-41-3-2 applies as an affirmative defense.[56]

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46. *Id*. at 576.

47. *Id*.

48. *Id*. at 577.

49. Brief Of Amicus Curiae Members of the General Assembly in Support of Appellant's Petition For Rehearing at 1-2, Barnes v. State, 946 N.E.2d 572 (Ind. 2011) (No. 82S05-1007-CR-343) [hereinafter Amicus Brief] ("Few issues before this Court have galvanized the public's attention and concern as the declaration in this case that the right to reasonably resist an unlawful police entry into a home is no longer recognized under Indiana law.") (internal quotation marks omitted); Schumm, *supra* note 35, at 1073.

50. *See* Amicus Brief, *supra* note 49, at 2.

51. Schumm, *supra* note 35, at 1074.

52. Barnes v. State, 953 N.E.2d 473, 475 (Ind. 2011).

53. *Id* at 474.

54. *See id*. at 474-75.

55. *See* LEGISLATIVE REPORT, *supra* note 34, at 1 ("The Legislative Council directed the Subcommittee to review the Supreme Court's opinion in *Barnes v. State* . . . and consider a possible legislative response.").

56. *See* IND. CODE § 35-41-3-2 (2012).

B. No-Knock Warrants and Indiana Case Law

In the same week the Indiana Supreme Court heard the initial *Barnes* case, they also addressed the controversial issue of the circumstances under which police officials may disregard the knock-and-announce rule in executing a search warrant, and instead, carry out a no-knock warrant.[57]

The knock-and-announce rule is an extension of a citizen's Fourth Amendment right to be protected from unreasonable searches and seizures.[58] The rule requires an officer to first knock and announce his presence before physically entering an individual's home, even if he has a valid warrant.[59] The U.S. Supreme Court first recognized the knock-and-announce rule as a component of the Fourth Amendment in *Wilson v. Arkansas*.[60] In its decision, the Court stated the "common-law 'knock and announce' principle forms a part of the reasonableness inquiry under the Fourth Amendment."[61]

While the Court has recognized the knock-and-announce rule as part of the Fourth Amendment protections, the rule is not absolute, and there are situations in which police officials may circumvent the rule.[62] For instance, some jurisdictions permit police officers to execute no-knock warrants.[63] The Supreme Court has held no-knock warrants are constitutional "when a warrant applicant gives reasonable grounds to expect the futility or to suspect that one or another . . . exigency already exists or will arise instantly upon knocking, a magistrate judge is acting within the Constitution to authorize a 'no-knock' entry."[64] Furthermore, even if a no-knock warrant is not issued, the Supreme Court has allowed police officers to dispense with the knock-and-announce rule "if circumstances support a reasonable suspicion of exigency when the officers arrive at the door, they may go straight in."[65] Finally, even if police officers execute a warrant unlawfully by not announcing their presence, the Court has stated suppression of the evidence found during the search is not an appropriate remedy, thus further lessening an individual's right against police search and seizure.[66] While the U.S. Supreme Court has ruled police officers may execute a no-knock warrant if exigent circumstances exist at the time the officers arrive at the door, some jurisdictions have held that officers may not circumvent the knock-and-announce rule and execute a no-knock warrant unless they have received express

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57. Lacey v. State, 946 N.E.2d 548 (Ind. 2011).

58. E. Martin Estrada, *A Toothless Tiger in the Constitutional Jungle: The "Knock and Announce Rule" and the Sacred Castle Door*, 16 U. FLA. J.L. & PUB. POL'Y 77, 81 (2005).

59. 1 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE: FEDERAL RULES OF CRIMINAL PROCEDURE § 56 (4th ed. 2013).

60. Wilson v. Arkansas, 514 U.S. 927 (1995).

61. *Id*. at 929.

62. JOHN M. BURKOFF, SEARCH WARRANT LAW DESKBOOK § 12:9 (2013).

63. *Id.*

64. *Id*.

65. United States v. Banks, 540 U.S. 31, 37 (2003).

66. Hudson v. Michigan, 547 U.S. 586, 591 (2006).

authorization to do so, and the circumstances that justified its issuance existed at the time of the warrant's execution.[67]

Indiana, like many jurisdictions, requires that police officers knock-and-announce their presence before executing a valid search warrant.[68] The requirement, however, is not absolute and police officers may execute a no-knock warrant when exigent circumstances exist.[69] The issue of whether an officer must receive express authorization from a magistrate to execute a no-knock warrant was decided in *Lacey v. State*.[70]

In *Lacey*, the defendant was charged with unlawful possession of a firearm by a serious violent felon, possession of marijuana, and maintaining a common nuisance.[71] The charges were brought after police obtained evidence, pursuant to a search warrant, from the defendant's residence in Fort Wayne, Indiana.[72] The police officers executed the search warrant without knocking-and-announcing their presence.[73] At trial, the defendant filed a motion to suppress the evidence obtained by the police officials, arguing the search warrant was not supported by probable cause, and the manner in which the police officers executed the warrant violated Indiana constitutional law.[74] The trial court denied the defendant's motion.[75] On appeal, the appellate court held there was sufficient probable cause to issue the warrant, but found the search did violate Indiana constitutional law and suppression of the evidence was the appropriate remedy.[76] The Indiana Supreme Court then granted transfer to determine whether the search violated the Indiana Constitution.[77]

In his appeal, the defendant acknowledged that Indiana law, which requires police officers to first knock-and-announce their presence before entering a home to execute a warrant, is not an absolute rule, and police officials may circumvent the law if exigent circumstances exist.[78] The defendant also did not argue that the factors the police officers had relied upon to execute the no-knock warrant were inadequate.[79] Instead, the defendant argued the police's execution of a no-knock warrant to gain entry into his residence was illegal because the officers did not first gain approval from the magistrate who issued the warrant enabling them not

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67. *See* BURKOFF, *supra* note 62.

68. IND. CODE § 35-33-5-7 (2012).

69. *See* Beer v. State, 885 N.E.2d 33, 43 (Ind. Ct. App. 2008) ("We conclude that Indiana law supports no knock warrants under certain circumstances.").

70. Lacey v. State, 946 N.E.2d 548 (Ind. 2011).

71. *Id*. at 549.

72. *Id*.

73. *Id*.

74. *Id*.

75. *Id*.

76. Lacey v. State, 931 N.E.2d 378, 386 (Ind. Ct. App. 2010).

77. *Lacey*, 946 N.E.2d, at 548.

78. *Id*. at 549.

79. *Id*.

to comply with the knock-and-announce requirement.[80] Put more simply, the defendant argued article 1, section 11 of the Indiana Constitution, which prohibits unreasonable search or seizure, requires police officers to first tell the magistrate issuing the warrant of the exigent circumstances justifying the execution of a no-knock warrant, and then gain approval from the magistrate to execute the no-knock warrant.[81]

The Indiana Supreme Court disagreed that police officers must first inform the magistrate issuing the warrant of the existing exigent circumstances.[82] Instead, "courts will assess the reasonableness of entry based on the totality of the circumstances at the time the warrant was served."[83] While it would be better practice for police officers to disclose all circumstances known at the issue of the warrant, it still is not required.[84] The court ultimately found evaluating the reasonableness of the police officers decision to enter a home without knocking and announcing his presence in light of the totality of circumstances appropriate, because "whatever arguably exigent factors may be known by police when a warrant is obtained, their significance at the moment the warrant is executed may vary considerably due to the then-existing circumstances."[85] The Indiana Supreme Court also decided to follow the United States Supreme Court rule that suppression of the evidence found during the illegal search is not a proper remedy, even if a police officer is found to have unlawfully executed a warrant by not announcing his presence.[86]

Therefore, by following the national trend of loosening the rules for police officers to use and execute no-knock warrants, the Indiana Supreme Court effectively lessened Indiana citizens' Fourth Amendment rights. Alarmingly, the updated language to section 35-41-3-2 allowing citizens an affirmative right to reasonably defend their home from intrusion seems to directly conflict with the court's knock-and-announce ruling.

II. ANALYSIS: HOW TO APPLY INDIANA' NEW SELF-DEFENSE STATUTE

Section 35-41-3-2 offers citizens an affirmative defense when using force against a police officer trying to unlawfully enter their home.[87] Understanding the new law is important to understand how and when a citizen may raise the defense against a police officer. First, one must determine how to statutorily

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80. *Id*.

81. *Id*.

82. *Id* at 551.

83. *Id*. at 552-53.

84. *Id*.

85. *Id*. at 552.

86. *See* Wilkins v. State, 946 N.E.2d 1144, 1148 (Ind. 2011) ("Even if the circumstances were considered to have been insufficient to justify the no-knock entry, however, such a violation would not entitle the defendant to the exclusion of the resulting evidence under federal jurisprudence.").

87. IND. CODE § 35-41-3-2 (2012).

interpret the language of the law. Mainly, should the defense apply if an individual can show he or she reasonably believed the police intrusion during a no-knock raid was unlawful, or does an individual have to show the police intrusion was actually unlawful? Second, looking at the policy and rationale behind the added language to the law may offer valuable insight on a judge's interpretation of whether the law may apply to police officers in executing a no-knock raid. Finally, it will be helpful to look at Indiana case law dealing with an individual's right to resist unlawful arrest to better understand the law's potential breadth.

A. Statutory Interpretation

Under Indiana law, "[t]he courts have the exclusive responsibility and duty to interpret the law, including the Constitution, legislation, and case law, and to apply the law to the case at issue."[88] "Thus, statutory interpretation is the responsibility of the court and within the exclusive province of the judiciary."[89] Furthermore, "[a] statute is examined and interpreted as whole and language itself is scrutinized, including grammatical structure of clause or sentence at issue."[90]

Looking plainly at the text of the statute: "[a] person is justified in using reasonable force against a public servant if the person *reasonably* believes the force is necessary to [prevent unlawful entry],"[91] and "a person is not justified in using deadly force against a public servant whom the person knows or reasonably should know is a public servant unless (1) the person *reasonably* believes that the public servant is acting unlawfully."[92] In both provisions of the statute, the legislature placed the word "reasonably" in the text before the phrase "unlawfully." Following rules of grammar, the word "reasonably" qualifies the phrase "unlawful entry."[93] It would appear, therefore, the statute allows an individual to use force on a reasonable belief that a police official is unlawfully entering their home.

Statutory construction can also help courts interpret section 35-41-3-2. "the meaning of the statute. The construction of a statute is necessary only where the statute is ambiguous and of doubtful meaning, and if the language of a statute is

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88. 5A TRACY FARRELL ET AL., INDIANA LAW ENCYCLOPEDIA: CONSTITUTIONAL LAW § 59 (2012) (citing Miller v. Mayberry, 506 N.E.2d 7 (Ind. 1987); State *ex rel*. Mass Transp. Auth. of Greater Indianapolis v. Ind. Revenue Bd., 255 N.E.2d 833 (Ind. Ct. App. 1970)).

89. *Id*. (citing Ashley v. State, 757 N.E.2d 1037 (Ind. Ct. App. 2001); Golden Rule Ins. Co. v. McCarty, 755 N.E.2d 1104 (Ind. Ct. App. 2001); Dora v. State, 736 N.E.2d 1254 (Ind. Ct. App. 2000); Brooks v. Gariup Const. Co., 722 N.E.2d 834 (Ind. Ct. App. 1999); State v. Hensley, 716 N.E.2d 71 (Ind. Ct. App. 1999)).

90. 26 LILA A. ZAKOLSKI, INDIANA LAW ENCYCLOPEDIA: STATUTES § 80 (2012) (citing Blasko v. Menard, Inc., 831 N.E.2d 271 (Ind. Ct. App. 2005)).

91. IND. CODE § 35-41-3-2 (i) (2013) (emphasis added).

92. *Id*. § 35-41-3-2 (k) (emphasis added).

93. Dimitri Epstein, Note, *Cops or Robbers? How Georgia's Defense of Habitation Statute Applies to No-Knock Raids by Police*, 26 GA. ST. U. L. REV. 585, 596 (2010).

plain and unambiguous, there is no occasion for construction to ascertain "[94] Accordingly, a statute is "ambiguous," and thus open to judicial interpretation, when it is susceptible to more than one interpretation.[95] If a statute is ambiguous, a court must ascertain the legislature's intent and interpret the statute to effectuate that intent.[96]

One could arguably read "reasonably" in section 35-41-3-2(i) and (k) as qualifying the sections that follow the main phrase, or instead, read the phrase "reasonably" as only applying to the first sentence of the section. When there is an ambiguity concerning the ambit of criminal statutes, the ambiguity should be resolved in favor of lenity.[97] The "'[r]ule of lenity' requires that penal statutes be construed strictly against state and any ambiguities resolved in favor of the accused."[98] Looking at the ambiguity, courts should construe the term "reasonably" to qualify the entire section of the statute, in order to give fair warning to Indiana citizens invoking the defense.

B. Legislative Intent

"The cardinal rule, and primary goal, of statutory construction is to determine and give effect to the true intent of the legislature."[99] The Court's decision in *Barnes* to no longer recognize the common law right to resist law enforcement from unlawfully entering one's home was received with a flurry of outrage and protest from Indiana citizens and government officials.[100] One of the largest concerns was that the decision abrogated any right for citizens to defend themselves against illegal police activities.[101] In the amicus curiae brief asking the Indiana Supreme Court to reconsider the initial *Barnes* ruling, members of the General Assembly argued the ruling would create an incentive for individuals to portray themselves as police officers and demand access into citizens' homes

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94. 26 LISA A. ZAKOLSKI, INDIANA LAW ENCYCLOPEDIA: STATUTES § 60 (2012) (citing Romack v. State, 446 N.E.2d 1346 (Ind. Ct. App. 1983); Bowen v. Review Bd., 362 N.E.2d 1178 (Ind. App. 1977); Reome v. Edwards, 79 N.E.2d 389 (Ind. 1948); Piersol v. Hays, 47 N.E.2d 838 (Ind. App. 1943); Tucker v. Muesing, 39 N.E.2d 738 (Ind. 1942)).

95. *Id*. (citing Elmer Buchta Trucking, Inc. v. Stanley, 744 N.E.2d 939 (Ind. 2001); D.O. McComb & Sons, Inc. v. Feller Funeral Home, Inc., 720 N.E.2d 454 (Ind. Ct. App. 1999); Ballard v. State, 715 N.E.2d 1276 (Ind. Ct. App. 1999); U.S. Outdoor Adver. Co. v. Ind. Dep't of Transp., 714 N.E.2d 1244 (Ind. Ct. App. 1999); Amoco Prod. Co. v. Laird, 622 N.E.2d 912 (Ind. 1993); Hinshaw v. Bd. of Comm'rs, 611 N.E.2d 637 (Ind. 1993)).

96. Cnty. Council of Porter Cnty. v. RDA, 944 N.E.2d 519, 524 (Ind. Ct. App. 2011).

97. Skilling v. United States, 130 S. Ct. 2896, 2905-06 (2010).

98. Meredith v. State, 906 N.E.2d 867, 872 (Ind. 2009).

99. 26 LISA A. ZAKOLSKI, INDIANA LAW ENCYCLOPEDIA: STATUTES § 63 (2012) (citing Westbrook v. State, 770 N.E.2d 868 (Ind. Ct. App. 2002); Hatcher v. State, 762 N.E.2d 170 (Ind. Ct. App. 2002); Snider v. State, 753 N.E.2d 721 (Ind. Ct. App. 2001); Lakes & Rivers Transfer v. Rudolph Robinson Steel Co., 736 N.E.2d 285 (Ind. Ct. App. 2000)).

100. *See* Amicus Brief, *supra* note 49, at 1-2; Schumm, *supra* note 35, at 1073.

101. Schumm, *supra* note 35, at 1073.

based off of the *Barnes* ruling.[102] Fearing the court's ruling left Indiana citizens with absolutely no rights to defend themselves against illegal police activity, legislative officials looked to draft a bill that would statutorily bar the *Barnes* decision.[103] The initial legislative response to *Barnes* included a draft proposal of a bill expanding the crime of official misconduct to include unlawful entry by police officers in certain circumstances, and another bill proposal permitting citizens, in certain circumstances, to resist unlawful entry by police officers.[104] The language of the bill expanding the crime of official police misconduct included:

> A law enforcement officer who, knowing that the entry is unlawful, enters the residence of another person without having a reasonable belief that the unlawful entry is necessary to prevent injury or death commits unlawful entry by law enforcement, a Class D felony. However, the offense is a class C felony if it results in serious bodily injury to another person.[105]

The language of the proposed bill permitting citizens to resist unlawful entry by police officers is now part of section 35-41-3-2. Along with allowing citizens to use reasonable force against police officers, the Indiana legislature also added the text:

> In enacting this section, the general assembly finds and declares that it is the policy of this state to recognize the unique character of a citizen's home and to ensure that a citizen feels secure in his or her own home against unlawful intrusion by another individual or a public servant. By reaffirming the long standing right of a citizen to protect his or her home against unlawful intrusion, however, the general assembly does not intend to diminish in any way the other robust self defense rights that citizens of this state have always enjoyed. Accordingly, the general assembly also finds and declares that it is the policy of this state that people have a right to defend themselves and third parties from physical harm and crime. The purpose of this section is to provide the citizens of this state with a lawful means of carrying out this policy.[106]

The Indiana legislature ultimately found that adopting the additions to section 35-41-3-2, identified the best approach to dealing with the *Barnes* decision.[107] By allowing Indiana citizens to use force against police officers if the entry is unlawful, the Indiana law would afford the same protections against police officials as it did against regular citizen intrusion.

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102. Amicus Brief, *supra* note 49, at 5.

103. LEGISLATIVE REPORT, *supra* note 34, at 1.

104. *Id*.

105. *Id*.

106. IND. CODE § 35-41-3-2(a) (2012).

107. LEGISLATIVE REPORT, *supra* note 34, at 1.

C. Past Cases

Before the *Barnes* decision, Indiana courts had ruled on the issue of resisting unlawful police entry into one's home. Looking at past cases dealing with the issue may also offer some insight into how courts may interpret the new provisions to section 35-41-3-2.

In *Heichelbech v. State*, the Indiana Supreme Court recognized the common law right to resist unlawful arrest.[108] Though the *Heichelbech* court found the defendant's arrest to be lawful, it recognized that the defendant would have been "entitled to resist the arrest only if the officer had no right to arrest."[109] Because the court found the right inapplicable, it added no further explanation as to what exactly constitutes prohibited and permissible resistance.[110]

Even though the Indiana Supreme Court has not clarified its language regarding resisting unlawful arrest in *Heichelbech*, the Indiana Court of Appeals has considered an individual's right to resist unlawful arrest in number of cases. In earlier cases, the appellate court's decisions seemed to be going towards the trend of abolishing a citizen's right to resist unlawful arrest.[111] However, the court did limit those earlier case decisions to circumstances occurring in public, and applied different rules when the arrest occurred in an individual's home.[112]

In *Casselman v. State*, a police officer went to the home of the defendant to issue a body attachment order entered at a bankruptcy proceeding.[113] After the defendant attempted to close the door, the officer forced his way into the defendant's home, drew his revolver, and placed the defendant under arrest.[114] On appeal, the court reversed the defendant's charge of resisting law enforcement.[115] The court determined the officer illegally entered the defendant's home, and the defendant properly resisted the illegal arrest.[116] The court's decision ultimately ruled on the sanctity of an individual's home, noting there is a greater privilege to resist an unlawful entry into private premises than to resist unlawful arrest in a public place.[117] In essence, the *Casselman* decision affirmed the "castle doctrine." *Barnes* effectively overruled *Casselman*, but judges may look to the court's analysis in *Casselman* when interpreting the new provisions

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108. 281 N.E.2d 102 (Ind. 1972).

109. *Id*. at 104.

110. 16 WILLIAM ANDREW KERR, INDIANA PRACTICE: CRIMINAL PROCEDURE—PRETRIAL § 1.9d (2012).

111. *Id*.

112. *See* Casselman v. State, 472 N.E.2d 1310, 1317 (Ind. Ct. App. 1985) ("[The] line extends across the doorway of Casselman's house and separates his situation [from those] who knowingly resisted arrests in public places. The common law right to resist such arrests has been abrogated; the right to offer reasonable resistance to an unlawful entry has not.").

113. *Id*. at 1312.

114. *Id*.

115. *Id*. at 1318.

116. *Id*.

117. *Id*. at 1317.

in section 35-41-3-2.

III. PROPOSAL

Indiana courts should interpret Indiana's self-defense statute to allow citizens to use force if they reasonably believe the police officers entry was unlawful, even if the entry was lawful. By requiring the police entry to actually be unlawful goes against the intent of the legislature.[118] Allowing a citizen an affirmative defense against an imposter disguised as a police officer but not against an actual police official when the citizen reasonably believes the entry is unlawful is not fair and places the brunt of risk onto the citizen's shoulders during a deadly encounter.[119] As one writer states:

> For criminal law, the current rule that self-defense is a complete defense if the defendant's fear was both real and reasonable is appropriate. An actor's conduct based on a reasonable fear of death or serious injury does not merit punishment and, when life is at stake, criminal sanctions will not deter deadly force. It is also unlikely that such an actor represents a future danger to the public. Most important, a violent response towards another is not wrongful when it is based on a reasonable fear that the other is perpetrating a deadly attack on the actor or a third party.[120]

Just as in Jillian King's case, many people will confuse militarized search tactics employed by police officials to enter their homes as an actual attack on themselves and their property.[121] Prosecuting these individuals will not deter other citizens from making the same mistake because individuals will always employ tactics of self-defense when they reasonably believe their families' lives or their own are at stake.[122] Therefore, section 35-41-3-2 should be read to offer an affirmative defense to citizens who use force, including deadly force, against police officers if they reasonably believe the officer is entering unlawfully, even though their entry is in fact lawful. In determining whether an individual's mistake in shooting a police officer is reasonable, the court should apply an objective standard with clear guidelines to offer clarity to both citizens and police officers in navigating the new law. Furthermore, to help curb unneeded violence and death among citizens and law abiding police officers, the Indiana legislature should pass a new law requiring police officers to knock-and-announce their presence before entering a citizen's home to execute a warrant.[123] By forcing police officers to first knock-and-announce their presence, the Indiana legislature may guard Indiana citizens' strong liberty interest in protecting their homes,

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118. LEGISLATIVE REPORT, *supra* note 34, at 1.

119. Epstein, *supra* note 93, at 611-12.

120. Caroline Forell, *What's Reasonable?: Self-Defense and Mistake in Criminal and Tort Law*, 14 LEWIS & CLARK L. REV. 1401, 1433 (2010).

121. BALKO, *supra* note 1, at 68.

122. Forell, *supra* note 120, at 1433.

123. Butler, *supra* note 22, at 449.

while still protecting both citizens and police officers from mindless violence that results from no-knock warrants.[124]

A. A Reasonable Belief: Applying an Objective Reasonable Test

Allowing citizens the right to use force against police officers based on the "castle doctrine," while simultaneously granting the police almost unlimited power to enter an individual's home with a valid warrant will almost certainly lead to deadly results.[125] Opponents of the "castle doctrine" contend it creates a "trigger happy" mentality in citizens' minds and encourages individuals to "shoot first, ask questions later."[126] The "castle doctrine" sends conflicting messages to citizens regarding when they can and cannot use lethal force with impunity.[127] At the same time, critics of the abrogation of the knock-and-announce rule in favor of no-knock warrants argue it places both citizens and police in dangerous situations, often times causing injury and death.[128] If an officer executes a no-knock warrant and does not announce his presence, it is easy to imagine a situation where an unassuming homeowner would engage the officer in violent interaction for fear of burglary or an intruder.[129] Such a situation creates a problematic scenario for judges and juries when defendants can claim they thought the officer was an unknown intruder against whom they had the right to shoot on sight.[130]

The disastrous situation of a man named Cory Maye illustrates the tension between the "castle doctrine" and no-knock warrants. On December 26, 2001, police in Prentiss, Mississippi executed a no-knock search warrant on the apartment of Cory Maye.[131] After attempting unsuccessfully to enter through the front door, the police officers broke down the home's back door which led to Maye's bedroom.[132] Maye, who had no criminal record, and his eighteen month old daughter were sound asleep when the police executed the no-knock raid.[133] Fearing for their lives after being startled awake, Maye fired three shots at the first police officer to enter his room, hitting the officer once in the abdomen, causing death shortly thereafter.[134] After Maye realized it was the police entering his home, he dropped his weapon and allowed the police to take him into custody.[135] Upon searching Maye's apartment, police only found small traces of

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124. BALKO, *supra* note 1, at 68.
125. Butler, *supra* note 22, at 448.
126. *Id*. at 450.
127. *Id*.
128. *Id*.
129. *Id*. at 451.
130. *Id*.
131. BALKO, *supra* note 1, at 68.
132. *Id*. at 69.
133. *Id*.
134. *Id*.
135. *Id*.

marijuana after first telling reporters they had found no drugs at all.[136] In May of 2004, a jury found Maye guilty of capital murder and sentenced him to death.[137]

Were Maye's actions wrong? Did he have a right to protect both his daughter's safety and his own? Under Indiana's self-defense law, Maye would argue he did not know nor reasonably should have known the individuals breaking down his door in the middle of the night were police officers. To determine whether Maye's beliefs were reasonable or not, the court should apply an objective standard test.[138] By applying an objective reasonability test, police officers can then consider the factors the court will use in making its assessment to determine whether or not a raid is the only option.[139]

When assessing whether the individual's apprehension of danger is objectively reasonable or not, the court should consider several factors including the defendant's general behavior, the time of day and the location at which the raid takes place, whether or not the defendant has a past criminal record, and the method of entry the police officers used to enter the home.[140] While these factors would be relevant in the objective test, they are not an exhaustive list and the court may consider other factors when making its determination.

When considering the defendant's general behavior, the court should consider how the defendant reacted to police invasion.[141] In Maye's case, he fired at the police officers from his bedroom after they had stormed into his home.[142] He did not have time to assess the situation nor have any way of knowing the individuals breaking into his home were police officers.[143] After finding out the home invaders were police, Maye instantly stopped resisting.[144] Based on his actions, it would appear Maye acted out of instinct to protect his daughter and himself from danger, without any intent to resist the police officers advancement.

Next, the court should consider the time of day and where the raid takes place.[145] If the raid takes place in the middle of the night, there is an increased likelihood that the defendant may be asleep and would not be able to make an alert or oriented decision as to whether the individuals entering his home are burglars or police officials.[146] Furthermore, if the defendant's home is in a crime ridden neighborhood or he has been subject to a home intruder in the past, he may be much more likely to mistake a police invasion for an unlawful and life-threatening intrusion.[147] In Maye's situation, the police officers had not only

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136. *Id*.
137. *Id*.
138. Epstein, *supra* note 93, at 612.
139. *Id*.
140. *Id*. at 613.
141. *Id*.
142. BALKO, *supra* note 1, at 69.
143. *Id*.
144. *Id*.
145. *See* Epstein, *supra* note 93, at 613.
146. *Id*.
147. *Id*.

broken into his home, but entered into his bedroom through the back entrance in the middle of the night.[148] Being startled awake to the sound of one's bedroom door being kicked down would certainly scare most anyone. Along with being sound asleep, which most likely disoriented Mayes, the lack of light likely made it that much more difficult for him to ascertain that the individuals breaking into his bedroom were in fact police officers. Taking into account the time of night and the specific room the police broke into, it seems Maye acted reasonably in believing the police officers were actual intruders.

Another factor for the court to consider in determining whether the defendant's actions were reasonable is whether the defendant has a past criminal record. If the homeowner has a past criminal record or has been subject to police search on another occasion then they are more likely to be on notice that intruders into his home may actually be the authorities.[149] Maye did not have a criminal record,[150] and he did not have any reason to believe anyone would need to break down his door in the middle of the night other than to commit an unlawful entry. Without having any reason to fear a militarized police raid into his home, Maye could argue that even if he knew the individuals were police officers, he reasonably believed they were acting unlawfully and his force was reasonably necessary to prevent the serious bodily injury to his daughter and himself.

By applying an objective test with strong standards, the court will place both a strong pressure on police officers to execute police raids and searches in as safe and peaceful manner as possible, while still forcing the homeowner to act reasonably for the self-defense law to apply if they mistake police officers for home intruders, instead of trying to hide behind the statute after irrationally attacking a police officers who lawfully enters their home.[151]

B. Eliminating the Tension: Requiring Officers to Knock-and-Announce Their Presence

Maye and other citizens in "castle doctrine" states should be able to defend themselves and their families in good faith against no-knock raids.[152] However, allowing individuals to use force against police officers during a no-knock search or raid may dissuade Indiana police and legal officials because it would basically be authorizing citizen violence against the police.[153] Essentially "[l]egalizing such deadly encounters will not solve the problem, but our justice system should not blame and punish the police or private citizens for taking reasonable actions in pursuit of self-preservation."[154] Instead, "the fault lies with the bad public

148. BALKO, *supra* note 1, at 69.
149. Epstein, *supra* note 93, at 613.
150. BALKO, *supra* note 1, at 69.
151. Epstein, *supra* note 93, at 613.
152. *Id*. at 611-12.
153. *Id*.
154. *Id*.

policy that puts police officers in such unnecessarily perilous situations."[155]

In order to protect both Indiana citizens and police officers from dangerous situations resulting from the tension between the "castle doctrine" and no-knock warrants, the Indiana legislature should amend the state's search warrant statute**,** Indiana code section 35-33-5-7, to require police officers to strictly adhere to the knock-and-announce requirement while executing a warrant. Requiring police officers to adhere to the knock-and-announce rule when executing a warrant alleviates the bad public policy no-knock raids place both citizens and police officers in.[156] As Justice Brennan stated, complying with the knock-and-announce rule acts as "a safeguard for the police themselves who might be mistaken for prowlers and be shot down by a fearful householder."[157]

By requiring strict adherence to the knock-and-announce principle, the Indiana legislature will further its goal to recognize the unique character of a citizen's home, and ensuring that every citizen feels secure in their home against unlawful intrusion by another individual or a public servant.[158] As one writer notes,

> While a "no-knock" entry is not the *most* pernicious sort of governmental privacy intrusion, it strikes at the individual's sense of security. Of further concern is the potential shame and fear resulting from an inability to prevent outsiders from breaching the castle door. The "knock and announce" rule recognizes the thoroughly distasteful effects of having unknown intruders enter the home.[159]

The potential fear and shame caused by no-knock warrants seems to be exactly what the Indiana legislature looked to prevent when rewriting section 35-41-3-2.[160]

After the *Barnes* decision, many in the Indiana legislature feared the court's decision destroyed Indiana citizens' right to be safe from police intrusion into their homes.[161] These fears seemed to flow from the court's decision to abrogate the common law ruling of the "castle doctrine" as a defense against unlawful police intrusion.[162] As many writers have pointed out, the Fourth Amendment's search and seizure clause can be traced back in large part to the "castle doctrine"[163] and the Founding Fathers concerns of protecting the private sphere

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155. *Id*. at 612.

156. Butler, *supra* note 22, at 451.

157. *Id*.

158. *See* IND. CODE § 35-41-3-2 (2012) ("In enacting this section, the general assembly finds and declares that it is the policy of this state to recognize the unique character of a citizen's home and to ensure that a citizen feels secure in his or her own home against unlawful intrusion . . . .").

159. Estrada*, supra* note 58, at 84.

160. LEGISLATIVE REPORT, *supra* note 34, at 1.

161. *See* Amicus Brief, *supra* note 49, at 1-2; Schumm, *supra* note 35, at 1073.

162. *Id.*

163. *See* Estrada*, supra* note 58, at 84.

from governmental intrusion.[164] Thus, it seems the "Fourth Amendment's indefatigable guarding of the home is an outcropping of the liberalistic tradition."[165]

If the ultimate purpose of the Fourth Amendment is to protect citizens' individualist liberty, it only seems logical that the knock-and-announce principle, an extension of the Fourth Amendment, "flows from this liberalistic inheritance as a constitutional mechanism for tempering the evils of governmental intrusion into the sacred home."[166] By forcing Indiana police officers to strictly adhere to the knock-and-announce requirement, the Indiana legislature would ensure "governmental authorities accord due respect to domestic tranquility even in the case of suspected criminals."[167] "In essence, the 'knock and announce' rule guards individual dignity."[168]

Proponents of no-knock warrants argue the state's primary interest in executing an unannounced entry is it allows the police officers to take command of the search scene quickly and efficiently.[169] There are two primary benefits from the state's interest.[170] First, allowing police officers to enter quickly and unannounced reduces the possibility of the targeted suspect destroying the evidence.[171] While this is a valid interest, there are less violent approaches than barging into one's home unannounced to prevent the destruction of drugs or other evidence that may be in the home.[172] These less violent alternatives include the tactic of shutting off the house's water or trying to use a ruse to gain entry first.[173]

The second benefit arising from the state's interest in executing a no-knock entry is the safety of the police officer.[174] The safety of police officers is a "weighty" interest when executing a valid warrant.[175] When executing a warrant, officers are most vulnerable when attempting to enter the house.[176] The officer is disadvantaged by not knowing the location of the house's occupants or the layout of the house, allowing hiding places for occupants who wish to resist.[177] Furthermore, occupants may have the chance to arm themselves and prepare for confrontation if the officer is first forced to announce his presence.[178]

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164. *Id*. at 84-85.

165. *Id*. at 85.

166. *Id*.

167. *Id*. at 86.

168. *Id*.

169. Mark Josephson, *Fourth Amendment—Must Police Knock and Announce Themselves Before Kicking in the Door of a House?*, 86 J. CRIM. L. & CRIMINOLOGY 1229, 1258 (1996).

170. *Id*.

171. *Id*.

172. *Id*.

173. *Id*.

174. *Id*. at 1259.

175. *Id*. (quoting Pennsylvania v. Mimms, 434 U.S. 106, 110 (1979) (per curiam)).

176. *Id*.

177. *Id*.

178. *Id*.

While police safety is an extremely important issue, "safety is not necessarily maximized by allowing officers to enter a house unannounced."[179] Furthermore, "civilians should not [have to] shoulder all the risks of a deadly encounter" with police officers executing a no-knock raid on their home.[180] Police are "significantly more prepared to deal with deadly situations and to avoid harm than private citizens."[181] Both Jillian King and Cory Maye's stories show it is "unrealistic and unfair to expect civilian occupants to show remarkable poise and composure, exercise good judgment, and hold their fire, even as teams of armed assailants are swarming their homes."[182]

Furthermore, when weighing the citizen's privacy interest against the state's efficiency and safety interest, the Supreme Court pointed out in *Richards v. Wisconsin,* "governmental interests in preserving evidence and maintaining safety may not outweigh the individual privacy interests intruded upon by a no-knock entry."[183] The Court recognized that

> [w]hile it is true that a no-knock entry is less intrusive than, for example, a warrantless search, the individual interests implicated by an unannounced, forcible entry should not be unduly minimized . . . . [T]he common law recognized that individuals should be provided the opportunity to comply with the law and to avoid the destruction of property occasioned by a forcible entry. These interests are not inconsequential.[184]

The Court went on to explain "[t]he brief interlude between [the police] announcement and entry with a warrant may be the opportunity that an individual has to pull on clothes or get out of bed."[185] Concern for the integrity of the "castle" door is what is at the core of the Court's interest in the knock-and-announce rule doctrine.[186] "Thus, at the heart of the lofty, genteel dignity interests undergirding the 'knock and announce' rule lies a strikingly prosaic concern: protecting the castle door."[187] The "castle" door conveys power to the occupant of the home, it allows one to exclude or include others of the activities occurring within, and it provides safety by presenting both a physical and symbolic obstacle to intruders.[188] Protecting "[t]his interest is paramount in the present political climate where the public's desire for security is at a premium."[189]

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179. *Id*.
180. Epstein, *supra* note 93, at 610-11.
181. *Id*. at 611.
182. *Id*. (internal quotation marks and citation omitted).
183. Richards v. Wisconsin, 520 U.S. 385, 393 (1997).
184. *Id*. at 393 n.5.
185. *Id*.
186. Estrada, *supra* note 58, at 86.
187. *Id*. at 87.
188. *Id*.
189. *Id*.

Thus, the Indiana legislature may protect Indiana citizens' strong desire for security, while still protecting both police officers and citizens from deadly encounters by forcing police to strictly adhere to the knock-and-announce rule. The individual safety and liberty interests the knock-and-announce rule protects go hand in hand with the new language added in section 35-41-3-2. At the same time, requiring police officers to announce their presence before entering offers a safeguard that will allow citizens to not be reasonably confused or mistaken as to the identity of the officers.[190] While there is concern for efficiency and police officers' safety in announcing their presence, the police have extensive training and equipment that may help them minimize the added risks, which allows a balancing of the citizen's private security interest.[191] Therefore, the knock-and-announce requirement will allow Indiana's new self-defense statute to recognize the unique character of an individual's home, while removing the bad public policy that puts police officers in such unnecessarily perilous situations.[192]

In order to further support both Indiana citizens' liberty interest, while still protecting police officers from mindless shootings, the Indiana legislature should also circumvent the Indiana Supreme Court's decision to follow the precedent set forth in the Supreme Court case *Hudson v. Michigan*[193] that suppression of the evidence found during a search where the officers did not adhere to the knock-and-announce rule is not a proper remedy. By not requiring the suppression of evidence found during a search where the police officers did not first stop and announce their presence, police officers will have no incentive to strictly adhere to any rule requiring they announce their presence.[194] As Justice Breyer stated in his dissent of the *Hudson* rule, "the Court destroy[ed] the strongest legal incentive to comply with the Constitution's knock-and-announce requirement."[195] Furthermore, as one writer notes, the civil remedies stated by the majority in *Hudson* that force police officers to strictly adhere to the knock-and-announce requirement are insufficient because:

> First, it is unlikely that a criminal defendant would file a lawsuit over a knock-and-announce violation because there is no right to counsel in civil suits. Second, the criminal defendant would face difficulty obtaining private counsel because such a case is unattractive considering the "expensive [and] time-consuming" nature of the suit when compared with the nominal recovery that would probably be awarded. Third, recovery is unlikely, even if the criminal defendant does file a suit, because officers are often shielded by the doctrine of qualified immunity. Fourth, research suggests that jurors favor police officers in civil actions, especially where the plaintiff is an individual convicted of a crime. For

190. Butler, *supra* note 22, at 451.

191. *See* Epstein, *supra* note 93, at 611; Josephson, *supra* note 169, at 1258-59.

192. *See* BALKO, *supra* note 2, at 35.

193. 547 U.S. 586, 602 (2006).

194. Butler, *supra* note 22, at 451.

195. *Hudson*, 547 U.S. at 605.

these reasons, civil liability, at best, is a dubious deterrent substitute.[196]

It is hard to believe that Indiana police officers will not disregard a strict knock-an-announce requirement created by the legislature if they know any evidence found during an illegal search where they did not first knock will not be suppressed.

By forcing police officers to strictly adhere to the knock-and-announce requirement while executing a warrant and suppressing any evidence found when they do not, the Indiana legislature can allow Indiana citizens to still have a robust right to defend themselves and their homes as was the intention of section 35-41-3-2,[197] while still protecting both citizens and police officers alike from serious injury and death.[198]

CONCLUSION

The Indiana Supreme Court's decision in *Barnes v. State* to abrogate the common law defense allowing an Indiana citizen to resist unlawful entry into their home by police officers met fierce criticism from citizens and law makers alike. In response to the court's decision, the Indiana legislature updated the language of Indiana's self-defense statute, section 35-41-3-2, to include police officers as a class of individuals to whom it applies. At the same as the *Barnes* decision, the Indiana Supreme Court's ruling in *Lacey v. State* that police do not have to gain confirmation to execute a no-knock warrant further strengthened an officer's ability to enter a citizen's home without the citizen's knowledge. Furthermore, in citing the Supreme Court precedent issued in *Hudson v. Michigan*, the Indiana Supreme Court ruled that the suppression of evidence is not an appropriate remedy when it is found that the searching officers did not comply with the knock-and-announce rule in executing a warrant. In following the *Hudson* rule, the Indiana Supreme Court further incentivized police officers to execute no-knock warrants, which place both police and private citizens in dangerous situations.

This Note focuses on the potentially violent conflicts that could result when police officials who are authorized to execute no-knock warrants become a class of people to whom section 35-41-3-2 applies, thus laying the groundwork for potentially dangerous responses from homeowners acting within the limits of the self-defense law. The self-defense law should offer an affirmative defense to citizens who reasonably mistake a lawful officer as an intruder. By allowing an affirmative defense to a reasonable mistake, the courts will guard the liberty interest citizens have in protecting their homes, without having to fear punishment for making a wrong split second decision. In order to determine

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196. Butler, *supra* note 22, at 448 (citations omitted).

197. *See* IND. CODE § 35-41-3-2 (a) (2012) ("In enacting this section, the general assembly finds and declares that it is the policy of this state to recognize the unique character of a citizen's home and to ensure that a citizen feels secure in his or her own home against unlawful intrusion . . . .").

198. *See* Butler, *supra* note 22, at 451.

whether the citizen's mistake was reasonable, the court should apply an objective test that sets clear guidelines for both citizens and police on what the law is.

Finally, to further protect citizens and police officers from deadly encounters, the Indiana legislature should pass a law requiring police officers to strictly adhere to the knock-and-announce rule when executing a warrant. No-knock warrants are bad policy and place citizens in an the uncomfortable decision of having to make a split second decision on whether the person breaking into their home is a law abiding police officers or an unlawful intruder. By forcing police officers to announce their presence before entering, citizens will be on notice and therefore, will not have to make a reasonable mistake. By taking affirmative action, the legislature can take steps to alleviate the potential problem the new self-defense law creates with regards to no-knock warrants, while still allowing Indiana citizens to protect and recognize the importance of privacy within their homes.