

In the
Indiana Supreme Court

No. 82S05-1007-CR-343

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| RICHARD L. BARNES, |) | On Petition to Transfer from the |
| |) | Indiana Court of Appeals |
| Appellant (Defendant below), |) | No. 82A05-0910-CR-592 |
| |) | |
| vs. |) | Appeal from the |
| |) | Vanderburgh Superior Court |
| STATE OF INDIANA, |) | |
| |) | Cause No. 82D02-0808-CM-759 |
| Appellee (Plaintiff below). |) | |
| |) | The Honorable Mary Margaret Lloyd, |
| |) | Judge |

**BRIEF OF *AMICI CURIAE* SENATORS M. YOUNG, LONG, ALTING, BANKS,
BECKER, BOOTS, BRAY, BUCK, CHARBONNEAU, DELPH, ECKERTY,
GARD, GLICK, GROOMS, HEAD, HERSHMAN, HOLDMAN, HUME, KRUSE,
LANDSKE, LAWSON, LEISING, MERRITT, MILLER, MRVAN, NUGENT,
PAUL, RANDLOPH, SCHNEIDER, SMITH, STEELE, TAYLOR, TOMES,
WALKER, WALTZ, WATERMAN, WYSS, YODER, R. YOUNG, ZAKAS, AND
REPRESENTATIVES BEHNING, BROWN, BURTON, CHEATHAM, CHERRY,
CULVER, DAVIS, DEMBOWKSI, DERMONDY, DODGE, EBERHART,
ELLSPERMANN, FOLEY, FRIEND, HEATON, HINKLE, KERSEY, KLINKER,
KOCH, LEONARD, MAHAN, MORRIS, MOSES, NEESE, RHOADS, SAUN-
DERS, SPEEDY, TORR, TURNER, TYLER, AND WOLKINS
IN SUPPORT OF APPELLANT'S PETITION FOR
REHEARING**

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STATEMENT OF THE INTEREST OF AMICUS CURIAE

This Court's opinion, which broadly holds "there is no right to reasonably resist unlawful entry by police officers" into a home, is a matter of great concern to members of the General Assembly and their constituents. Although the decision is grounded in the common law, its holding sweeps further and purports to extinguish any right of Indiana citizens to protect themselves from any unlawful police entry. This cannot be reconciled with Indiana's self-defense statute.

Amici are current members of the General Assembly who also served in 2006 and supported House Bill 1028, which significantly broadened the longstanding ability of Hoosiers to protect themselves from unlawful entry into their homes under the self-defense statute, and members more recently elected who also support that legislation. This brief discusses that crucial statute and the manner in which it informs public policy, which were not addressed in the earlier briefing of this case.¹ The interests of amici appear to be aligned with both parties to the extent they seek to narrow this Court's holding allowing unlawful entry by police into homes.

SUMMARY OF THE ARGUMENT

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

¹ Although this case also raises significant Fourth Amendment concerns, this brief focuses solely on areas of legislative expertise: the self-defense statute and the public policy concerns underlying it.

into a home is no longer recognized under Indiana law.” Slip op. at 6. Rehearing is appropriate to reconsider that holding in light of Indiana’s robust self-defense statute.

Indiana’s self-defense statute has long allowed citizens to use “reasonable” force if the person “reasonably believes” such force is necessary to prevent or terminate unlawful entry into their home. The statute was furthered broadened by overwhelming majorities of both houses in 2006 to make clear that Hoosiers do not have a duty to retreat when faced with unlawful entry. That statute, by its plain language, applies to unlawful entry by police or persons pretending to be police officers, and rehearing would be helpful in clarifying this important point of law for our citizens and trial courts. Moreover, rehearing would allow an opportunity to reconsider the abrogation of the common law rule in light of this important statute and the public policy considerations underlying it. Although some state legislatures have abrogated the common law right to *resist arrest*, Indiana has not. The right to resist arrest in the *streets* is quite different from the right to resist unlawful entry into one’s *home*—for arrest, investigation, or any other purpose. The public policy of this state, as embodied in the 2006 legislation, has been to grant our citizens greater autonomy to protect themselves from unlawful incursions into their homes.

Amici respectfully request this Court narrow its broad holding to square it with Indiana’s self-defense statute by making clear citizens retain the right to reasonably resist unlawful police entry into their homes.

ARGUMENT

This Court’s broad declaration of “no right to resist unlawful entry by police” into a home is inconsistent with Indiana’s robust self-defense statute.

In the wake of this Court’s opinion, many Hoosiers are concerned that they are powerless to take any action when a person claiming to be a police officer appears at their door or attempts to enter their home. Rehearing is appropriate to narrow this Court’s broad holding in a manner consistent with Indiana’s expansive self-defense statute and the public policy underlying it.

A. The 2006 broadening of the self-defense statute

In 2006, the General Assembly enacted House Bill 1028 overwhelmingly with bipartisan support in both houses.² That bill, like “stand your ground” legislation passed in many other states, expanded the self-defense statute to make clear that citizens faced with an unlawful entry into their homes were not required to retreat. Specifically, the following **bolded** language was added:

(b) A person:

(1) is justified in using reasonable force, including deadly force, against another person; **and**

(2) **does not have a duty to retreat;**

if the person reasonably believes that the force is necessary to prevent or terminate the other person's unlawful entry of or attack on the person’s dwelling, curtilage, **or occupied motor vehicle.**

Ind. Code § 35-41-3-2.³

² The vote in the House was 81-10, and the Senate vote was 44-5.

³ Similar language was also added to parts (a) and (c) of the statute, but this brief discusses only part (b), which applies to entries into a home.

This Court's broad holding renders citizens faced with unlawful entry into their home by police helpless to do anything but watch and wait for the encounter to end before pursuing legal recourse later in the courts. This is wholly at odds with the self-defense statute, which is not a license to engage in violence at whim but explicitly informs Hoosiers they need not retreat and may use "reasonable force" when they "reasonably" believe such force is necessary to prevent unlawful entry into a home. Rehearing is appropriate to clarify that Hoosiers retain the right to defend themselves and their homes under the self-defense statute.⁴

B. The public policy concerns underlying the self-defense statute support a right to reasonably resist unlawful entry by police.

Beyond clarifying the right to pursue a self-defense claim, this Court may wish to reconsider the abrogation of the common law rule in light of Indiana statutes and the public policy considerations underlying them. This Court's opinion alluded to the trend of states abolishing the common law right to resist an unlawful arrest. Slip op. at 4; *see generally State v. Valentine*, 935 P.2d 1294, 1302 (Wash. 1997). But Indiana has not, by statute, followed that course. The most relevant statutory change in recent years has been House Bill 1028, which *broadened* the rights of citizens in their homes and elsewhere.

Moreover, the right to resist an unlawful arrest on the street is quite different from the right to keep police from unlawfully entering one's home.

⁴ Even some states that have adopted statutes prohibiting the use of force to resist arrest have acknowledged their self-defense statutes allow citizens to use force in self-defense under some circumstances against officers who use unlawful force. *See, e.g., Commonwealth v. French*, 611 A.2d 175, 179 (Pa. 1992).

Indiana courts have previously and appropriately recognized “a greater privilege to resist an unlawful entry into private premises than to resist an unlawful arrest in a public place.” *Casselman v. State*, 472 N.E.2d 1310, 1316 (Ind. Ct. App. 1985) (quoting *State v. Gallagher*, 465 A.2d 323, 327 (Conn. 1983)). A citizen’s home has long been viewed as a “castle, a place where safety from enemies should be guaranteed” and which “confer[s] a certain degree of immunity from the state.” Benjamin Levin, Note, *A Defensible Defense?: Reexamining Castle Doctrine Statutes*, 47 Harv. J. on Legis. 523, 530 (2010) (citing William Blackstone 4 *Commentaries* 223). Few interactions between citizens and police involve unlawful entry issues, and the utmost protection should be provided to our citizens in that setting. *See generally* Bureau of Justice Statistics, *Contacts between Police and the Public* 3 (2007) (noting 56.3% of encounters were traffic-related and another 23.7% were discussions about citizen-reported problems).

This Court has previously recognized statutes “as a legislative declaration of the public policy of the state.” *Loza v. State*, 263 Ind. 124, 130, 325 N.E.2d 173, 176 (1975). It presumes “the legislature, in writing the statute, intended its language to be applied in a logical manner consistent with public policy and convenience.” *Alberici Constructors, Inc. v. Ohio Farmers Ins. Co.*, 866 N.E.2d 740, 746 (Ind. 2007). Well-settled legal doctrines are generally revised or rejected by legislatures rather than courts. *Meyers v. Meyers*, 861 N.E.2d 704, 707 (Ind. 2007).

Any rule that encourages “immediate surrender” whenever a person hears the word “police!” or sees a badge could expose citizens to a great risk of harm. 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, 609 (2010). Cases of police impersonation are common throughout the country and allow criminals to “disarm their victims” easily. *Id.* For example, a serial killer in Pennsylvania used a police disguise to gain entry into a home where he raped and strangled a woman, and men claiming to be narcotics agents in Alabama kicked in a door and stole money and prescription drugs after hitting the occupant on the head. *Id.* at 609-10. Two former policemen in Los Angeles were convicted of “home-invasion robberies that were designed to look like legitimate police searches of homes and businesses.” *Id.* at 610 (quoting Wendy Thomas Russel, *Ferguson Brothers Convicted of Felonies*, Long Beach Press-Telegram, Jan. 31, 2008, at 1A).

These headlines need not be replicated in Indiana. Rather, granting rehearing is appropriate to narrow this Court’s holding and apprise our citizens that they retain the venerable right to *reasonably* resist unlawful entry into their homes by police.

CONCLUSION

For the foregoing reasons, the following members of the General Assembly respectfully request this Court grant rehearing and narrow the scope of its holding in a

manner consistent with the ability of Hoosiers to protect themselves and their homes from unlawful entry as provided in Indiana's self-defense statute.

Sen. Michael Young
Sen. David C. Long
Sen. Ronnie J. Alting
Sen. Jim Banks
Sen. Vaneta Becker
Sen. Phil Boots
Sen. Richard D. Bray
Sen. Jim Buck
Sen. Ed Charbonneau
Sen. Mike Delph
Sen. Doug Eckerty
Sen. Beverly J. Gard
Sen. Susan C. Glick
Sen. Ron Grooms
Sen. Randy Head
Sen. Brandt Hershman
Sen. Travis Holdman
Sen. Lindel O. Hume
Sen. Dennis Kruse
Sen. Sue Landske

Sen. Connie Lawson
Sen. Jean Leising
Sen. James W. Merritt, Jr.
Sen. Patricia L. Miller
Sen. Frank Mrvan, Jr.
Sen. Johnny Nugent
Sen. Allen E. Paul
Sen. Lonnie Randolph
Sen. Scott Schneider
Sen. Jim Smith
Sen. Brent Steele
Sen. Greg Taylor
Sen. Jim Tomes
Sen. Greg Walker
Sen. Brent Waltz
Sen. John W. Waterman
Sen. Thomas J. Wyss
Sen. Carlin Yoder
Sen. Richard D. Young, Jr.
Sen. Joseph C. Zakas

Rep. Robert W. Behning
Rep. Timothy Brown
Rep. Woody Burton
Rep. Dave Cheatham
Rep. Bob Cherry
Rep. Wesley Culver
Rep. Bill Davis
Rep. Nancy Dembowski
Rep. Thomas Dermody
Rep. Richard "Dick" Dodge
Rep. Sean Eberhart
Rep. Sue Ellspermann
Rep. Ralph M. Foley
Rep. William C. Friend
Rep. Bob Heaton
Rep. Phillip D. Hinkle

Rep. Clyde Kersey
Rep. Sheila J. Klinker
Rep. Eric Allan Koch
Rep. Dan Leonard
Rep. Kevin Mahan
Rep. Robert Morris
Rep. Winfield C. Moses, Jr.
Rep. Tim Neese
Rep. Rhonda Rhoads
Rep. Thomas E. Saunders
Rep. Mike Speedy
Rep. Jerry R. Torr
Rep. P. Eric Turner
Rep. Dennis Tyler
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Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing brief was served by personal delivery on this
8th day of June 2011 upon:

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