

Members

Sen. Brent Steele, Chairperson
Sen. Timothy Lanane
Rep. Eric Turner
Rep. Linda Lawson



LEGISLATIVE COUNCIL BARNES V. STATE SUBCOMMITTEE

Legislative Services Agency
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Andrew Hedges, Attorney for the Subcommittee
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Subcommittee

Authority: Established by LCR01-2011

MEETING MINUTES¹

Meeting Date: October 20, 2011
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington
St., Senate Chambers
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Sen. Brent Steele, Chairperson; Sen. Timothy Lanane; Rep. Eric Turner; Rep. Linda Lawson.

Members Absent: None.

Senator Steele convened the meeting at 1:05 p.m.

Legislative Services Attorney Andrew Hedges presented an overview of the Supreme Court's opinion on rehearing in *Barnes v. State (Barnes II)*. (See Exhibit 1). Mr. Hedges noted that the opinion was handed down after the Subcommittee's previous meeting. Mr. Hedges discussed that while there was uncertainty as to whether the holding of *Barnes I* was limited to the common law or whether it also applied to the Castle Doctrine, *Barnes II* explicitly stated that it applied to the both common law and the Castle Doctrine.

Mr. Hedges introduced: (1) documents 20121039.005 and 20121039.006, both which permit a person to forcibly resist the unlawful entry into a dwelling; (2) PD 3239, which expands the crime of official misconduct to include unlawful entry by police officers under certain circumstances; and (3) PD 3031, a draft which was discussed at the first meeting

¹ These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative> Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

of the Subcommittee. (See Exhibit 2). Representative Lawson stated that she believed document 20121039.005 was preferable to document 20121039.006 because it would provide more direction to law enforcement. In response to a question from Senator Steele, Senator Young stated that he believed PD 3031 had been superseded by the court's opinion in *Barnes II*.

Senator Steele adjourned the meeting at 1:50 p.m.

Exhibit 1

10/20/11 was Lawyer

ATTORNEY FOR APPELLANT
Erin L. Berger
Evansville, Indiana

ATTORNEYS FOR APPELLEE
Gregory F. Zoeller
Attorney General of Indiana

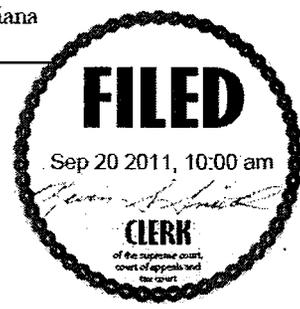
ATTORNEY FOR AMICI CURIAE
Joel M. Schumm
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Stephen R. Creason
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ATTORNEY FOR AMICI CURIAE
Eric C. Bolnet
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Karl M. Scharnberg
Deputy Attorney General
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In the
Indiana Supreme Court



No. 82S05-1007-CR-343

RICHARD L. BARNES,

Appellant (Defendant below),

v.

STATE OF INDIANA,

Appellee (Plaintiff below).

Appeal from the Vanderburgh Superior Court, No. 82D02-0808-CM-759
The Honorable Mary Margaret Lloyd, Judge

On Petition for Rehearing

September 20, 2011

David, Justice.

When law enforcement officers responding to a “domestic violence in progress call” arrived at the scene, the husband, about whom his wife had made the 911 call, got physical with the responding police officer. A jury found Richard Barnes guilty of battery on a police officer and resisting arrest. We earlier affirmed his conviction, and he has petitioned for rehearing.

In addition, the Attorney General has requested rehearing, as have amicus curiae members of the Indiana General Assembly, who urge clarification or modification of our prior ruling.

The petitions for rehearing, advanced by thoughtful people, have convinced us that the appropriate course is to grant rehearing and speak further on the law of this case.

At the heart of this appeal has been the suspected spouse abuser's contention that the trial court erred when it refused to instruct the jury that he had the right to get physical with the police officers if he believed their attempt to enter the residence was legally unjustified.

Neither the trial court, nor the Court of Appeals, nor this Court have agreed with Barnes that the officers violated any statute or any provision of the state or federal constitutions when they sought entry, at the wife's request, to investigate and ensure the wife's safety.

The central question we addressed earlier was whether the defendant was entitled to have the jury told that the common law right to defend one's home against invasion was a defense against Indiana's statute that criminalizes violence against police officers acting in the course of their duties. The legislature has declared it to be a Class A misdemeanor when one commits battery on a law enforcement officer "while the officer is engaged in the execution of the officer's official duty." Ind. Code § 35-42-2-1(a)(1)(B) (2008).¹

Barnes's demand for this instruction has rested solely on the common law rule that "a man's home is his castle," which gives him the right to reasonably resist unlawful entry. The amicus legislators additionally cite a statute not pleaded by Barnes which creates a defense to crimes of violence, authorizing a person to use "reasonable force, including deadly force, against another person . . . if the person reasonably believes that the force is necessary to prevent or terminate" the unlawful entry of his dwelling or occupied motor vehicle. I.C. § 35-41-3-2(b). As will appear below, the Attorney General's analysis of this statute speaks to the same point raised by the amicus.

¹ Courts have long understood that the legislature intended battery on a law enforcement officer to require proof that the officer was engaged in official duties. See *Tapp v. State*, 406 N.E.2d 296, 302 (Ind. Ct. App. 1980) ("[I]t is the nature of the acts performed and not whether the officer is on or off duty, in or out of uniform, which determines whether the officer is engaged in the performance of his official duties.").

The Attorney General's response to Barnes's petition for rehearing urges that this right should remain intact but likewise urges that "reasonable resistance does not include battery or other violent acts against law enforcement."

We deem the Attorney General to have restated the central thesis of our resolution of this case. As he says,

Tense and even dangerous police-citizen encounters fit no limited pattern; reactions and decisions are made in the split second, and each incident is unique. The hindsight, after-the-fact evaluation by the judiciary is inherently a case-by-case process, but our courts have shown themselves equal to the task as they strike the correct balance between safety and privacy.

The Attorney General is correct that making such decisions is inherently a matter based on fact, but whether a criminal defendant may be excused from a crime created by statute is a matter of general law. Consistent with his earlier point, we hold that the Castle Doctrine is not a defense to the crime of battery or other violent acts on a police officer.

Our holding does no more than bring Indiana common law in stride with jurisdictions that value promoting safety in situations where police and homeowners interact. Importantly, we observe the actions in this case were "appropriate to a rapidly unfolding situation in the immediate aftermath of a reported" domestic violence situation. Commonwealth v. Gomes, 795 N.E.2d 1217, 1222 (Mass. App. Ct. 2003) (refusing to grant a jury instruction on the right to forcibly resist an unlawful police entry).

We also emphasize that this holding does not alter, indeed says nothing, about the statutory and constitutional boundaries of legal entry into the home or any other place. Our earlier opinion was not intended to, and did not, change that existing law about the right of the people to be secure in their persons, houses, and papers against unreasonable searches and seizures. U.S. Const. amend. IV; Ind. Const. art. 1, § 11.

This also reflects the basis for our holding about defenses available to criminal defendants charged with violence against police officers: the ruling is statutory and not constitutional. The General Assembly can and does create statutory defenses to the offenses it criminalizes, and the crime of battery against a police officer stands on no different ground. What the statutory defenses should be, if any, is in its hands.

Having granted rehearing and restated the essential holding in this case, we continue to affirm Barnes's conviction.

Shepard, C.J., and Sullivan, J., concur.

Dickson, J., concurs in result.

Rucker, J., dissents with separate opinion.

Rucker, Justice, dissenting.

I agree rehearing should be granted in this case. However I disagree with the Majority's resolution. There appears to be some tension between Ind. Code § 35-42-2-1(a)(1)(B) making it a criminal offense to commit battery on a law enforcement officer "while the officer is engaged in the execution of the officer's official duty," and Ind. Code § 35-41-3-2(b) providing persons the right to use "reasonable force . . . 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." I would grant rehearing to explore whether, as a matter of Indiana statutory law, defendant Barnes was entitled to a jury instruction regarding police entry into his home.

Exhibit 2

10/20/11 mtg Barnes

Permits a person to forcibly resist the unlawful entry into a dwelling by a law enforcement officer under certain conditions.

SECTION 1. IC 35-41-3-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 2.5. (a) The purpose of this section is to protect citizens from unlawful entry into their homes by law enforcement officers or persons pretending to be law enforcement officers. Both citizens and law enforcement officers benefit from clear guidance about the parameters of lawful home entry, which will reduce the potential for violence and respect the privacy and property of citizens.**

(b) This section does not apply to the following:

(1) An investigation of suspected domestic or family violence (as defined in IC 34-6-2-34.5).

(2) The entry into a dwelling by a law enforcement officer who has a reasonable belief that a person inside the dwelling has been or is at risk of physical harm.

(3) An entry into a residence by invitation of at least one (1) resident, unless one (1) or more other residents object to the entry.

(4) The entry into a dwelling by a law enforcement officer in hot pursuit.

(5) A person who is committing or is escaping after the commission of a crime.

(6) The entry into a dwelling by a law enforcement officer with a warrant.

(c) A person may use force to prevent or terminate a law enforcement officer's unlawful entry into the person's dwelling or into the dwelling of a member of the person's immediate family under one (1) or more of the following conditions:

(1) The person does not have actual knowledge that the officer is a law enforcement officer, and the officer:

(A) has not identified himself or herself as a law enforcement officer;
or

(B) is not wearing a distinctive uniform or badge of authority.

(2) The law enforcement officer is not engaged in the execution of the law enforcement officer's official duty.

(d) A person may use reasonable force, including violent force, against a person described in subsection (c)(1), if the person reasonably believes that the force is necessary to immediately prevent or terminate the unlawful entry into the dwelling.

(e) A person may not use violent force against a law enforcement officer described in subsection (c)(2) unless the person has no adequate alternative to prevent or terminate the unlawful entry into the dwelling.

(f) A person who is justified in using force under this section is not required to retreat.

Permits a person to forcibly resist the unlawful entry into a dwelling by a law enforcement officer under certain conditions.

SECTION 1. IC 35-41-3-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 2.5. (a) The purpose of this section is to protect citizens from unlawful entry into their homes by law enforcement officers or persons pretending to be law enforcement officers. Both citizens and law enforcement officers benefit from clear guidance about the parameters of lawful home entry, which will reduce the potential for violence and respect the privacy and property of citizens.**

(b) This section does not apply to the following:

- (1) The entry into a dwelling by a law enforcement officer who has a reasonable belief that a person inside the dwelling has been or is at risk of physical harm or may be the victim suspected domestic or family violence (as defined in IC 34-6-2-34.5).**
- (2) An entry into a residence by invitation of at least one (1) resident, unless one (1) or more other residents object to the entry.**
- (3) The entry into a dwelling by a law enforcement officer in hot pursuit.**
- (4) A person who is committing or is escaping after the commission of a crime.**
- (5) The entry into a dwelling by a law enforcement officer with a warrant.**

(c) A person may use force to prevent or terminate a law enforcement officer's unlawful entry into the person's dwelling or into the dwelling of a member of the person's immediate family under one (1) or more of the following conditions:

- (1) The person does not have actual knowledge that the officer is a law enforcement officer, and the officer:**
 - (A) has not identified himself or herself as a law enforcement officer;**
 - or**
 - (B) is not wearing a distinctive uniform or badge of authority.**
- (2) The law enforcement officer is not engaged in the execution of the law enforcement officer's official duty.**

(d) A person may use reasonable force, including violent force, against a person described in subsection (c)(1), if the person reasonably believes that the force is necessary to immediately prevent or terminate the unlawful entry into the dwelling.

(e) A person may not use violent force against a law enforcement officer described in subsection (c)(2) unless the person has no adequate alternative to prevent or terminate the unlawful entry into the dwelling.

(f) A person who is justified in using force under this section is not required to retreat.

PRELIMINARY DRAFT
No. 3239

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2012 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 35-44-1-2.

Synopsis: Official misconduct. Specifies that a public servant commits official misconduct if the public servant commits an offense while misusing a power possessed by virtue of state law, or if the public servant commits an offense while appearing to be exercising authority granted by state law. Provides that 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.

Effective: July 1, 2012.



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-44-1-2, AS AMENDED BY P.L.102-2011,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2012]: Sec. 2. (a) A public servant who knowingly or
4 intentionally:

5 (1) commits an offense in the performance of the public servant's
6 official duties, **including an offense committed while the public
7 servant:**

8 (A) was misusing a power possessed by virtue of state law;
9 or

10 (B) appeared to be exercising authority granted by state
11 law;

12 (2) solicits, accepts, or agrees to accept from an appointee or
13 employee any property other than what the public servant is
14 authorized by law to accept as a condition of continued
15 employment;

16 (3) acquires or divests himself or herself of a pecuniary interest in
17 any property, transaction, or enterprise or aids another person to
18 do so based on information obtained by virtue of the public
19 servant's office that official action that has not been made public
20 is contemplated; or

21 (4) fails to deliver public records and property in the public
22 servant's custody to the public servant's successor in office when
23 that successor qualifies;

24 commits official misconduct, a Class D felony.

25 (b) A law enforcement officer who, knowing that the entry is
26 unlawful, enters the residence of another person without having a
27 reasonable belief that the unlawful entry is necessary to prevent
28 injury or death, commits unlawful entry by law enforcement, a
29 Class D felony.



PRELIMINARY DRAFT
No. 3031

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2012 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 35-41-3-2.

Synopsis: Right to defend against unlawful entry. Specifies that "person" includes a law enforcement officer, that unlawful force includes an unlawful arrest, and that reasonable force may be used to prevent or terminate an unlawful search, seizure, or arrest.

Effective: July 1, 2012.



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-41-3-2, AS AMENDED BY P.L.189-2006,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2012]: Sec. 2. (a) **As used in this section, "person" includes**
4 **a law enforcement officer.**

5 (b) A person is justified in using reasonable force against another
6 person to protect the person or a third person from what the person
7 reasonably believes to be the imminent use of unlawful force,
8 **including an unlawful search, seizure, or arrest.** However, a person:

9 (1) is justified in using deadly force; and

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

11 if the person reasonably believes that that force is necessary to prevent
12 serious bodily injury to the person or a third person or the commission
13 of a forcible felony. No person in this state shall be placed in legal
14 jeopardy of any kind whatsoever for protecting the person or a third
15 person by reasonable means necessary.

16 (b) (c) A person:

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

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

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

24 (c) (d) With respect to property other than a dwelling, curtilage, or
25 an occupied motor vehicle, a person is justified in using reasonable
26 force against another person if the person reasonably believes that the
27 force is necessary to immediately prevent or terminate the other
28 person's trespass on or criminal interference with property lawfully in
29 the person's possession, lawfully in possession of a member of the
30 person's immediate family, or belonging to a person whose property the
31 person has authority to protect. However, a person:



- 1 (1) is justified in using deadly force; and
 2 (2) does not have a duty to retreat;
 3 only if that force is justified under subsection ~~(a)~~: **(b)**.
 4 ~~(d)~~ **(e)** A person is justified in using reasonable force, including
 5 deadly force, against another person and does not have a duty to retreat
 6 if the person reasonably believes that the force is necessary to prevent
 7 or stop the other person from hijacking, attempting to hijack, or
 8 otherwise seizing or attempting to seize unlawful control of an aircraft
 9 in flight. For purposes of this subsection, an aircraft is considered to be
 10 in flight while the aircraft is:
 11 (1) on the ground in Indiana:
 12 (A) after the doors of the aircraft are closed for takeoff; and
 13 (B) until the aircraft takes off;
 14 (2) in the airspace above Indiana; or
 15 (3) on the ground in Indiana:
 16 (A) after the aircraft lands; and
 17 (B) before the doors of the aircraft are opened after landing.
 18 ~~(e)~~ **(f)** Notwithstanding subsections ~~(a)~~, ~~(b)~~, ~~(c)~~, and ~~(c)~~ **(d)**, a person
 19 is not justified in using force if:
 20 (1) the person is committing or is escaping after the commission
 21 of a crime;
 22 (2) the person provokes unlawful action by another person with
 23 intent to cause bodily injury to the other person; or
 24 (3) the person has entered into combat with another person or is
 25 the initial aggressor unless the person withdraws from the
 26 encounter and communicates to the other person the intent to do
 27 so and the other person nevertheless continues or threatens to
 28 continue unlawful action.
 29 **(f)** **(g)** Notwithstanding subsection ~~(d)~~, ~~(e)~~, a person is not justified
 30 in using force if the person:
 31 (1) is committing, or is escaping after the commission of, a crime;
 32 (2) provokes unlawful action by another person, with intent to
 33 cause bodily injury to the other person; or
 34 (3) continues to combat another person after the other person
 35 withdraws from the encounter and communicates the other
 36 person's intent to stop hijacking, attempting to hijack, or
 37 otherwise seizing or attempting to seize unlawful control of an
 38 aircraft in flight.

