In the
Indiana Supreme Court

Lacey M. Evans,
Appellant(s),

v.

State Of Indiana,
Appellee(s).

Court of Appeals Case No.
22A-CR-00174

Trial Court Case No.
49D33-2106-CM-17004

Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 4/25/2023.

FOR THE COURT

Loretta H. Rush
Chief Justice of Indiana

Massa, Goff, and Molter, JJ., concur.
Rush, C.J., dissents from the denial of transfer with separate opinion, in which Slaughter, J., joins.

Rush, Chief Justice, dissenting.

When does an individual "forcibly" resist, obstruct, or interfere with a law enforcement officer? Nearly ten years ago, we provided direction about what makes conduct "forcible." *Walker v. State*, 998 N.E.2d 724, 727–28 (Ind. 2013). Despite persisting confusion, we haven't since. *See, e.g.*, *Macy v. State*, 9 N.E.3d 249, 252 (Ind. Ct. App. 2014) ("[T]he line between what is and is not forcible resistance is blurry, to say the least."). What were initially guideposts subject to qualifications are now rules swallowed by their limitations. And today, we pass up an important opportunity to provide a simpler inquiry.

Lacey Evans was charged with resisting law enforcement under Indiana Code section 35-44.1-3-1(a)(1), requiring the State to prove beyond a reasonable doubt that she knowingly or intentionally forcibly resisted, obstructed, or interfered with an officer lawfully engaged in the execution of their duties. A majority of a Court of Appeals' panel affirmed her conviction, concluding she acted forcibly when she "slammed" shut her slightly open apartment door—making no contact with law enforcement—after an officer expressed intent to arrest her. *Evans v. State*, No. 22A-CR-174, 2022 WL 16630780, at *3 (Ind. Ct. App. Nov. 2, 2022).

But the bar for forcible conduct is not this low, and we should clarify as much. *See* Ind. Appellate Rule 57(H)(6). Moreover, this case presents an opportunity to decide when, if ever, an occupant can validly consent to law enforcement's warrantless entry of a residence when another occupant unequivocally objects. This important question of law, not reached by the majority, is one of recurring significance—particularly when officers respond to domestic disputes—and we should decide it. *See* App. R. 57(H)(4). For these reasons, I respectfully dissent from the Court's decision to deny transfer.

I. Evans's act of slamming her door does not constitute forcible conduct.

Forcible conduct generally falls into one of two categories: acts that make physical contact with an officer and acts that do not. *Compare*

Johnson v. State, 833 N.E.2d 516, 518–19 (Ind. Ct. App. 2005), *with Pogue v. State*, 937 N.E.2d 1253, 1258 (Ind. Ct. App. 2010), *trans. denied*. Here, the majority properly observed that Evans's conduct falls in the latter category—the door she "slammed" made no contact with the officer. *Evans*, 2022 WL 16630780, at *3. But the majority's holding that this act constituted forcible conduct strays significantly from precedent.

When an officer makes lawful contact with an individual, **physical** conduct alone is not necessarily **forcible** conduct. *See, e.g.*, *Walker*, 998 N.E.2d at 727; *K.W. v. State*, 984 N.E.2d 610, 612–13 (Ind. 2013). Rather, an individual's conduct becomes forcible when it is accompanied by an "exertion of strength, power, or violence." *Walker*, 998 N.E.2d at 727. These same principles apply, but function slightly differently, when an individual makes no contact with an officer. *See Pogue*, 937 N.E.2d at 1258. The majority recognized this distinction, explaining the inquiry turns on whether the act conveyed a **threat** of strength, power, or violence directed against the officer. *Evans*, 2022 WL 16630780, at *3. So, while it's clear that a threatening movement or gesture directed at an officer may qualify as forcible conduct, *id.*, it's far less clear **how** to determine whether a particular threat rises to the level of forcible conduct.

Just a few years ago, I urged our Court to provide necessary guidance on this exact issue. Specifically, I encouraged us to adopt a standard requiring the evidence to establish that (1) the threat is directed at the officer, and (2) the defendant's action, viewed **objectively**, threatened the use of force—that is, an act of violence. *Tyson v. State*, 149 N.E.3d 1186, 1186 (Ind. 2020) (Rush, C.J., dissenting from denial of transfer) (Slaughter, J., joining). Applying this standard here illustrates why the majority's analysis warrants our intervention.

The majority concluded that Evans made a forcible "threatening 'gesture or movement'" when she slammed her door after the officer informed her that she would be arrested. *Evans*, 2022 WL 16630780, at *3 (quoting *Price v. State*, 622 N.E.2d 954, 963 n.14 (Ind. 1993)). This conclusion, the majority reasoned, is bolstered by the fact that Evans retreated into her home "where any number of dangerous items could have been kept." *Id.* But there's no evidence that Evans had any such

items inside her apartment. And the record reveals she merely "slammed" her "slightly" open door while conversing with an officer, altogether undermining the conclusion that Evans used significant strength, power, or violence. More importantly, Evans's refusal to surrender herself to the officer did not transform her act into something forcible merely because she "slammed" the door. As the dissent aptly recognized, "[T]here is no objective evidence that Evans'[s] act of closing the door was threatening towards" the officer. *Id.* at *4 (Weissmann, J., dissenting). That recognition, coupled with the majority's contrary conclusion in reviewing the same evidence, highlights precisely why courts must utilize an objective standard to assess allegedly forcible conduct that makes no contact with an officer.

Indeed, the majority's conclusion is supportable only if the act of slamming a door objectively communicates a threat of force to be used against an officer, or if the act conveyed a threat of force to be used against the officer based on an objective review of the evidence. But doors are slammed for a multitude of reasons—chief among them is not necessarily to threaten the use of force against the recipient. And, on this record, there is simply **no** evidence from which to reasonably infer that Evans slammed her apartment door to threaten the use of force against law enforcement. Instead, an objective review of the evidence supports the inference that Evans's act—which made no contact with the officer—was simply one of fervent defiance. *Cf. Brooks v. State*, 113 N.E.3d 782, 785 (Ind. Ct. App. 2018) (observing that an "obnoxious disrespect for authority" alone does not equate to the use of force) (quoting *Graham v. State*, 903 N.E.2d 963, 964 (Ind. 2009)).

Simply put, viewed objectively, nothing in this record suggests any strength, power, or violence in Evans's act of slamming her slightly open apartment door or otherwise proves beyond a reasonable doubt that she acted forcibly prior to law enforcement entering her home. The majority's contrary conclusion represents a significant departure from accepted law. For that reason alone, transfer is warranted. App. R. 57(H)(6). But transfer is also warranted to address the State's alternative argument supporting Evans's conviction—one that presents an undecided question of law that this Court should decide.

II. The officers were not lawfully inside Evans's apartment when she resisted arrest.

Because the Court of Appeals' majority concluded that Evans forcibly resisted law enforcement when she slammed her door, it did not address the State's primary argument for sustaining her conviction on appeal: law enforcement had valid consent to enter Evans's apartment and thus were lawfully engaged in their duties when she resisted arrest inside.

The officers did not have a warrant to enter Evans's apartment, but the State contends her ex-boyfriend consented to their entry after he unlocked the door with his key and forced it open by breaking the chain lock. Evans disagrees, arguing that the officers' entry and subsequent arrest violated her rights under both the Fourth Amendment and Article 1, Section 11. Citing *Georgia v. Randolph*, 547 U.S. 103 (2006), Evans contends the consent was invalid and that no other exception to the warrant requirement justified the warrantless entry. *Cf. Adkisson v. State*, 728 N.E.2d 175, 178–79 (Ind. Ct. App. 2000) (holding that law enforcement is not "lawfully engaged" in executing an arrest in someone's home if they had no lawful basis for entry). These competing arguments present an important question of law that this Court should decide. *See* App. R. 57(H)(4).

Although, under the Fourth Amendment, law enforcement generally cannot enter a home without a warrant, one may not be required when an exception—such as consent—applies. *See, e.g.*, *Hadley v. Williams*, 368 F.3d 747, 749 (7th Cir. 2004). The United States Supreme Court has held the consent exception applies even when a co-occupant who is no longer physically present at the home objects to entry. *United States v. Matlock*, 415 U.S. 164, 170–71 (1974). But the Court later clarified in *Randolph* that the exception does not apply when multiple occupants are present, and one consents to entry while the other unequivocally refuses. 547 U.S. at 120. In such circumstances, the refusal prevails, and law enforcement may not enter the home absent a warrant or a different exception to the warrant requirement. *See id.*

While our Court of Appeals has applied *Randolph* on a few occasions, *see, e.g.*, *Bulthuis v. State*, 17 N.E.3d 378, 385–86 (Ind. Ct. App. 2014), *trans.*

denied, our Court has never examined its scope or its applicability under Article 1, Section 11, *see Lee v. State*, 849 N.E.2d 602, 604 n.1 (Ind. 2006) (finding *Randolph* did "not affect" the case in our only opinion to cite the Court's decision). For three reasons, we should grant transfer to do just that.

First, federal courts have applied *Randolph* in circumstances similar to the facts before us today, and those decisions lead to a straightforward conclusion under the Fourth Amendment: a physically present occupant's express refusal nullifies a co-occupant's consent, and if no other exception to the warrant requirement applies, no warrant simply means no entry. *See, e.g.*, *Bonivert v. City of Clarkston*, 883 F.3d 865, 874–79 (9th Cir. 2018); *United States v. Williams*, 521 F.3d 902, 906–07 (8th Cir. 2008). Applying this precedent, we should reach the same conclusion here, which renders the consent invalid—and law enforcement's entry justified only if supported by another exception.

Second, in applying *Randolph* for the first time, we should determine when a domestic dispute presents an exigency or emergency justifying warrantless entry. These disputes do not presumptively authorize warrantless entry. *See, e.g.*, *United States v. Brooks*, 367 F.3d 1128, 1136–37 (9th Cir. 2004). Instead, the facts surrounding the dispute inform whether entry is justified on either basis. *See id.* Unfortunately, the facts in this case are hardly novel—domestic disputes are all too prevalent. But absent certain, qualifying circumstances, the sensitive nature of the dispute does not render Fourth Amendment protections disposable. *See Bonivert*, 883 F.3d at 879. And, as recognized by the dissent, Evans's ex-boyfriend may have provided law enforcement "with specific facts about the alleged battery, but the State only presented [the officer's] conclusory allegations at trial." *Evans*, 2022 WL 16630780, at *5 (Weissmann, J., dissenting). We should thoughtfully review this record and weigh the competing interests of public safety and privacy in determining whether an exigency or emergency justified the warrantless entry into Evans's apartment.

Third, we should decide whether law enforcement's warrantless entry violated Evans's rights under Article 1, Section 11 of the Indiana Constitution. Regardless of the outcome on Evans's Fourth Amendment

claim, it is well-settled that Section 11 is "given an independent interpretation and application," which can lead to "broader protections." *Dycus v. State*, 108 N.E.3d 301, 304 (Ind. 2018). Indeed, the State must establish that law enforcement's conduct "was reasonable based on the totality of the circumstances." *Hardin v. State*, 148 N.E.3d 932, 942 (Ind. 2020). And here, Evans's Article 1, Section 11 claim implicates an issue of first impression: whether, and to what extent, it is reasonable for an officer to enter a home without a warrant when a physically present occupant consents to entry while another such occupant expressly objects. We should resolve that issue and, in doing so, provide needed guidance to the bench and the bar.

Today, the Court passes up an important opportunity to rectify a significant departure from law and to provide guidance on recurring legal issues of both practical and constitutional significance. I therefore dissent from the Court's decision to deny transfer.

Slaughter, J., joins.