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Knock-and-Announce Rule: An Illusory Hurdle or a Legitimate Law Enforcement Limitation, The

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The Knock-and-Announce Rule: An Illusory Hurdle or a Legitimate Law Enforcement Limitation?

Doran v. Eckold[1]

I. INTRODUCTION

Woven into the western world's legal fabric by English courts over four centuries ago,[2] the knock-and-announce rule requires law enforcement officials to knock at a residence and announce their presence prior to executing a search warrant.[3] Recently, the efficacy of this law enforcement restriction and essential civil right has been challenged by various United States courts. On June 15, 2006, the United States Supreme Court eviscerated an essential remedy for violation of this rule,[4] and last year, the Eighth Circuit's decision in *Doran v. Eckold* diminished the threshold for permissible no-knock entries.[5] These decisions have eroded the constitutional protection the Supreme Court previously established.

This protection is provided by the Fourth Amendment of the United States Constitution, which defends "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."[6] To this end, the Supreme Court incorporated the common law knock-and-announce rule into its Fourth Amendment analysis of what constitutes "unreasonable searches" of residences.[7] The court acknowledged that exigent circumstances, such as disposal of evidence or danger to law enforcement officials, may eliminate this requirement of officers to knock-and-announce their presence.[8] However, the Court neglected to offer guidance for determining the existence of these circumstances.[9]

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1. 409 F.3d 958 (8th Cir. 2005) (en banc).

2. Wilson v. Arkansas, 514 U.S. 927, 931 (1995) (citing Semayne's Case, (1603) 77 Eng. Rep. 194, 195 (K.B.).

3. *Id.*

4. Hudson v. Michigan, 126 S.Ct. 2159 (2006). In *Hudson*, the Supreme Court held that the exclusionary rule was not a proper remedy for violation of the knock-and-announce rule. *Id.* at 2170. The exclusionary rule prohibits the admission of evidence unlawfully obtained in violation of the Fourth Amendment. *Id.* at 2163.

5. *Doran*, 409 F.3d 958.

6. U.S. Const. amend. IV.

7. *See* Wilson v. Arkansas, 514 U.S. 927 (1995).

8. *See id.*

9. *See id.*

The Eighth Circuit has conducted this exigent circumstances analysis on numerous occasions.[10] Without specific guidance, the Eighth Circuit has followed the Supreme Court's general framework for conducting this analysis: a case-by-case examination of the "totality of the circumstances."[11] In *Doran v. Eckold*, however, the Eighth Circuit's exigent circumstances analysis resembled a generalized, not particularized, evaluation of the facts. This Note argues that this manner of generalized evaluation, prohibited by the Supreme Court in *Richards v. Wisconsin*, creates an unacceptable standard for police conduct.

II. FACTS AND HOLDING

In July 1998, the Kansas City Police Department ("KCPD") received an anonymous tip describing illegal drug-related activity at the home of David Doran ("Doran").[12] The tip alleged that Doran was manufacturing methamphetamine and selling it, along with crack cocaine, from his house.[13] Further, the tip alleged that Doran kept guns in his bedroom and that Doran's son, who also lived in the house, had previously been arrested for possession of a sawed-off shotgun.[14]

The KCPD sent a narcotics detective to investigate the tip.[15] The detective verified that both the residence and the cars parked in front belonged to the Doran family.[16] The detective also collected trash bags from the front of the residence[17] which contained items relevant to the KCPD's investigation: two plastic bags with methamphetamine residue, fifty plastic baggies cut in a way consistent with the distribution of narcotics, an empty "Dristan" bottle,[18] and mail addressed to the Dorans.[19] With this evidence and the anonymous tip, the detective acquired a search warrant for the Doran residence.[20]

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10. *See* United States v. Walsh, 299 F.3d 729 (8th Cir. 2002); United States v. Lucht, 18 F.3d 541 (8th Cir. 1994); United States v. Marts, 986 F.2d 1216 (8th Cir. 1993).

11. Doran v. Eckold, 409 F.3d 958, 962-63 (8th Cir. 2005) (en banc) (citing Richards v. Wisconson, 520 U.S. 385, 394 (1997); United States v. Banks, 540 U.S. 31, 40 (2003).

12. *Id.* at 960.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* The occupants of the residence were David Doran, his wife Linda, his son Joseph, and Shirley Smith. Appellee's Brief at 11, Doran v. Eckold, 409 F.3d 958 (8th Cir. 2005) (No. 03-1810).

17. *Doran*, 409 F.3d at 960.

18. Dristan is a product often used to manufacture methamphetamine. *Id.*

19. *Id.* at 960-61.

20. *Id.* at 961. The search warrant obtained did not authorize a no-knock entry. *Id.*

At 10:00 p.m. on August 11, 1998, KCPD's Street Narcotics Unit executed the search warrant at the Doran residence.[21] Sergeant Eric Greenwell ("Greenwell"), the officer in charge of executing the search, instructed the unit to use a dynamic entry, also known as a "no-knock entry."[22] Greenwell's instruction was based on his briefing with the investigating detective and an independent review of the search warrant.[23] To effectuate the no-knock entry, Officer Ty Grant, announced, "Police, search warrant," and then immediately struck the front door of the Doran's residence with a ram.[24] On the third hit, the door opened and Officer Mark Sumpter entered the residence.[25] Upon reaching the kitchen, Sumpter encountered Doran holding a gun.[26] Sumpter yelled, "Police, search warrant, get down," and shot Doran twice after Doran allegedly failed to lower his weapon.[27] The officers then searched the residence, but did not discover any evidence of a methamphetamine lab or other drug distribution paraphernalia.[28]

Doran filed multiple 42 U.S.C § 1983 claims against the officers involved and the Board of Police Commissioners for violation of his Fourth Amendment rights.[29] The district court granted the officers' motion for summary judgment on Doran's claim of illegal search,[30] but denied summary judgment on the excessive force claim and the illegal entry claim.[31] At trial, the jury concluded that Sumpter's use of force was justified, but awarded Doran over $2 million on the illegal entry claim.[32] The decision regarding the illegal entry claim hinged upon the trial judge's ruling that, as a matter of law, a no-knock entry was not justified because exigent circumstances did not

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21. *Id.* at 960.

22. *Id.*

23. *Id.* at 968 (Heaney, J., dissenting).

24. *Id.* at 960.

25. *Id.*

26. *Id.*

27. *Id.* According to Doran's testimony, he was asleep when the no-knock entry began. *Id.* He thought the commotion was an intruder, grabbed his gun and went to investigate. *Id.* Doran soon realized it was the police, but the officer shot him as he bent down to drop his gun. *Id.*

28. *Id.* at 961. The only drug found at the residence was an ounce of marijuana in Doran's son's bedroom. *Id.*

29. *Id.*

30. *Id.* The court held the investigating officer had sufficient probable cause for the search warrant. *Id.* After the grant of summary judgment on the illegal search claim, Doran dropped his claim against the investigating officer for unlawful execution of the warrant, and the investigating officer was eliminated as a defendant. *Id.*

31. *Id.* The excessive force claim was against Sumpter, and the illegal entry claim was against Greenwell, Grant and the board of police commissioners. *Id.*

32. Doran v. Eckold, 362 F.3d 1047, 1049 (8th Cir. 2004).

exist.[33] On appeal, a three-judge Eighth Circuit panel affirmed the trial court's decision.[34]

On rehearing en banc, the Eighth Circuit reevaluated whether exigent circumstances justified the officers' use of a no-knock entry.[35] The officers argued that the investigation of the narcotics detective, specifically the evidence found in Doran's trash, was sufficient to justify the entry.[36] Conversely, Doran argued that such evidence was insufficient to justify the use of a no-knock entry because none of the circumstances which had previously justified a no-knock entry were present.[37] The majority reversed the rulings of the trial court and Eighth Circuit panel.[38] By so ruling, the Eighth Circuit held that an anonymous, unsubstantiated tip alleging methamphetamine production and the presence of violent inhabitants, as well as physical traces of methamphetamine, created exigent circumstances sufficient to justify a no-knock entry.[39]

III. LEGAL BACKGROUND

A. The "Knock-and-Announce" Principle at Common Law

The knock-and-announce rule stems from a common law principle "protect[ing] a man's house as 'his castle of defense and asylum.'"[40] Adhering to this principle, the English common law courts allowed the state to forcibly enter a dwelling if it was the only plausible option.[41] Prior to making such an entry, the common law required the state to notify the inhabitant of its purpose.[42] This requirement, which forms the basis for the knock-and-announce rule, was first introduced in a 1604 English court decision, *Semayne's Case*.[43]

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33. *Id.* at 1049-50.

34. *Id.* at 1054. The appellant's raised four issues on appeal: (1) the reasonableness of force used during the search eliminates the proximate cause on the illegal entry claim, (2) the exigent circumstances to allow a no-knock entry did exist as a matter of law, (3) the testimony of an expert witness was improperly admitted and (4) the court abused its discretion in denying a mistrial for improper questioning of a witness. *Id.* at 1050-54.

35. *Doran*, 409 F.3d at 958.

36. *See* Appellants' Brief at 24-29, Doran v. Eckold, 409 F.3d 958 (8th Cir. 2005) (No. 03-1810).

37. *See* Appellee's Brief at 22-27, Doran v. Eckold, 409 F.3d 958 (8th Cir. 2005) (No. 03-1810).

38. *Doran*, 409 F.3d at 967.

39. *Id.*

40. Wilson v. Arkansas, 514 U.S. 927, 931 (1995) (quoting WILLIAM BLACKSTONE, 3 COMMENTARIES, *288).

41. *Id.* (citing Semayne's Case, (1603) 77 Eng. Rep. 194, 195 (K.B.)).

42. *Id.* (quoting Semayne's Case, (1603) 77 Eng. Rep. at 195.

43. *Id.* (quoting Semayne's Case, (1603) 77 Eng. Rep. at 195.

In *Semayne's Case*, the court stated that "the sheriff . . . may break the party's house, either to arrest him, or to do other execution of the K[ing]'s process, if otherwise he cannot enter. But before he breaks it, he ought to signify the cause of his coming, and to make request to open the door."[44] This principle, which continued in the English legal system,[45] and was adopted by early American courts and incorporated into the laws of the states.[46]

B. United States' Adoption of the "Knock-and-Announce" Rule

In the United States, the knock-and-announce rule was adopted by both Congress and the judiciary. In 1822, the first American court introduced the knock-and-announce rule in *Read v. Case*.[47] Since *Read*, courts have continued to incorporate this principle into the American legal fabric and established exceptions to it.[48] Furthermore, in 1917, Congress enacted what is now 18 U.S.C. § 3109,[49] which essentially codified the knock-and-announce rule.[50] Section 3109 states:

> The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.[51]

The Supreme Court first addressed this principle in *Miller v. United States*.[52] Though the decision in *Miller* was based on local law, not the Fourth Amendment or Section 3109,[53] this was the Supreme Court's first attempt at determining the knock-and-announce rule's applicability to the state's entry into a private residence.[54] After conducting a lengthy analysis of the common law principles of notice and announcement, the court ruled that the entry was

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44. *Id.* (quoting Semayne's Case, (1603) 77 Eng. Rep. at 195.

45. *Id.* (quoting Case of Richard Curtis, (1757) 168 Eng. Rep. 67, 68 (Crown) ("[N]o precise form of words is required in a case of this kind. It is sufficient that the party hath notice, that the officer cometh not as a mere trespasser, but claiming to act under proper authority.")).

46. *Id.* at 933.

47. *See* Read v. Case, 4 Conn. 166 (1822).

48. *See* State v. Pelletier, 552 A.2d 805 (Conn. 1989); Crabtree v. State, 479 N.E.2d 70 (Ind. Ct. App. 1985); Dunfee v. State, 346 A.2d 173 (Del. 1975).

49. Act of June 15, 1917, ch. 30, Title XI, §§ 8-9, 40 Stat. 229 (codified as amended at 18 U.S.C. § 3109 (2000)).

50. *See* Sabbath v. United States, 391 U.S. 585, 587-89 (1968).

51. 18 U.S.C. § 3109 (2000).

52. 357 U.S. 301 (1958).

53. *Id.* at 305-06.

54. *See id.* at 306-314.

unlawful because the officers broke in "without first giving [the owner of the residence] notice of their authority and purpose."[55]

In subsequent Supreme Court cases, the court continued to address the knock-and-announce rule in relation to statutory law, rather than a requirement of the Fourth Amendment's "unreasonable searches" analysis.[56] The Court's determination hinged on the constitutionality of the various statutes under the Fourth Amendment.[57] It was not until 1963 that the Court directly evaluated the knock-and-announce rule as a requirement of the Fourth Amendment.[58]

The Supreme Court first incorporated the knock-and-announce rule into the Fourth Amendment's reasonableness analysis of law enforcement searches and seizures in *Wilson v. Arkansas*.[59] The defendant in *Wilson* filed a motion to suppress evidence because the officers "violated the common-law principle requiring them to announce their presence and authority before entering."[60] Reversing the Arkansas Supreme Court, the Supreme Court held that law enforcement officers must knock and announce prior to entry, but countervailing law enforcement interests may allow a no-knock entry.[61] The Court, however, declined to list situations in which such countervailing factors may exist.[62] Although the *Wilson* Court expressed a desire to leave the determination of these countervailing factors to lower courts, three subsequent Supreme Court decisions have provided insight into such determinations.

In *Richards v. Wisconsin*, the Supreme Court rejected a blanket exception of the knock-and-announce rule for felony drug investigations.[63] In *Richards*, the defendant was suspected of dealing cocaine from a motel room.[64] The officers had substantial evidence of narcotics distribution and requested a search warrant authorizing a no-knock entry.[65] The Magistrate granted the warrant without the provision allowing for no-knock entry.[66] The Wisconsin Supreme Court held it reasonable to assume that exigent circumstances existed because "all felony drug crimes will involve 'an extremely high risk of serious if not deadly injury to the police as well as the potential for the dis-

55. *Id.* at 313.

56. *See* Wong Sun v. United States, 371 U.S. 471, 482-84 (1963); Ker v. California, 374 U.S. 23, 40-41 (1963); Sabbath v. United States, 391 U.S. 585, 591.

57. *See* Wong Sun, 371 U.S. at 482-84; Ker, 374 U.S. at 40-41; Sabbath, 391 U.S. at 591.

58. *See* Wilson v. Arkansas, 514 U.S. 927 (1995).

59. *Id.*

60. *Id.* at 927.

61. *Id.* at 936.

62. *Id.*

63. 520 U.S. 385, 396 (1997).

64. *Id.* at 388.

65. *Id.*

66. *Id.*

posal of drugs by the occupants prior to entry by the police.'"[67] The Supreme Court disagreed with this assumption and held that, under the particular circumstances encountered, law enforcement officers must have a "reasonable suspicion" that announcement of their presence would be dangerous, futile or inhibitive upon the effective investigation of the crime.[68] The Court held that the burden of establishing "reasonable suspicion" was not high, but the officers should have to carry this burden each time the use of the entry is questioned.[69]

The Supreme Court next addressed no-knock entries in *United States v. Ramirez*.[70] In *Ramirez*, the officers received a reliable tip that the defendant, a dangerous escaped felon, was in possession of firearms and at the home of a friend.[71] The officers obtained a search warrant allowing a no-knock entry.[72] While executing the warrant, the officers broke the window of the suspected house.[73] The tip provided information that weapons and guns were stashed in the garage.[74] The officers broke a window to the garage and pointed a gun inside to prevent the suspects from retrieving the contraband.[75] The Court found that police officers are not held to a higher standard when a no-knock entry results in property damage.[76] Police must still demonstrate a reasonable suspicion to justify a no-knock entry, and the damaging of property is not a factor in that determination.[77] However, the Court noted that excessive damage to property, even during the execution of a lawful no-knock entry, could violate the Fourth Amendment.[78] Ultimately, the Court applied the same reasonableness standard to determine whether the damaging of property was justified under the circumstances encountered.[79]

Finally, the Supreme Court held in *United States v. Banks* that forced entry by police officers was justified when the officers paused fifteen to twenty seconds after announcing their presence.[80] The Court reasoned that the

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67. *Id.* at 390 (quoting State v. Richards, 549 N.W.2d 218, 219 (Wis. 1996)).
68. *Id.* at 394.
69. *Id.* at 394-395.
70. 523 U.S. 65 (1998).
71. *Id.*
72. *Id.*
73. *Id.* 69-70.
74. *Id.* 68-69.
75. *Id.* 69-70.
76. *Id.*
77. *Id.*
78. *Id.* at 65-66.
79. *Id.* at 66.
80. 540 U.S. 31, 33 (2003). The law enforcement officers received information that the defendant was selling cocaine from his apartment. *Id.* The officers in front of the apartment announced their presence loud enough to be heard by the officers at the rear of the building. *Id.* With no indication of anyone inside, the officers waited 15 to 20 seconds before using a battering ram to enter the residence. *Id.*

potential for disposal of evidence was sufficient to warrant a forcible entry in this circumstance.[81] The Court, however, again emphasized the importance of considering the "totality of the circumstances" when making such a determination.[82] The use of categorical schemes could incorrectly pigeonhole and impede the fact-finding process necessary to make an accurate determination of reasonableness.[83] In this instance, the Court held that the potential disposal of cocaine was sufficient to warrant a forcible entry.[84]

As these cases show, the knock-and-announce rule is firmly embedded within the Supreme Court's Fourth Amendment jurisprudence.[85] Exigent circumstances may provide an exception to the rule, but the Court still applies a "totality of the circumstances" test to determine when the exception applies.[86] The Court, however, has provided only guidelines for making such a determination and has instead left the task to the lower courts.

IV. INSTANT DECISION

A. The Majority

The Eighth Circuit Court of Appeals, sitting en banc, reversed the district court and Eighth Circuit panel decisions in *Doran*.[87] The majority held that exigent circumstances justified the defendants' use of a no-knock entry, and thus, the defendants' search was constitutionally reasonable.[88] The majority's analysis of the case first dismissed four "faulty legal premises" relied upon in the district court's exigent circumstances ruling.[89] The majority then discussed the facts upon which it based its holding.[90] Lastly, the majority discussed the reasonableness of defendant Greenwell's decision to use a no-knock entry when executing the search warrant.[91] Upon conducting its analysis, the majority concluded that the defendants' no-knock entry was reason-

81. *Id.*

82. *Id.* at 42.

83. *Id.* at 42.

84. *Id.* at 31.

85. Craig Hemmens & Chris Mathias, *United States v. Banks: The "Knock-and-Announce" Rule Returns to the Supreme Court*, 41 IDAHO L. REV. 1, 36 (2004); *see also* Wilson v. Arkansas, 514 U.S. 927 (1995); Richards v. Wisconsin, 520 U.S. 385 (1997); United States v. Ramirez, 523 U.S. 65 (1998); United States v. Banks, 540 U.S. 31 (2003).

86. *See* Wilson v. Arkansas, 514 U.S. 927 (1995); *Richards*, 520 U.S. 385; *Ramirez*, 523 U.S. 65; *Banks*, 540 U.S. 31.

87. Doran v. Eckold, 409 F.3d 958, 967 (8th Cir. 2005).

88. *Id.*

89. *Id.* at 963-64.

90. *Id.* at 965-66.

91. *Id.* at 967-68.

able and that the claims should not have been submitted to the jury.[92] As a result, the majority reversed the judgment of the district court and remanded the case with instructions to dismiss the complaint.[93]

1. Dismissal of "Faulty Legal Premises"

Reviewing the exigent circumstances ruling *de novo*, the majority's analysis began by refuting the district court's analysis of four legal premises.[94] First, the majority stated that the district court over-emphasized the defendants' failure to obtain a search warrant authorizing a no-knock entry.[95] In making this assertion, the majority relied upon the decision of the Supreme Court in *Dalia v. United States*,[96] which held that the manner of executing the search warrant is at the discretion of the executing officers.[97] The majority bolstered this principle by citing *Richards v. Wisconsin*,[98] a Supreme Court decision upholding the legality of a no-knock entry after the request for a no-knock warrant was denied.[99] For the majority, the relevant question was "whether the officers have reasonable suspicion of exigent circumstances at the time they *execute* the warrant," not at the time the officers requested the warrant.[100] Thus, the type of warrant the officers actually possessed was irrelevant so long as exigent circumstances existed at the time of execution.

Second, the majority disagreed with the district court's analysis regarding the similarity of the facts known to the officers when requesting and executing the warrant.[101] The majority stated that executing officers may consider the totality of the circumstances when executing the warrant, including those facts known prior to application for the warrant.[102] To hold otherwise, the majority argued, would require the officers to request no-knock authority whenever the execution of the warrant may require such an entry.[103] The majority claimed that such a requirement would encourage excessive use of no-knock entries.[104] Therefore, the majority held that facts known prior to obtaining the warrant could sufficiently support the exigent circumstances requirement.[105]

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92. *Id.* at 967.
93. *Id.*
94. *Id.* at 964.
95. *Id.*
96. *Id.*
97. Dalia v. United States, 441 U.S. 238, 257 (1979).
98. *Doran*, 409 F.3d at 964.
99. Richards v. Wisconsin, 520 U.S. 385 (1997).
100. *Doran*, 409 F.3d at 964.
101. *Id.*
102. *Id.*
103. *Id.* at 964-65.
104. *Id.*
105. *Id.*

Third, the majority stated that the district court incorrectly applied the inadequacies of the investigation conducted by the field officers to the Street Narcotics Unit officers executing the search warrant.[106] The majority noted that section 1983 liability is personal, and therefore, the court must only consider whether the conduct of the executing officers, Grant and Greenwell, was constitutionally reasonable.[107] In making this determination, the court considered the "settled principle that law enforcement officers may rely on information provided by others in the law enforcement community, so long as the reliance is reasonable."[108]

The majority's final disagreement with the district court involved the manner in which Officer Grant routinely operated the ram during no-knock entries: announcing the officers' presence and simultaneously breaking in with the ram without knocking or waiting for a response.[109] The majority held that Grant, briefed and assigned as ram officer by Greenwell, could rely upon the judgment of his superior officer.[110] Therefore, according to the court, Grant's conduct as the ram officer was irrelevant to the reasonableness of the no-knock entry.[111]

2. Error in the District Court's Factual Analysis

In addition to the legal questions, the majority disagreed with the district court's evaluation of the facts as applied to its exigent circumstances analysis.[112] The majority found that the lower court over-emphasized portions of the pretrial record, while quickly dismissing others.[113] Primarily, the majority disagreed with what the district court held was "an incomplete investigation to verify the anonymous tip."[114]

The majority focused on the drug residue, sandwich bags with the corners cut out and mail addressed to the Doran residence.[115] The court placed considerable weight on this evidence even though the testimony did not confirm that the drug paraphernalia and the Doran's mail were found in the same trash bag.[116] The majority also disagreed with the district court's assertion that the trash did not contain any evidence suggesting the Dorans were manu-

106. *Id.* at 965.
107. *Id.*
108. *Id.*
109. *Id.* at 964-65.
110. *Id.* at 965.
111. *Id.*
112. *Id.*
113. *Id.*
114. *Id.*
115. *Id.* The cut off corners of sandwich bags are often used containers to distribute small quantities of illegal drugs. *Id.*
116. *Id.*

facturing methamphetamine.[117] The court pointed to the existence of an empty box of Dristan as such evidence.[118] By dismissing such evidence, the majority found the fact-finding underlying the district court's exigent circumstances ruling clearly erroneous.[119]

3. Justification of Exigent Circumstances

Finally, the majority considered whether exigent circumstances justified Greenwell's decision to execute the search warrant for the Doran residence with a no-knock entry.[120] The court considered the facts known to Greenwell at the time of execution and cited a series of cases finding exigent circumstances in similar situations.[121] Ultimately, the majority held that the facts known to Greenwell were sufficient to justify the no-knock entry.[122]

First, the majority found that Greenwell's level of research was reasonable for an officer in charge of executing a search warrant.[123] The court found it persuasive that the anonymous tip indicated that the Doran residence allegedly contained a methamphetamine lab.[124] Recounting portions of Greenwell's testimony, the court emphasized the dangers of executing a search warrant on a home harboring a methamphetamine lab.[125] The majority noted that this has justified no-knock entries in the past and cited a series of cases in support.[126] Next, the majority stated that, during his investigation, Greenwell learned of both ongoing drugs sales from the residence and guns that were kept in the house.[127] In considering this information, the court again listed past decisions justifying no-knock entries under similar circumstances.[128] Lastly, the court stated that Greenwell had learned that Doran's son had allegedly been arrested for possession of an illegal weapon.[129] The majority

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117. *Id.*

118. *Id.* at 965-66. Dristan contains pseudoephedrine, a methamphetamine precursor. *Id.*

119. *Id.* at 966.

120. *Id.*

121. *Id.*

122. *Id.* at 966-67.

123. *Id.* at 966. Greenwell reviewed the warrant and warrant affidavit, interviewed the investigating officer and drove by the Doran residence. *Id.*

124. *Id.*

125. *Id.*

126. *Id.* (citing United States v. Tucker, 313 F.3d 1259, 1265-66 (10th Cir. 2002); United States v. Keene, 915 F.2d 1164, 1168-69 (8th Cir. 1990); United States v. Spinelli, 848 F.2d 26, 29-30 (2d Cir. 1988)).

127. *Id.*

128. *Id.* (citing United States v. Washington, 340 F.3d 222, 227 (5th Cir. 2003); United States v. Gambrell, 178 F.3d 927, 928-29 (7th Cir. 1999); State v. Baker, 103 S.W.3d 711, 717-19 (Mo. 2003) (en banc)).

129. *Id.* at 966-67.

acknowledged the inaccuracy of the illegal weapon possession, but again offered court decisions under which such information justified no-knock entries.[130]

Considering the totality of the circumstances, the court held that the information available to Greenwell established "a reasonable suspicion of exigent circumstances."[131] According to the majority, the existence of such circumstances permits law enforcement officers to conduct a no-knock entry without violating the Fourth Amendment[132] As a result, the court held that Greenwell's decision to use a no-knock entry and Grant's execution of the no-knock entry were constitutionally reasonable.[133] Without a violation of Doran's constitutional rights, the claims against the Board of Police Commissioners should not have been submitted to the jury.[134] Accordingly, the majority reversed the decision of the district court and remanded the case for dismissal.[135]

B. The Dissent

Circuit Judge Heaney disagreed with the majority's decision that exigent circumstances justified the no-knock entry at the Doran residence.[136] His dissent argued that the officers did not adequately prove exigent circumstances to overcome the Fourth Amendment's right to privacy in one's home.[137] In support of this assertion, the dissent began by reviewing the investigation and facts upon which the officers acted.[138] The dissent next examined prior court decisions relevant to this issue; including the decisions relied upon by the majority, the seminal Supreme Court decisions and the decision the dissent considered most apposite.[139] After conducting this analysis, the dissent concluded that exigent circumstances did not exist and, therefore, the district court's ruling should be affirmed.[140]

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130. *Id.* (citing United States v. Nguyen, 250 F.3d 643, 645 (8th Cir. 2001); United States v. Gay, 240 F.3d 1222, 1228-29 (10th Cir. 2001); United States v. Weeks, 160 F.3d 1210, 1213-14 (8th Cir. 1998); United States v. Murphy, 69 F.3d 237, 243 (8th Cir. 1995)).

131. *Id.*

132. *Id.* at 962-63.

133. *Id.*

134. *Id.* Doran asserted failure-to-train and custom and practice claims against the Board of Commissioners.

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.* at 968-69.

139. *Id.* at 969-73.

140. *Id.* at 974.

1. Criticism of the Police Investigation

The dissent began by criticizing the limited investigation conducted by the police officers.[141] The dissent first noted that the investigation was based upon an anonymous tip from an informant with questionable reliability.[142] In addition, the dissent argued that the information conveyed by the tip could have easily been verified, but the officers failed to do so.[143] The dissent acknowledged the traces of methamphetamine found in the trash may point to use or even sale of the drug, but did not support the conclusion that a methamphetamine lab was in operation.[144] The opinion offered a list of Eighth Circuit cases which described the type of evidence often associated with operating labs.[145] The dissent stated that none of the typical signs from those cases were observed by any officer during the investigation of the Doran residence.[146] Therefore, Judge Heaney argued that the officers relied on uncorroborated evidence, a reliance he considered "unreasonable, and outweighed by the privacy interest the Fourth Amendment is meant to protect."[147]

The dissent also disagreed with the majority's opinion that Greenwell and Grant were not liable because they relied on information provided by the investigator.[148] Judge Heaney argued that, since Greenwell and Grant knew most of the information was uncorroborated, liability was not removed.[149] Thus, for the dissent, the majority's argument on this point was irrelevant in evaluating the existence of exigent circumstances.[150]

The dissent next argued that, since the information known to the officers was the same when they requested and executed the search warrant, a no-

141. *Id.* at 968.

142. *Id.* As previously stated, this tip alleged methamphetamine was made and sold from the Doran residence and Doran's son had recently been arrested for possessing an illegal firearm. *Id.*

143. *Id.* A series of examples is listed, including a failure to check the Doran's criminal history, a failure to check the son's arrest record or verify he lived at the address, a failure to conduct surveillance of the Doran residence, a failure to conduct a controlled buy at the Doran residence, and a failure to observe any signs of a methamphetamine lab. *Id.*

144. *Id.* at 969.

145. *Id.* (citing United States v. Lloyd, 396 F.3d 948, 954 (8th Cir. 2005); United States v. Dishman, 377 F.3d 809, 810 (8th Cir. 2004); Klienholz v. United States, 339 F.3d 674, 677 (8th Cir. 2003); United States v. Francis, 327 F.3d 729, 732 n.7 (8th Cir. 2003)).

146. *Id.*

147. *Id.*

148. *Id.* at 970.

149. *Id.* at 970-71 (citing United States v. Hensley, 469 U.S. 221, 232-33 (1985) (holding that the reasonableness of police conduct depends upon the extent of the officers' knowledge).

150. *Id.* at 971.

knock entry was not allowed.[151] Judge Heaney asserted that law enforcement officers should not be allowed to conduct a no-knock entry when they did not request one and additional circumstances did not arise to warrant one.[152] The dissent cited *United States v. Scroggins*, a prior Eighth Circuit decision, stating that "it seems more consistent with the Fourth Amendment to ask a neutral judge for approval before intruding upon a citizen's privacy."[153] Additionally, "the showing the police must make to obtain a no-knock warrant is the same showing they must make to justify their own decision to dispense with the knock-and-announce requirement. *Only the timing differs.*"[154] The dissent noted that, as a result of the majority decision, even timing did not matter.[155] Ultimately, the dissent argued that the executing officers should not be able to usurp the role of the neutral judge by failing to request a no-knock warrant and then by using the tactic, even though the facts remained unchanged.[156]

2. Dismissing the Cases Cited by the Majority

The dissent dismissed the majority's cases which held that the operation of a methamphetamine lab had justified a no-knock entry in prior cases.[157] The dissent noted that the four cases relied upon by the majority all contained *reliable* evidence of the current operation of a methamphetamine lab.[158] Unlike the reliable evidence available in the cases cited by the majority, Judge Heaney argued that the evidence in this case, drug paraphernalia and a box of Dristan, failed to provide the reasonable suspicion required to justify a no-knock entry.[159]

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151. *Id.* at 973-74.

152. *Id.*

153. *Id.* at 974 (quoting United States v. Scroggins, 361 F.3d 1075, 1082 (8th Cir. 2004)).

154. *Id.* (quoting *Scroggins*, 361 F.3d at 1082).

155. *Id.*

156. *Id.* at 973-74.

157. *Id.* at 969.

158. *Id.* at 969-70 (citing United States v. Tucker, 313 F.3d 1259, 1265-66 (10th Cir. 2002) (permitting a no-knock entry after direct observation of purchases of methamphetamine precursors); United States v. Spinelli, 848 F.2d 26, 29-30 (2d Cir. 1988) (permitting a no-knock entry because defendant had a prior conviction for methamphetamine production and agents observed activity consistent with the manufacturing of methamphetamine); United States v. Walsh, 299 F.3d 729, 734 (8th Cir. 2002) (permitting a no-knock entry after agents smelled ether and found equipment consistent with methamphetamine production); United States v. Keene, 915 F.2d 1164, 1166-67 (8th Cir. 1990) (permitting a no-knock entry after direct observation on an operating methamphetamine lab)).

159. *Id.* at 970.

The dissent next examined the basic knock-and-announce principle under the Fourth Amendment.[160] The dissent noted that *Wilson v. Arkansas*, which initially included the knock-and-announce principle within the Fourth Amendment's reasonableness inquiry, allowed unannounced entries if a threat of violence or a possibility for the destruction of evidence could be shown.[161] Judge Heaney argued that the government failed to make a showing of either in this case.[162]

The dissent continued its analysis of the knock-and-announce principle by discussing the Supreme Court's decision in *Richards v. Wisconsin*.[163] In *Richards*, the Supreme Court struck down a blanket exception to the knock-and-announce principle for felony drug investigations.[164] After noting the Court's emphasis on the importance of evaluating the facts and circumstances of each specific no-knock entry,[165] the dissent contended that the majority's decision in *Doran* was synonymous with a blanket exception and failed to consider the specific facts of the case.[166] Thus, the dissent argued that the majority created a per se exception to the knock-and-announce principle for methamphetamine labs, violating the notion that specific facts and circumstances are required to overcome the Fourth Amendment's right to privacy.[167]

Lastly, the dissent discussed *United States v. Lucht*, a case Judge Heaney called "indistinguishable" from the current case.[168] In *Lucht*, the Eighth Circuit ruled that a large quantity of methamphetamine and a likelihood of weapons was insufficient to justify a no-knock entry.[169] The dissent also cited a portion of the *Lucht* opinion which reiterated the premise that "a decision to force entry cannot rest on an assumption."[170] Judge Heaney noted that, in *Lucht*, the executing officers' assumption of anti-police sentiments was insufficient to warrant a forced entry.[171] The *Lucht* opinion reviewed the criminal record of the occupant and determined that a drug possession conviction and a concealed weapons charge were insufficient to justify the assumption.[172] The dissent compared the similarity of the alleged drug dealing and weapons possession in both cases and noted that, under these circum-

160. *Id.* at 971.
161. *Id.* (citing Wilson v. Arkansas, 514 U.S. 927, 935-36 (1995)).
162. *Id.*
163. *Id.* at 971-72.
164. *See supra* notes 54-57.
165. *Doran*, 409 F.3d at 971 (Heaney, J., dissenting).
166. *Id.* at 972.
167. *Id.* at 972-73 (citing Doran v. Eckold, 362 F.3d 1048, 1052 (8th Cir. 2004)).
168. *Id.* at 973.
169. United States v. Lucht, 18 F.3d 541, 550 (8th Cir. 1994).
170. *Doran*, 409 F.3d at 973 (quoting *Lucht*, 18 F.3d at 541).
171. *Id.* (citing *Lucht*, 18 F.3d at 541 (stating that anti-police sentiment was based on the occupants' membership in a motorcycle gang)).
172. *Id.* (citing *Lucht*, 18 F.3d at 551).

stances, the *Lucht* court held that a forced entry was unreasonable.[173] Judge Heaney recognized the ability of the en banc majority to overrule *Lucht*, but questioned the majority's failure to mention this case.[174]

In his conclusion, Judge Heaney reiterated the executing officers' unreasonable reliance on mostly uncorroborated evidence.[175] In addition, he argued that cases involving drugs and weapons are not exempt from the knock-and-announce principle without information specific to the particular case.[176] The dissent contended that the majority's decision did not conform to the Supreme Court's knock-and-announce principle.[177] As a result, the dissent argued that the decision left "an innocent man with no redress for clearly unreasonable and unconstitutional government conduct."[178]

V. COMMENT

As discussed by the dissent, the majority's holding in *Doran v. Eckold* failed to comply with the Supreme Court's knock-and-announce principle and, in addition, created a deplorable standard for permissible police conduct. First, the majority failed to meet the Supreme Court's standard by finding that a no-knock entry was reasonable on insufficient evidence. Second, this decision created an extremely low threshold for officer due diligence to justify a no-knock entry. This decision was not based upon adequate exigent circumstances to justify the officers' violation of Doran's Fourth Amendment right to privacy in his own home.

The Supreme Court's knock-and-announce principle has long been a fixture of Fourth Amendment reasonableness determinations.[179] To disregard this principle, the executing officers must offer proof of danger to officers or possible destruction of evidence specific to each particular case.[180] Traces of methamphetamine, a bottle of Dristan and baggies from trash bags in front of Doran's residence were the only particularized evidence against him.[181] As Judge Heaney appropriately stated in the dissent, this evidence pointed only to use or possible sale of methamphetamine.[182] Such facts alone have previously been insufficient to justify a no-knock entry.[183]

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173. *Id.*
174. *Id.*
175. *Id.* at 974.
176. *Id.*
177. *Id.*
178. *Id.*
179. Wilson v. Arkansas, 514 U.S. 927, 929 (1995).
180. Richards v. Wisconsin, 520 U.S. 385, 393-94 (1997).
181. *Doran*, 409 F.3d at 962.
182. *Id.* at 969.
183. *See* United States v. Lucht, 18 F.3d 541, 550 (8th Cir. 1994); United States v. Marts, 986 F.2d 1216, 1217-18 (8th Cir. 1993).

Moreover, the majority's assertion that the trial court erred by attributing the investigating officer's inadequacies to the executing officers mischaracterizes the relevant issue. The issue was not whether the executing officers could reasonably rely on the information provided by the investigating officers, as the majority seems to address.[184] Instead, the issue was whether the decision to use a no-knock entry was supported by the information received from the investigating officer's inadequate investigation.

The majority seemed to argue that the executing officers' conduct was constitutional because they reasonably relied on information provided by other law enforcement personnel.[185] This assertion misconstrued the general principle that law enforcement personnel can rely on information provided by other law enforcement personnel.[186] In this case, the principle only provided that the executing officers could rely on the investigator's conclusion that the residue found in Doran's trash was actually methamphetamine and that the uncorroborated tip was an uncorroborated tip. The majority, however, confused this reliance with the validity of the uncorroborated tip itself.

As a result, the majority's brief discussion of this issue fails to address the relevant question: whether the investigating officer's inadequate investigation supported the no-knock entry. The majority should have considered whether the executing officers' reliance on the uncorroborated tip was reasonable, instead of whether they could rely on the information provided by the investigating officer. The tip does not lose its status as being uncorroborated and anonymous simply because the investigating officer received and conveyed it to the executing officers. The executing officer is not liable for an inadequate investigation, but he should be liable for his unreasonable reliance upon that investigation to justify the no-knock entry.

Due to this inadequate investigation, there was no specific information establishing the existence of a methamphetamine lab or dangerous individuals occupying the residence, situations which have previously justified a no-knock entry.[187] Assumptions and anonymous tips do not satisfy the Supreme Court's requirement for disposing with the knock-and-announce principle.[188] By permitting the no-knock entry in this case, the majority has created a precedent similar to the per se exception the Supreme Court rejected in *Richards v. Wisconsin*.[189] As previously discussed, the Supreme Court required a case-by-case analysis of the facts to a particular entry.[190] In this case, the Eighth Circuit has allowed mere suspicion of drug manufacturing and evi-

184. *Doran*, 409 F.3d at 965.

185. *Id.*

186. *Id.* (citing United States v. Hensley, 469 U.S. 221, 232 (1985).

187. *See* United States v. Walsh, 299 F.3d 729 (8th Cir. 2002); United States v. Keene, 915 F.2d 1164 (8th Cir. 1990).

188. *See supra* notes 47-85 and accompanying text.

189. *See* 520 U.S. 385 (1997).

190. *Id.* at 394.

dence of use to justify a no-knock entry. The court offered no other particular evidence to support the existence of exigent circumstances.

In addition to disregarding the Supreme Court's standard, the majority has created an unacceptable precedent for police conduct. Under this precedent, law enforcement officers need only circumstantial evidence of drug use or sales and an assumption of methamphetamine production and hostile occupants to justify a no-knock entry. By permitting an inadequate investigation to justify the use of a no-knock entry, *Doran* promotes officers to perform their duties inadequately. In *Doran*, an adequate investigation may have disclosed information that would have dispelled the need for a no-knock entry. In the future, officers may forego further investigation if the mere assumption of risk is present and the no-knock entry is the preferable means of search warrant execution. The executing officer should, at a minimum, require the investigating officer to take all reasonable measures to validate the information upon which she is basing her decision. Otherwise, anonymous tips and unsubstantiated evidence will continue to "justify" the violation of Fourth Amendment rights.

The Eighth Circuit's failure to require more particularized evidence substantially lowers the threshold for justifying a no-knock entry. This decision fails to adhere to the Supreme Court's standards and allows for inadequate police conduct. As a result, this dilution of the knock-and-announce principle substantially weakens the once inviolable Fourth Amendment right to privacy in one's own home.

VI. CONCLUSION

The knock-and-announce rule was incorporated into the Fourth Amendment to protect the privacy of persons in their own homes.[191] In addition, only exigent circumstances, such as the risk of officer safety or disposal of evidence, will eliminate the right to this privacy.[192] After the Eighth Circuit's ruling in *Doran v. Eckold*, the threshold for proving such exigent circumstances has been reduced to an unacceptable level. This decision establishes an illusory requirement which law enforcement officers can prove by a mere assertion of risk. Moreover, this case presents a perfect example of why particular evidence of exigent circumstances is required to dispense with the knock-and-announce rule. Without this requirement, more innocent people will be left "with no redress for clearly unreasonable and unconstitutional government conduct."[193]

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191. *See* Wilson v. Arkansas, 514 U.S. 927 (1995).
192. *See* Richards v. Wisconsin, 520 U.S. 385 (1997).
193. Doran v. Eckold, 409 F.3d 958, 974 (8th Cir. 2005) (en banc).