MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Enedeo Rodriguez, Jr.,
Appellant-Petitioner

v.

State of Indiana,
Appellee-Respondent

March 21, 2024

Court of Appeals Case No.
23A-PC-2137

Appeal from the Elkhart Circuit Court

The Honorable Michael A. Christofeno, Judge

Trial Court Cause No.
20C01-1810-PC-52

Memorandum Decision by Judge Crone
Judges Bailey and Pyle concur.

Crone, Judge.

Case Summary

[1] Enedeo Rodriguez, Jr., appeals the denial of his petition for post-conviction relief. Rodriguez claims that his trial counsel was ineffective in failing to object to evidence on the basis that it was seized in violation of the Indiana Constitution when SWAT team members used a flash-bang device while executing a search warrant at his home. We affirm.

Facts and Procedural History

[2] On October 31, 2016, an undercover ATF agent filed an affidavit in support of an application for a search warrant on Rodriguez's property in a rural area of Elkhart County. At that time, Rodriguez was on supervised release following a federal felony conviction for conspiracy to deliver 1,000 pounds of marijuana. In his affidavit, the agent noted that Rodriguez was on supervised release, and he described an investigation that had developed evidence indicating that Rodriguez was involved in an ongoing conspiracy to distribute methamphetamine from Mexico via his home and his used car business. The evidence included information from a confidential source, surveillance of Rodriguez and an alleged coconspirator, and undercover buys from that coconspirator ranging up to one pound of methamphetamine, which cost $11,000. Based on his training and two decades of experience in narcotics investigations, the agent averred that it is "common" for drug traffickers to

possess firearms to protect themselves and their cash and drugs "from others who might attempt forcibly to take these items." PCR Ex. Vol. 1 at 28, 29.

[3] Later that day, a federal magistrate found that the affidavit established probable cause to search Rodriguez's home, outbuildings, and vehicles for "[c]ontrolled substances and/or evidence of drug trafficking," including guns and ammunition, and that "such search [would] reveal" those items. *Id*. at 33. The magistrate issued a search warrant for Rodriguez's property, which was one of ten warrants that were to be served simultaneously as part of the investigation. The South Bend Police Department's SWAT team was enlisted to execute the warrant.

[4] A detailed operational plan was developed for executing the warrant, which was scheduled for 6:00 a.m. on November 2, 2016. Officers were aware of Rodriguez's prior narcotics conviction and were led to believe that he would be armed. They were also aware of a potential for children to be in the residence. The front door, which opened into the living room, would be the primary entry point. Tools would be used to breach the door and to break out an adjacent window to allow officers to view the front area of the house and provide cover for the entry team. A medical team and an ambulance would be on site to treat anyone injured during the operation.

[5] "[G]iven the nature [of the trafficking conspiracy] and the allegations that it was cartel-related[,]" the use of a flash-bang device, also known as a "distraction device," was authorized. PCR Tr. Vol. 2 at 19. A flash-bang device is activated

by pulling a pin, which causes a lever to hit "a shotgun primer that starts the deflagration chain, and then … that powder that's in there would burn." *Id.* at 54. The device, which is approximately the size of a "toilet paper roll[,]" emits a "bright flash" of approximately "1.4 million candela[,]" which "destroys your night vision[,]" as well as a "loud thump[.]" *Id.* at 38, 20.[1] "It's not a high explosive.… All of its energy is contained in the body, with the exception of the light that comes out, and it does give off heat. But there's nothing that comes out of it." *Id.* at 38. The model used by the SWAT team "has six sides on it, so it's not like it can just roll willy-nilly somewhere." *Id.* at 85.

[6] According to Officer Sheldon Scott, who joined the SWAT team around 2005,

> [Flash-bang devices are] deployed one meter inside of the door. So the door would come open, … whoever's gonna deploy it would look to make sure there's no one in that immediate area, and drop it roughly 3 feet inside the doorway. It would deflagrate, and then the entry team would step over it.
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> ….
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> It's up to the individual officer who is going to throw the device or deploy it whether or not they utilize it, in accordance with their training. So if there was someone lying there in the immediate entry within one meter of the door, then they would not deploy it. If there's no one in the room, specifically a small

[1] Rodriguez claims that the noise is "likely more than 100 decibels." Appellant's Br. at 8 (citing, inter alia, PCR Tr. Vol. 2 at 21). When SWAT team Officer Sheldon Scott was asked whether the noise would "be more than 100 decibels[,]" he replied, "I can't be definitive without looking at it. I suspect it would be, but I don't." PCR Tr. Vol. 2 at 21.

> child, then they would be authorized to deploy that distraction device, so if they deemed it necessary.

Id. at 22, 19.

[7] On the morning of November 2, as the SWAT team approached Rodriguez's front door in the darkness, "a light came on," "a silhouette flash[ed] across the windows[,]" and "feet stomping in the house" could be heard. *Id*. at 19-20, 53. Officer Scott yelled that the approach had been "compromised[,]" i.e., that they had "lost the element of surprise." *Id*. at 93, 94. Other officers began yelling, "[P]olice with a warrant." *Id*. at 53. The front door was breached with a battering ram, the adjacent window was broken out, and a flash-bang device was deployed in the living room. Rodriguez was apprehended, and his wife Maria and his one-year-old daughter were also found in the home. No one received any treatment from the medical team at the scene.

[8] The ensuing "search yielded a significant quantity of methamphetamine in the basement, along with a measuring cup, two digital scales, two vacuum sealing machines, large, industrial resealable bags, bulk quantities of cellophane, a cutting agent, and at least six cell phones." *Rodriguez v. State*, No. 20A03-1707-CR-1607, 2018 WL 2945715, at *2 (Ind. Ct. App. June 13, 2018), *trans. denied*. "Investigators also recovered methamphetamine crystals and smoking devices from Rodriguez's garage and 240 grams of methamphetamine and a large supply of resealable bags from the stereo speaker of a truck that was parked outside Rodriguez's house." *Id*.

[9] The State charged Rodriguez with level 2 felony dealing in methamphetamine and level 5 felony corrupt business influence. Attorney Peter Soldato was appointed to represent Rodriguez. After a June 2017 jury trial, Rodriguez was found guilty as charged and sentenced to thirty-two years. Rodriguez unsuccessfully appealed his convictions and sentence.

[10] In October 2018, Rodriguez filed a pro se petition for post-conviction relief, which was amended by counsel. The amended petition alleged in pertinent part that Rodriguez was denied the effective assistance of trial counsel when Soldato "did not move to suppress evidence and/or object at trial to admission of evidence obtained from the search of [Rodriguez's] residence because the use of a flash bang device and the manner of entry on executing the search warrant was unreasonable" under Article 1, Section 11 of the Indiana Constitution. PCR Appellant's App. Vol. 2 at 34.

[11] A hearing was held in December 2022 and April 2023. Officer Scott and other SWAT team members testified to the foregoing. Maria testified that when the SWAT team entered the home, she and Rodriguez were sleeping in a bedroom approximately twenty feet from the front door and their daughter was sleeping in a playpen in the living room "four or five feet" from the front door. PCR Tr. Vol. 2 at 118. Maria stated that she "woke up to a loud bang[,] reached for the doorknob, [and] heard the second bang, but with a flash." *Id*. at 119. She testified that she and Rodriguez "ran out" of the bedroom. *Id*. He got "tackled," and she "swooped in for [her] daughter." *Id*. According to Maria, the flash-bang device went off "a few feet away from" her daughter. *Id*. at 120.

[12] Rodriguez testified that he and Maria were sleeping in their bedroom when he heard a "loud clash." *Id*. at 157. He went into the living room and saw an officer, who "quickly closed the door, and then [he] heard a big bang." *Id*. at 158. He stated that he was "tooken [sic] down" and "felt something hit [his] right shoulder." *Id*. He further stated that his daughter slept "in the living room in a playpen" and that she suffered "ear injuries" and "a cough that's never [gone] away because of this" and that it took "several years … for her to get her hearing back completely." *Id*. at 157, 160. He also testified that he had filed a pro se federal civil lawsuit seeking monetary damages for his daughter.

[13] SWAT team commander Lieutenant Steve Spadafora, who was "about the last" member of the entry team to cross the threshold of Rodriguez's home, was shown a photo of an empty playpen in the living room that was taken after the warrant was executed. *Id*. at 65. The lieutenant testified, "[T]here wouldn't have been a child in it. I would have recalled that.… [W]hen I was in that front room, I didn't notice anything … extreme, out of the ordinary, anything like that. So, if there would have been a child in that front room, I … would think I would certainly remember that." *Id*. at 72. He also testified that an officer who deploys a flash-bang device "is responsible to look before and make sure no one's nearby before deploying the device and then throwing it no more than three feet inside the threshold." *Id*. at 67. Lieutenant Spadafora, who joined the SWAT team around 1999, further testified that "[d]ealing in drugs has the potential to turn into something of a violent nature" and that "[d]rugs and guns sometimes and frequently go together[.]" *Id*. at 78.

[14] Similarly, Officer Scott testified that the possession and the delivery of drugs "[a]lmost always" "involves the use of firearms" and that that was "of concern to [him] back when [he] did that job[.]" *Id*. at 25. He also testified that flash-bang devices are used in "particular circumstances where we're compromised on the approach and we're trying to get in the door safely and quickly …. [I]f you think of it from this perspective, someone tries to point a firearm at you and aim it to shoot, if you have this bright light go off, it would be very to [sic] focus on those sights and put accurate gunfire on the team coming through the door." *Id*. at 50-51.

[15] Attorney Soldato testified that he talked with Maria "about the possibility of a flash-bang device of some kind being used during the execution of the warrant" but that he "pretty quickly … came to the conclusion that [he] didn't think that was a worthwhile use of resources and time as a basis to try to suppress evidence in this case." *Id*. at 100-01. Soldato explained, "If I found a case that said use of a flash-bang device during a search that was executed pursuant to a warrant was per se unreasonable, then I would have filed a motion. But that case, at the time I did the search, did not exist." *Id*. at 107.

[16] In September 2023, the post-conviction court issued an order denying Rodriguez's petition. The court did not specifically find Rodriguez's and Maria's testimony to be credible, noting that "no evidence of injury was presented" and that "the photos admitted showed that the child's playpen was situated somewhat away from the area where the flash bang device was tossed." Appealed Order at 11 n.3. The court found that "Soldato's understanding of the

law regarding the use of flash bangs is accurate"; that "the use of a flash bang was appropriate" in this case; that if Soldato "had moved to suppress evidence or had objected to evidence obtained from the search of [Rodriguez's] residence, it is highly unlikely that such a motion or objection would have been sustained"; and that Soldato's failure to do so "did not constitute ineffective assistance of counsel." *Id*. at 11, 16, 17. Rodriguez now appeals.

Discussion and Decision

[17] "Post-conviction proceedings are civil proceedings in which a defendant may present limited collateral challenges to a conviction and sentence." *Gibson v. State*, 133 N.E.3d 673, 681 (Ind. 2019) (citing Ind. Post-Conviction Rule 1(1)(b)), *cert. denied* (2020). The defendant "bears the burden of establishing grounds for relief by a preponderance of the evidence." Ind. Post-Conviction Rule 1(5); *Humphrey v. State*, 73 N.E.3d 677, 681 (Ind. 2017). Because Rodriguez is appealing from the denial of post-conviction relief, he is appealing from a negative judgment:

> Thus, the defendant must establish that the evidence, as a whole, unmistakably and unerringly points to a conclusion contrary to the post-conviction court's decision. In other words, the defendant must convince this Court that there is *no* way within the law that the court below could have reached the decision it did. We review the post-conviction court's factual findings for clear error, but do not defer to its conclusions of law.

Wilkes v. State, 984 N.E.2d 1236, 1240 (Ind. 2013) (citations and quotation marks omitted). "We will not reweigh the evidence or judge the credibility of

witnesses, and will consider only the probative evidence and reasonable inferences flowing therefrom that support the post-conviction court's decision." *Hinesley v. State*, 999 N.E.2d 975, 981 (Ind. Ct. App. 2013), *trans. denied* (2014).

[18] Rodriguez asserts that he is entitled to post-conviction relief because he was denied the right to effective assistance of trial counsel guaranteed by the Sixth Amendment to the United States Constitution. *See Strickland v. Washington*, 466 U.S. 668, 686 (1984) ("[T]he right to counsel is the right to effective assistance of counsel.") (quoting *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970)). To succeed on an ineffective assistance of counsel claim, the defendant must satisfy the two-part standard articulated in *Strickland*. *Humphrey*, 73 N.E.3d at 682. This requires the defendant to show that "1) counsel's performance was deficient based on prevailing professional norms; and 2) that the deficient performance prejudiced the defense." *Weisheit v. State*, 109 N.E.3d 978, 983 (Ind. 2018), *cert. denied* (2019).

[19] To establish deficient performance, the defendant must show that counsel's representation "fell below an objective standard of reasonableness, committing errors so serious that the defendant did not have the 'counsel' guaranteed by the Sixth Amendment." *Humphrey*, 73 N.E.3d at 682 (quoting *McCary v. State*, 761 N.E.2d 389, 392 (Ind. 2002)). In reviewing counsel's performance, "[a] strong presumption arises that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Morgan v. State*, 755 N.E.2d 1070, 1073 (Ind. 2001). "[C]ounsel's performance is

presumed effective, and a defendant must offer strong and convincing evidence to overcome this presumption." *Williams v. State*, 771 N.E.2d 70, 73 (Ind. 2002).

[20] "To demonstrate prejudice from counsel's deficient performance, a petitioner need only show a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Baumholser v. State*, 186 N.E.3d 684, 689 (Ind. Ct. App. 2022) (citation and quotation marks omitted), *trans. denied*. "Although the two parts of the *Strickland* test are separate [inquiries], a claim may be disposed of on either prong." *Grinstead v. State*, 845 N.E.2d 1027, 1031 (Ind. 2006). "*Strickland* declared that the 'object of an ineffectiveness claim is not to grade counsel's performance. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, ... that course should be followed.'" *Id.* (quoting *Strickland*, 466 U.S. at 697).

[21] To prevail on a claim of ineffective assistance due to counsel's failure to file a motion to suppress or object to certain evidence, the defendant must show a reasonable probability that the motion would have been granted or the objection would have been sustained if made. *Ritchie v. State*, 875 N.E.2d 706, 717-18 (Ind. 2007). Article 1, Section 11 of the Indiana Constitution provides, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to

be seized." "We construe Section 11 liberally in favor of protecting individuals from unreasonable intrusions on their privacy." *Grier v. State*, 868 N.E.2d 443, 444 (Ind. 2007). "Evidence obtained as a result of an unconstitutional search must be suppressed." *Id*. at 445. The exclusionary rule is not required by the constitution's text, but it "represents a judicially-created remedy aimed first at deterring police misconduct and second at securing Hoosiers' rights." *Wright v. State*, 108 N.E.3d 307, 313-14 (Ind. 2018).

[22] "The legality of a governmental search under the Indiana Constitution turns on an evaluation of the reasonableness of the police conduct under the totality of the circumstances." *Litchfield v. State*, 824 N.E.2d 356, 359 (Ind. 2005). Although "there may well be other relevant considerations under the circumstances," the reasonableness of a search "turn[s] on a balance of: 1) the degree of concern, suspicion, or knowledge that a violation has occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities, and 3) the extent of law enforcement needs." *Id*. at 361. This test applies in determining the reasonableness of the method of executing a search warrant. *Watkins v. State*, 85 N.E.3d 597, 600 (Ind. 2017).

[23] In *Watkins*, the case on which Rodriguez chiefly relies, the defendant was seen by "[a] long-time confidential informant … in his Evansville home with a gun, cocaine, and marijuana." *Id*. at 598.

> After receiving this tip, Evansville police got a search warrant, surveilled the house, and decided to send in the SWAT team. The team met to plan the warrant execution, taking into account

> the layout of the house, Watkins's violent criminal history, and the danger posed by four adults with narcotics and a gun.
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> Soon after, twelve SWAT officers arrived at Watkins's house in an armored vehicle. One officer bashed in the front door with a battering ram while another announced the team's presence over a loudspeaker. A third officer's job was to use a flash-bang grenade—a diversionary device that emits a loud noise and bright flash of light—to distract anyone inside. Following standard safety precautions, he did a "quick peek" into the front room to see whether the grenade was appropriate, then deployed it six inches inside the door. He did not know that a nine-month-old boy was lying under a blanket in a playpen in that room.
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> Officers discovered the child moments after the grenade went off, and took him outside. They then found four adults—including Watkins—in the rest of the house.

Id. at 598-99 (footnote omitted). The officers searched the house and found drugs, digital scales, cash, and a handgun. Watkins was charged with and convicted of several drug-related offenses.

[24] On appeal, Watkins argued "that the search warrant execution was unreasonable under Article 1, Section 11 of the Indiana Constitution." *Id*. at 599. In January 2017, a divided panel of this Court found the search unreasonable under *Litchfield* "because 'the extent of law enforcement needs for a military-style assault was low and the degree of intrusion was unreasonably high.'" *Id*. (quoting *Watkins v. State*, 67 N.E.3d 1092, 1103 (Ind. Ct. App. 2017), *trans. granted*). Our supreme court granted the State's petition to transfer, thereby vacating this Court's opinion, in April 2017, two months before

Rodriguez's jury trial. Thus, Soldato had no favorable Indiana constitutional authority on which to base either a motion to suppress or an objection.

[25] In October 2017, four months after Rodriguez's jury trial, our supreme court issued an opinion affirming Watkins's convictions and addressing his argument as follows:

> **1. The degree of police suspicion.**
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> Watkins argues that police suspicion was low because little to no evidence showed that drugs were in his house. But this argument is misplaced because a valid warrant means that police had probable cause to believe that Watkins's home contained evidence of a crime.
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> Evansville police also strongly suspected that executing the search warrant would be dangerous. They heard about the gun and drugs in the house from a reliable confidential informant who had worked for them "extensively" for sixteen to eighteen months, leading to dozens of arrests and convictions. Officers bolstered this suspicion by watching the house before executing the search warrant, which led them to notice activity consistent with active drug dealing: "short term traffic" to the house and Watkins pulling a small plastic bag from under a trash can behind the house. In short, not only did police have a valid warrant, they also corroborated the informant's tip before sending in the SWAT team.
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> **2. The degree of intrusion.**
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> Watkins argues, the State admits, and indeed any reasonable person would agree, that the degree of intrusion was high. The SWAT team bashed in the front door with a battering ram less than fifteen seconds after pulling up in an armored vehicle. Less

than three seconds after that, police deployed a flash-bang grenade into a room occupied only by a nine-month-old infant. A small army of officers carrying assault rifles then stormed the house, while others watched through windows and the front door.

Despite this aggressive entry, police moderated the intrusion. The officer deploying the flash-bang grenade did a "quick peek" inside to check for people or smells (that could indicate flammable materials or explosive methamphetamine) that would make a flash-bang dangerous. Because he couldn't see the entire room, he took the additional precaution of setting off the grenade in the threshold—only six inches inside the door. So while the degree of intrusion was high, police carefully tailored their tactics.

3. The extent of law enforcement needs.

Watkins also argues that law enforcement needs were low, downplaying the officers' knowledge that the house harbored cocaine, marijuana, four adults, and a gun. But guns and illegal drugs are a dangerous combination. *See Polk v. State*, 683 N.E.2d 567, 571 (Ind. 1997) (noting the "violent and dangerous criminal milieu created by drug dealing and possession"). While that combination is not enough to justify intrusive searches *per se* (*Litchfield* is, after all, a totality-of-the-circumstances test), it certainly increases law enforcement needs. This case was no exception. The gun was not hidden or locked in a safe; the informant saw Watkins carrying it. Add Watkins's criminal history—including drug crimes, robbery, and burglary—and the law enforcement needs were strong.

4. Balancing the totality of the circumstances.

Under the totality of the circumstances, this search was not unreasonable. Officers strategically protected themselves while searching a house that they strongly suspected had cocaine,

marijuana, and a suspect with a gun and violent criminal history. The search was intrusive; we cannot describe the use of a battering ram, flash bang grenade, and SWAT team any other way. But our constitutional analysis balances that invasiveness with police safety and other law enforcement needs. *Mitchell v. State*, 745 N.E.2d 775, 786 (Ind. 2001). The significant intrusion here did not outweigh the even more significant police interests.

Watkins cites several Seventh Circuit civil damages cases to argue that this search was unreasonable. *See, e.g.*, *Estate of Escobedo v. Bender*, 600 F.3d 770 (7th Cir. 2010); *Molina v. Cooper*, 325 F.3d 963 (7th Cir. 2003). These cases do not control for two reasons. First, they analyze reasonableness under the Fourth Amendment, while Watkins's challenge here rests solely on Article 1, Section 11. *See Carpenter* [*v. State*, 18 N.E.3d 998, 1001 (Ind. 2014)] ("Although Indiana's Section 11 and the Federal Fourth Amendment are textually identical, they are analytically distinct."). Second, their analysis zooms in on flash-bang grenades—something incompatible with our totality-of-the-circumstances test.[2]

Even if we did apply the Seventh Circuit's flash-bang grenade jurisprudence, though, this search was likely not unreasonable. In *Bender*, the court found the use of flash-bang grenades unreasonable because police blindly threw them into an apartment without any threat of violence to anyone but the resident himself. 600 F.3d at 785-86. And in *Molina*, the court found their use reasonable because police believed that someone in the house had a violent criminal record and access to weapons. 325 F.3d at 973. This case is much more like *Molina* than *Bender*: police knew that Watkins was in the home and that he had a violent criminal history and a gun. And unlike in *Bender*, police

[2] Rodriguez cites both *Bender* and *Molina*, which we find unpersuasive for the reasons given in *Watkins* and below.

> took the precautions of a "quick peek" and setting the flash-bang just inside the doorway instead of blindly lobbing it into the room.
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> But make no mistake: flash-bang grenades should be the exception in search warrant executions. Their extraordinary degree of intrusion will in many cases make a search constitutionally unreasonable. *See Watkins*, 67 N.E.3d at 1104 (May, J., dissenting). And we have serious concerns about officers here setting off a flash-bang grenade when the only person in the room was a nine-month-old. Ultimately though, this search warrant execution—under *Litchfield*'s totality-of-the-circumstances test—did not violate our Constitution's search-and-seizure protections.

Id. at 601-03 (some citations and footnote omitted).

[26] Here, Rodriguez does not dispute the post-conviction court's conclusion that law enforcement officers had a high degree of concern that he was violating drug trafficking laws. Indeed, based on the ATF agent's affidavit, a magistrate found probable cause to believe that evidence of such crimes would be found on his property. Rodriguez observes that the affidavit "did not specifically claim" that he "possessed or used firearms[.]" Appellant's Br. at 14. But the agent averred, based on his two decades of experience, that drug traffickers commonly possess firearms to protect themselves and their product and profits, and the magistrate found probable cause to believe that firearms would be found on Rodriguez's property, too. That Rodriguez—who was suspected of trafficking methamphetamine from Mexico and had been convicted of conspiring to deliver 1,000 pounds of marijuana—did not actually possess a

firearm when he was apprehended does not undermine the validity of the magistrate's probable cause determination, which Rodriguez does not dispute.

[27] As for the second *Litchfield* factor, the post-conviction court acknowledged that, "[a]rguably, whenever a flash bang device is used, the nature of the intrusion would be high." Appealed Order at 14. But the court concluded that "[c]oncern for officer safety became an utmost priority" when the operation was "compromised" [3] and that, "[a]s in *Watkins*, police attempted to some extent to tailor their tactics while deploying the flash bang. In this regard, the intrusion was moderated to some extent." *Id*. at 14-15. Rodriguez argues that because the police had information that a child could be present in the home, the tailoring of their tactics "to protect themselves and make safety a priority … did not moderate the degree of intrusion. It was still high." Appellant's Br. at 14. As indicated above, however, conflicting testimony was presented regarding whether Rodriguez's daughter was actually in the playpen in the living room when the flash-bang device was deployed. Moreover, both Officer Scott and Lieutenant Spadafora testified that an officer must look around and ensure that no one is in the "immediate area" before deploying a flash-bang device. PCR Tr. Vol. 2 at 22, 67.

[28] Regarding the third *Litchfield* factor, law enforcement needs, the post-conviction court concluded that "[i]t would have been foolish on the part of law

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[3] On this point, the post-conviction court implicitly found Officer Scott's testimony more credible than Rodriguez's and Maria's testimony that they were sleeping when the SWAT team entered.

enforcement to disregard or downplay the rational conclusion that the residence harbored guns" and that "[p]olice strategically protected themselves while acting under a finding of probable cause that the house they were searching contained large quantities of drugs, items associated with drug dealing and weapons, and the subject of the warrant had a criminal history of drug dealing." Appealed Order at 15. Rodriguez argues that, unlike in *Watkins* and *Molina*, "there were no allegations [that he] had prior convictions for use or possession of a weapon or had been convicted of a violent offense. The law enforcement needs were based on the immediate concern the operation had been compromised as opposed to Rodriguez having a history of violence." Appellant's Br. at 15. Again, Rodriguez disregards the magistrate's finding of probable cause that firearms would be present in the home, which was based on the ATF agent's averment that it is common for drug traffickers to possess firearms. And Rodriguez was no low-level street dealer, having been convicted of conspiring to distribute half a ton of marijuana and having been suspected of trafficking methamphetamine from Mexico that was sold at $11,000 a pound. The SWAT team members believed that their operational security had been compromised, and they deployed the flash-bang device within three feet of the front door in a manner calculated to minimize any collateral damage and to distract any potential gunman before they entered the home to execute a valid search warrant.

[29] Based on the foregoing, we must agree with the post-conviction court's conclusion that, under the totality of the circumstances, Rodriguez's "Indiana

Constitutional rights were … not violated[,]" i.e., that the SWAT team's method of executing the search warrant was not unreasonable. Appealed Order at 15. Although the degree of intrusion was significant, that factor did not outweigh the high degree of concern that Rodriguez was violating drug laws and was likely armed and the danger to the SWAT team when the operation was compromised. Consequently, we must also agree with the post-conviction court's conclusion that if Soldato "had moved to suppress evidence or had objected to evidence obtained from the search of [Rodriguez's] residence, it is highly unlikely that such a motion or objection would have been sustained. Therefore, there is no reasonable probability that the result of the trial would have been different." *Id*. at 16. Accordingly, we affirm the court's denial of Rodriguez's petition for post-conviction relief.

[30] Affirmed.

Bailey, J., and Pyle, J., concur.

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