

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Craig S. Thacker,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

May 17, 2023

Court of Appeals Case No.
22A-CR-972

Appeal from the Morgan Superior
Court

The Honorable Dakota R.
VanLeeuwen, Judge

Trial Court Cause Nos.
55D01-1911-F2-1958, 55D01-2007-
F6-1118

Memorandum Decision by Chief Judge Altice
Judges Brown and Tavitas concur.

Altice, Chief Judge.

Case Summary

- [1] While executing an arrest warrant on Shawn Silcox, Morgan County Sheriff's Department (MCSD) deputies, including Deputy Brighton Sichtung, entered Silcox's residence, where Craig Thacker, who was out on bond in Cause No. 55D01-1911-F2-1958 (F2-1958),¹ was residing at the time. While inside, officers observed contraband. That same day, Deputy Sichtung applied for and obtained a search warrant to enter and search the residence. Thereafter, the State charged Thacker under Cause No. 55D01-2007-F6-1118 (F6-1118) with Level 6 felony possession of methamphetamine, Level 6 felony unlawful possession of a syringe, and Class C misdemeanor possession of paraphernalia.
- [2] Thacker filed a motion to suppress in F6-1118, alleging that the officers who entered the property to arrest Silcox had done so illegally. Before the suppression matter was heard, Thacker raised allegations to the court that one or more officers had "lied under oath," such as in the probable cause affidavit used to obtain a search warrant to search Silcox's residence as well as in a deposition, and Thacker was "investigating the possibility of a wide-spread cover-up of the perjury," including by other MCSD officers and Morgan

¹ In late 2019, the State charged Thacker in F2-1958 with Level 2 felony dealing methamphetamine, Level 3 felony possession of methamphetamine, Level 6 felony dealing marijuana, Level 6 felony unlawful possession of a syringe, Level 6 felony possession of a narcotic drug, Level 6 felony maintaining a common nuisance, Class C misdemeanor possession of paraphernalia, Level 5 felony dealing marijuana, and with being a habitual offender. Thacker was released on bond in March 2020.

County deputy prosecutors. *Appendix* at 27. Contentious litigation ensued with depositions, motions, an informal MCSD inquiry, and the appointment of a special prosecutor – at the request of the Morgan County Prosecutor’s Office – to review allegations that Deputy Sighting had committed perjury. Before the special prosecutor’s report was issued, which ultimately found that no probable cause existed to find that Deputy Sighting had committed perjury, Thacker filed a petition for the appointment of a special prosecutor to prosecute F2-1958 and F6-1118.

[3] The trial court denied Thacker’s petition. In this interlocutory appeal, Thacker raises the following restated issue: Did the trial court abuse its discretion when it determined that Thacker did not show by clear and convincing evidence that the elected Morgan County Prosecutor had an actual conflict of interest that required the appointment of a special prosecutor for Thacker’s two pending causes?

[4] We affirm.

Facts & Procedural History

[5] On July 27, 2020, MCSD Deputy Timothy Coryell, a warrant officer for the department, was notified of an Owen County warrant for the arrest of Silcox. The warrant was for an alleged violation of home detention, and it listed Silcox’s address as 44 South Drive in Martinsville, which Silcox had provided to the Owen County probation department as his residence. Morgan County law enforcement had arrested Silcox at that address in November 2019 and had

encounters with him at that residence in April and June 2019. Deputy Coryell had reviewed this information before going to execute the warrant.

[6] At approximately 2:00 p.m. that afternoon, Deputies Sighting, Coryell, and Walter Stuart went to 44 South Drive, in separate vehicles, to execute the arrest warrant. Deputies Sighting and Coryell arrived about the same time, with Deputy Stuart arriving shortly thereafter. Deputies Sighting and Stuart went to the front door, while Deputy Coryell went around the duplex to watch the back door. When Deputy Sighting knocked and announced, he could hear “people moving around inside,” but no one came to the door for some minutes despite his repeated knocking. *Exhibits Vol.* at 10. The door was eventually opened by Thacker.

[7] According to Deputy Sighting, he told Thacker why they were there, entered the residence, and, as he rounded a corner, saw an individual go through a door that slammed shut. When no one opened the door at his commands, Deputy Sighting kicked it open, entered, and saw a woman on the bed, then discovered Silcox hiding in the corner of the closet. Silcox refused to come out, and Deputies Sighting and Stuart pulled Silcox from the closet and handcuffed him.

[8] Based on items observed while in the residence, including on the ground near where Thacker was standing, Deputy Sighting requested and received a search warrant that day to search the residence. As is relevant here, the probable cause affidavit in support of the request for the search warrant (First PCA) included

the following statements, describing the events surrounding his earlier arrival at and entry into Silcox's residence:

On July 27, 2020 at approximately 2:02pm while on duty with the [MCSD,] I deputy Brighton Sighting did respond to 44 South dr to execute an arrest warrant on Shawn Silcox. *Upon arrival I was notified by a neighbor that he was inside the residence.*

I did knock on the front door in attempt to make contact. After knocking for over a minute, I began shouting Sheriff Department come to the door. The front door did open where I did observe Craig Thacker standing. I asked Craig where Shawn was located at. *At that point in time I did observe the bedroom door partially open. As I approached the bedroom door[,] the door was closed shut in my face as if someone was attempting to evade my presence.*

Id. at 99 (emphases added).

[9] Deputy Sighting and other officers executed the search warrant at 3:32 p.m. Thereafter, Deputy Sighting submitted an arrest narrative and probable cause affidavit (Second PCA), requesting the filing of the charges against Thacker and Silcox. In addition to outlining what contraband was found during the search, the Second PCA contained the same language as the First PCA, quoted above, with regard to being “notified by a neighbor” that Silcox was inside the home and to observing “at that point in time . . . the bedroom door partially open.” *Appendix* at 19.

[10] On July 29, 2020, the State charged Thacker in F6-1118 with Level 6 felony possession of methamphetamine, Level 6 felony unlawful possession of a

syringe, and Class C misdemeanor possession of paraphernalia. The State also filed a motion to revoke Thacker's bail in F2-1958.²

[11] On March 11, 2021, counsel for Thacker, Andrew Baldwin and Mark Auger, deposed Deputy Sighting. Deputy prosecuting attorneys (DPA) Meghan Dial and Trevor Johnson were present for the State. As is relevant to this appeal, Baldwin questioned Deputy Sighting about having talked to a neighbor before knocking and entering Silcox's apartment:

Q: Do you know who this neighbor was?

A: I couldn't tell you the name, no sir. *I believe it was a female who resides directly east to where [Silcox] lives, but I don't recall her name.*

Exhibits Vol. at 14 (emphasis added). Deputy Sighting stated that he had met the female on one or more prior occasions during law enforcement encounters. Baldwin also asked Deputy Sighting about observing the partially-open bedroom door, focusing particularly on where the deputy was standing when he saw the door, including the following exchange:

Q: Once [Thacker] opened up the door, how long did it take for you *to get inside* the house?

² Thacker's bail subsequently was revoked on August 3, 2020, and he was remanded to the custody of MCSD.

A: Once I told him who I was there for, that we had a warrant for that residence, I had him step off to the side, so, I mean, seconds.

Q: Okay.

A: *And that's where I observed that door being shut and an individual going into that back bedroom.*

Q: Did you observe that once you were in the house?

A: *I don't recall if I was all of the way in the house or right at the doorway, but . . .*

Id. at 11 (emphases added). Later in the deposition, Baldwin stated to Deputy Sighting that his statement in the PCAs that “[a]t that time I did observe the bedroom door partially open” read as though Deputy Sighting saw the bedroom door open while he was “still at the front door,” but his deposition statements indicated that he saw the open door “once [he was] in the house.” *Id.* at 15 (emphasis added). Therefore, Baldwin asked Deputy Sighting to clarify. Deputy Sighting stated:

A: I'm trying to remember exactly how – *I know I was still at the doorway . . .* I don't recall if I observed the door moving or if it was just stationary partially open.

Q: Okay. . . . So where you're standing outside of that front door, you definitely could see a door – a bedroom door, is that true?

A: A door, yes. And from my experiences within [these units], I know that could be a bedroom door, yes.

Id. (emphasis added). Baldwin asked Deputy Sighting to draw a layout of the apartment as he recalled it, and the deputy complied. Thereafter, Baldwin again pointed out that Deputy Sighting's PCAs read as though he saw the bedroom door while he was standing at the front door, whereas his deposition testimony was that he was inside when he saw the bedroom door, and he asked the deputy "which of those two is more accurate?" *Id.* DPA Dial then interjected:

Q: Did you – just for clarification purposes. Did you say that he just testified that he was inside the door?

A: I thought that he did.

Q: Correct me if I'm wrong, you said that you weren't sure if you were inside the door or outside the door?

A: That's correct.

Id. Baldwin followed up,

Q: I guess the question is where were you when you saw the bedroom door open? Because this [PCA] makes it sound like you were outside.

A: I don't recall if I was directly in the entryway or if I was standing outside the door. I don't recall.

Id. at 16.

[12] Auger, on redirect, summarized and asked:

Q: So you're at the front door, [] Craig opens the door, and you're seeing beyond Craig, and you're seeing, as you say in your report, "at that point in time," which I'm assuming means you're standing at the front door where Craig is, you did observe the bedroom door partially open, correct?

A: Correct.

Q: And then as you begin approaching that bedroom door, you're saying the bedroom door shut in your face?

A: Correct.

Id. at 19.

[13] Given the focus of the questioning concerning when Deputy Sighting saw an open bedroom door and from where, DPAs Dial and Johnson asked Deputy Coryell to take them to the scene because they wanted to take photographs. Deputy Coryell did so on or about March 17. *See Appendix* at 24.

[14] On March 18, 2021, Baldwin sent an email to DPAs Dial and Johnson, stating that he had previously toured the apartment and that Deputy Sighting had lied three times – in the two PCAs and his deposition – about seeing a partially-open bedroom door from the front door, as it was "simply impossible" to see a bedroom door from the front door based on the layout of the apartment.

Exhibits Vol. at 89. Baldwin also asserted that he and/or his staff had spoken to

neighbors present on July 27 and met with the next-door neighbor, Vernon Spence, and his girlfriend, who stated that they remembered the date in question and no officer asked them if Silcox was in his apartment, contrary to Deputy Sighting's testimony. Baldwin expressed that, while he had various thoughts on how to handle the situation, his client Thacker preferred to resolve the pending matters and move on, and therefore offered the following: Thacker would plead guilty to a Level 5 felony in F2-1958, receive a one-year executed sentence, and F6-1118 would be dismissed. Otherwise, the matter would proceed to a suppression hearing and Baldwin would ask the judge to visit the property "so he can see, with his own eyes, the ridiculousness of Sighting's story." *Id.*

[15] Thereafter, Chief Deputy Prosecutor (CDP) Cassie Starnes forwarded Baldwin's emails to MCSD Captain Brent Worth. Some days later, on March 24, CDP Starnes emailed Baldwin, stating that she had reviewed materials relevant to his allegations about Deputy Sighting lying under oath, she had notified MCSD "and an inquiry was completed," which concluded that there was no evidence "that even closely supports your position." *Appendix* at 138.

[16] On March 26, 2021, Thacker filed a motion to suppress in F6-1118, asserting that officers "entered the property illegally" in violation of Thacker's state and

federal constitutional rights, and the matter was scheduled for hearing on May 25.³ *Id.* at 25.

[17] Prior to the hearing, attorneys Baldwin and Auger took the depositions of Deputy Stuart and Deputy Coryell, on April 16, 2021, this time with elected Morgan County Prosecutor Sonnega representing the State. Deputy Stuart recalled that, on July 27, he arrived after the other two deputies were already there, he did not speak to any neighbors before entering the apartment, and he did not see Deputy Sighting do so. Thacker’s attorneys asked Deputy Stuart a series of questions concerning whether the bedroom door can be seen from the doorway, including “How far do you think you need to go into that house before you can actually see that bedroom door?” and Deputy Stuart replied, “Maybe five feet or so.” *Exhibits Vol.* at 66. Deputy Stuart acknowledged that he had heard that Deputy Sighting had been accused “of basically lying” in his PCA but he had not read the PCA or discussed the matter with Deputy Sighting. *Id.* at 61.

[18] Deputy Coryell testified about walking toward the back door as Deputies Sighting and Stuart went to the front door. He testified that he had not spoken to any neighbors or anyone in the area about whether Silcox was inside the apartment, and as to whether he saw Deputy Sighting or Stuart do so, he

³ Thacker also filed a motion for a hearing on Thacker’s already-revoked bond in F2-1958, and requested for that matter to be heard at the same time as his motion to suppress. The court granted his request for a consolidated hearing. *Appendix* at 25-26.

replied, “I was not at the front of the building, so, no.” *Id.* at 34. At some point, Deputy Coryell came back to the front – either having been called or hearing activity – and found the other two deputies inside. He described the scene as “chaotic” with a lot of yelling, and that his main role was to watch Thacker, who Deputy Coryell eventually escorted outside in handcuffs. *Id.* at 35.

[19] Deputy Coryell also testified about when he took DPAs Dial and Johnson to the apartment in March 2021, by then occupied by other tenants, because “they wanted to take some photos of the apartment over the Craig Thacker case.” *Id.* at 32. Deputy Coryell maintained that he did not know for what reason they wanted to go back and take pictures, although he acknowledged having heard from Captain Worth about the lying accusations against Deputy Sighting.

[20] On May 19, 2021, Thacker filed a motion to dismiss the May 25 combined F6-1118 suppression hearing and F2-1958 bond revocation hearing on the basis that his attorneys “have continued to investigate allegations that police officers involved in both cause numbers have lied under oath” and, in addition, “are now investigating the possibility of a wide-spread cover-up of the perjury.” *Appendix* at 27. He asserted that “a full investigation” of those matters took priority over the suppression and bond matters and that he needed to depose DPAs Dial and Johnson and CDP Starnes. *Id.*

[21] The next day, the State, by Prosecutor Sonnega, filed a response and objection to Thacker’s motion to dismiss the May 25 hearing, as well as a separate

motion to quash Thacker’s notices of deposition for the three deputy prosecutors. The State argued, among other things, that the “straightforward” issue as to Thacker’s suppression claim is whether the deputies had legal authority to enter the residence at 44 South Drive on July 27, 2020, which the State maintained the deputies were entitled to do if the suspect lives at the address and the officer has a reasonable belief that the suspect is inside. *Id.* at 32. The State argued that Baldwin had not explained how the “broad sweeping claims” of perjury and a cover-up were relevant and material to the motion to suppress. *Id.*

[22] The trial court granted Thacker’s request to dismiss the May 25 suppression hearing and bond revocation hearing but held a hearing that day on the State’s motion to quash the depositions of the deputy prosecutors. In opening remarks to the court, Baldwin summarized the situation as he saw it: DPA Dial realized during Deputy Sighting’s deposition that there were problems with his PCA statements, and, thereafter, DPA Dial, through objection and questioning, led Deputy Sighting to change his testimony about what he saw and from where. Baldwin also argued that, although a MCSD inquiry had been done, Deputies Stuart and Coryell claimed in deposition to having very little knowledge about the allegations being made against Deputy Sighting, which indicated that either whoever did the inquiry never even talked to the officers who executed the arrest warrant, or Deputies Sighting and Coryell were lying at their April 2021 depositions about having very little knowledge of the allegations against Deputy Sighting. Baldwin argued that the lying began with Deputy Sighting’s false

statements about a neighbor and seeing an open bedroom door, to make entry into Silcox's apartment legal, and thereafter expanded to others to cover up for Deputy Sighting.

[23] The State presented the testimony of Captain Worth and DPA Dial at the hearing. Captain Worth testified about his informal inquiry of the matter involving Deputy Sighting.⁴ As to the now-challenged “at this point in time” phrase that Deputy Sighting used in his PCAs in connection with observing a partially-open bedroom door, Captain Worth's view was that the phrase may have been poor report writing, as it made it unclear as to where the deputy was standing when he saw the door, but was “not perjury.” *Id.* at 58. He also considered Deputy Sighting's deposition to be “a mess” and “confusing” but he did not see any criminality or policy violation by Deputy Sighting. *Id.*

[24] Captain Worth testified that he had spoken to both Deputies Stuart and Coryell about the matter and that Deputy Stuart had told him that “we talked to someone out front that said [Silcox] was in there,” which Baldwin later noted to the court was contrary to Deputy Stuart's deposition testimony. *Id.* at 72. Captain Worth stated that, while he had not been out to the property or talked to potential witnesses, he had tasked Captain Dan Downing with locating and speaking to the neighbor, Vernon Spence, but that Captain Downing “has not be able to locate” him. *Transcript* at 65, 68.

⁴ Captain Worth clarified that his inquiry was not a formal internal investigation.

[25] DPA Dial testified that the questions posed to Deputy Sighting in his deposition were “compound” and “convoluted” and that “every question was re-asked in a different way,” such that Deputy Sighting simply started to agree when Thacker’s attorneys would suggest he was in a certain location or saw a certain something. *Id.* at 95, 101. She also testified about having Deputy Coryell take her and Johnson to the apartment to get pictures. She was not certain if she took the pictures from the front door or if she stepped into the entryway, but recalled that no one fully entered or was down a hallway. When asked if she could see “the bedroom door from outside the front door,” she replied that she saw “a door” but did not know if it was a bedroom door. *Id.* at 106-07.

[26] In closing the hearing, Baldwin argued that the officers lied, the DPAs may be involved in a cover-up, Captain Worth’s inquiry did not really investigate anything, and that for Baldwin to fully and fairly represent Thacker, Baldwin needed to depose, at least, DPAs Dial and Johnson. Prosecutor Sonnega responded that there was no material or necessary reason to depose the DPAs and that Baldwin’s strategy was “just [] to muddy the water” to confuse a jury and/or use the allegations as leverage for a plea deal. Further, Prosecutor Sonnega argued that it was the job of the Prosecutor’s Office, not Baldwin, to investigate allegations that officers lied under oath. *Id.* at 86. Baldwin ultimately withdrew the subpoenas to depose DPAs Dial and Johnson as he “got what he needed out of [DPA Dial].” *Id.* at 116.

[27] On June 11, 2021, Thacker filed a petition for appointment of special prosecutor pursuant to Ind. Code § 33-39-10-2 for prosecution of F2-1958 and F6-1118, asserting, in part:

The Morgan County Prosecutor’s failure and refusal to seriously investigate allegations of perjury of officers from the Morgan County Sheriff’s Department and others involved in the proceedings currently pending against Craig Thacker in and of itself demonstrates an actual conflict of interest within the Morgan County Prosecutor’s Office[.]

Appendix at 40. The State filed an opposition, arguing that no conflict of interest existed to preclude Prosecutor Sonnega from prosecuting Thacker’s two pending causes.

[28] On July 19, 2021, the State, under separate cause number, filed a motion requesting a special prosecutor for the limited purpose of investigating the allegation of perjury against Deputy Sighting. The trial court granted that motion, and appointed Putnam County Prosecutor Timothy Bookwalter. On September 23, 2021, special prosecutor (SP) Bookwalter filed his report finding that Deputy Sighting did not lie under oath about what he saw from the front door, noting that at least once Deputy Sighting stated he could not recall where he was when he saw a partially-open door, and, additionally, the matters “were not material to the issue of the search” as the officers had probable cause to enter for the arrest regardless of Deputy Sighting’s challenged statements.

Exhibits Vol. at 196.

[29] On August 25, 2021, attorneys Baldwin and Auger took the depositions of Captains Worth and Downing, with Prosecutor Sonnega representing the State. Captain Worth was asked questions challenging the depth of the inquiry he conducted. Although Captain Worth did not personally go out to the property, he agreed that it was not possible to see “a bedroom door [] from the entry door.” *Id.* at 125. Captain Worth testified about his “informal conversations” with Deputies Sighting, Coryell, and Stuart, including that Deputy Sighting had told him that the person he spoke to outside of Silcox’s apartment may have been a “bystander” rather than a neighbor. *Id.* at 114, 130. As he had at the May 25 hearing, Captain Worth stated that he had asked another officer, namely Captain Downing, to attempt to speak with the next-door neighbor, Vernon Spence.

[30] Captain Downing testified that Captain Worth gave him “a list” of several people to track down and interview, including Spence, but Captain Downing “never understood” why he was supposed to talk to Spence, given that Deputy Sighting had reported speaking to a female. *Id.* at 152, 154. Captain Downing testified:

Vernon Spence made absolutely no sense to me whatsoever. I know where Vernon Spence is. I could have talked to him at any point in time. It was determined that Vernon Spence was not necessary to speak to, so I did not.

Id. When asked who at some point told him not to bother talking to Spence, Captain Downing replied, “Captain Worth.” *Id.* at 155, 157.

[31] On December 15, 2021, the trial court held a hearing on Thacker’s petition for appointment of a special prosecutor in the two pending criminal causes. At the State’s request, SP Bookwalter’s report was admitted without objection. At Thacker’s request, the following evidence was admitted without objection: the depositions of Deputies Sighting, Coryell, and Stuart; the depositions of Captains Worth and Downing; Captain Worth’s internal inquiry report dated July 12, 2021; and a transcript of the May 25 hearing at which DPA Dial and Captain Worth testified.

[32] Thacker called as witnesses Deputy Coryell, to testify about the occasion when he took DPAs Dial and Johnson to take pictures at the apartment, and Daniel Lujan, who was living in the apartment at the time. Deputy Coryell initially stated that he, Dial, and Johnson all went inside – which was contrary to what DPA Dial had stated at the May 25 hearing – but later stated that he could not be sure about who entered the apartment. Lujan testified that all three entered and “were taking pictures” and “talking amongst themselves” about “how the door was opened and everything,” while “reading paperwork.” *Id.* at 140, 141. Lujan testified that he had suspicions that day that the three of them were “trying to set somebody up.” *Id.* at 142.

[33] The parties submitted post-hearing briefs to the court in support of their positions, and on February 9, 2022, the trial court issued its order denying Thacker’s motion for a special prosecutor. The order found and concluded, in part:

7. Defendant alleges that through various depositions, affidavits, or court testimony that [MCSD] Deputies Brighton Sighting, Brent Worth, and Timothy Coryell, and/or [DPA] Meagan Dial have committed perjury. . . . The Court would [] note that much of the testimony cited by Defendant may not be relevant or material to the prosecution of the alleged crimes. . . . It may also be the case that [DPA] Dial may have an actual conflict of interest, but that conflict does not necessarily result in a conflict for Prosecuting Attorney Sonnega or the entire Morgan County Prosecutor's Office. . . .

8. The record does demonstrate conflicts in the testimony of one or more of the witnesses, but the evidence presented is not sufficient for the Court to conclude that one or more of the witnesses committed perjury. . . .

* * *

10. Even assuming the testimony of the officers and deputy prosecuting attorney contains false or untruthful statements, it does not follow that Prosecutor Sonnega has an actual conflict of interest that would justify the appointment of a special prosecutor in these matters.

11. . . . Defendant has failed to demonstrate that based upon "divided loyalties," or an actual conflict of interest, that Prosecutor Sonnega lacks the ability, or is so compromised that he is unable, to fulfill his legal and ethical duties.

12. Defendant has failed to demonstrate by clear and convincing evidence that the prosecutor in these matters has an actual conflict of interest. . . .

Appendix at 150-51. In March 2022, Thacker sought and received trial court certification of the order for interlocutory appeal, and this court accepted jurisdiction.

Discussion & Decision

[34] We review a trial court’s denial of an appointment of a special prosecutor for an abuse of discretion. *State v. Herrmann*, 151 N.E.3d 1256, 1258 (Ind. Ct. App. 2020), *trans. denied*. An abuse of discretion occurs if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it or if the trial court misinterprets the law. *Id.*

[35] Ind. Code § 33-39-10-2 governs the appointment of a special prosecutor and states, in relevant part, that a trial court may appoint a special prosecutor if:

(A) a person files a verified petition requesting the appointment of a special prosecutor; and

(B) the court, after:

(i) notice is given to the prosecuting attorney; and

(ii) an evidentiary hearing is conducted at which the prosecuting attorney is given an opportunity to be heard;

finds by clear and convincing evidence that the appointment is necessary to avoid an actual conflict of interest[.]

I.C. § 33-39-10-2(b)(2).⁵ Clear and convincing evidence is an intermediate standard of proof greater than a preponderance of the evidence but less than proof beyond a reasonable doubt. *In re Christoff*, 690 N.E.2d 1135, 1140 (Ind. 1997). The purpose of the special prosecutor statute is to protect the State’s interest in preserving the public confidence in the criminal justice system and ensuring that the prosecutor serves the ends of justice. *D.R.C. v. State*, 957 N.E.2d 205, 210 (Ind. Ct. App. 2011), *trans. denied*.

[36] Thacker argues that the trial court should have granted his request for a special prosecutor because an actual conflict of interest exists for Prosecutor Sonnega “due to the lies,” first by deputy Sighting, to justify the alleged “illegal entry” into Silcox’s apartment on July 27, then the ensuing lies by Deputies Coryell and Stuart, Captain Worth, and DPA Dial to cover up Deputy Sighting’s original falsehoods. *Appellant’s Brief* at 32. We address that argument in pieces.

a. Alleged Perjury

[37] Thacker’s claims stem from allegations that Deputy Sighting lied both about (1) talking to a neighbor regarding whether Silox was inside and (2) seeing a partially-open bedroom door as he was at or near the opened front door.

⁵ Thacker also raises an argument under Subsection (b)(3) of the statute, which permits a trial court to appoint a special prosecutor “if the prosecuting attorney files a petition” seeking appointment of a special prosecutor. I.C. § 33-39-10-2(b)(3). Here, it is *Thacker’s* petition that is at issue. That is, although Prosecutor Sonnega previously filed a petition in July 2021, under MC-961, that request and appointment of Special Prosecutor Bookwalter was for the limited purpose of investigating the allegations of perjury against Deputy Sighting. We, like the trial court, find that Subsection (b)(3) is inapplicable to Thacker’s request for a special prosecutor to handle his two pending criminal cases.

Thacker urges that through investigation, depositions, and hearing testimony, he proved that Deputy Sighting did not speak to a female neighbor who resided “directly to the east” of Silcox’s apartment, as stated in his deposition, because Spence and his girlfriend lived there and told Baldwin that they were home and no officer spoke to them. *Exhibits Vol.* at 14. Thacker asserts that he likewise proved that Deputy Sighting could not see a partially-open bedroom door, later slammed in his face, while he stood at the front door, because the door was down a hallway and impossible to see from the front door.

[38] We acknowledge that Deputy Sighting’s deposition testimony, as well as what he told Captain Worth, was, at times, equivocal if not contradictory. For instance, as to the neighbor, Deputy Sighting stated in his deposition that he “believe[d]” that the female “was a neighbor who resides directly east” of Silcox but, according to Captain Worth, later said that the female may have been a bystander. *Id.* at 14, 18.

[39] With regard to the partially-open door, at one point in his deposition Deputy Sighting stated that he saw a partially-open door from the front doorway of the residence, but at another time, he said that he could not recall for sure where he was standing when he saw that door or whether that was the same door that closed in his face. Also, while he stated that he believed, from prior experience at these apartments, that the partially-open door was a *bedroom* door, he also said that he was not sure. And while at one point he agreed with DPA Dial’s question that the “movement” he saw inside was Silcox, he thereafter stated that he could not confirm whether that person going into the bedroom was

Silcox or someone else. *Exhibits* at 18. Despite these inconsistencies, we, like SP Bookwalter,⁶ ultimately do not find that the record before us establishes that Deputy Sighting, in fact, perjured himself in the PCAs or his deposition.

[40] Nor does the record establish that other persons – namely, Deputies Stuart and Coryell, Captain Worth, and DPA Dial – engaged in deliberate maneuvering and/or lies to cover up Deputy Sighting’s alleged falsehoods. We acknowledge, as did the trial court, that their various deposition and in-court testimonies were, at times, inconsistent both internally and with each other. However, we cannot say that the record here establishes that they were flat out lying or definitively engaged in a cover-up.

b. Materiality of Allegations

[41] Even assuming Thacker’s perjury and cover-up allegations are true, those false statements are not material to Thacker’s suppression claim in F6-1118. That is, Thacker’s suppression claim is that, without Deputy Sighting’s false statements – averring to have spoken with a neighbor before making entry and about seeing a partially-open bedroom door while standing at the open front door – the entry into Silcox’s residence was illegal as a violation of the 4th Amendment and Article 1, Section 11 of the Indiana Constitution. He further claims that DPA Dial and others perjured themselves to support Deputy

⁶ We recognize that SP Bookwalter’s September 2021 report did not include review of the April 2021 depositions of Deputies Stuart and Coryell, the May 2021 hearing testimony of Captain Worth and DPA Dial, or the August 2021 depositions of Captains Worth and Downing and that SP Bookwalter’s report was completed before the December 2021 hearing at which Deputy Coryell and Lujan testified.

Sichting's manufactured reason for entry into the residence. We disagree and find that, contrary to Thacker's claim, the entry into the home was lawful without Deputy Sichting's alleged false statements.

[42] An arrest warrant founded on probable cause gives police limited authority to enter a dwelling. *Stickrod v. State*, 108 N.E.3d 385, 388 (Ind. Ct. App. 2018), *trans. denied*. Specifically, an officer may enter the property to make an arrest when he has "reasonable belief" that (1) the dwelling is the residence of the subject of the warrant and (2) the subject is present at the time the officers attempt to enter upon authority of the arrest warrant. *Duran v. State*, 930 N.E.2d 10, 16 (Ind. 2010). A "reasonable belief" involves a lower degree of confirmation than probable cause, although more information is required than just mere suspicion. *Id.* The reasonableness of the officers' assumptions, suspicions, or beliefs is based on the information available to them at the time. *Id.* at 18.

[43] Here, Deputies Sichting and Coryell had a felony arrest warrant for Silcox for a violation of home detention, and it listed 44 South Drive as Silcox's address, which was the address that Silcox had provided to Owen County probation department as being his residence. Silcox had been arrested in November 2019 at that residence, and law enforcement had involvement with Silcox earlier that year at that address. We find there was ample evidence for the officers to possess a reasonable belief that this was Silcox's residence.

[44] As to whether Silcox was in the apartment at the time, we initially observe that Silcox was on home detention. Moreover, when Deputy Sighting knocked and announced, he heard “people” moving around inside for some minutes, although no one came to the door. *Exhibits Vol.* at 10. We find that the combined facts that this was Silcox’s known home address, that he was on home detention, and that the officers heard multiple people inside provided a reasonable belief to officers that Silcox was in the apartment.⁷ See *Stickrod*, 108 N.E.3d at 389-90 (finding officer had reasonable belief the defendant was present inside because a light was on in his bedroom); *Carpenter v. State*, 974 N.E.2d 569, 573 (Ind. Ct. App. 2012) (finding officer had reasonable belief the arrestee was present because of the time of day, the presence of vehicles in the driveway, and visible lights on inside the residence), *trans. denied*; compare *Duran*, 930 N.E.2d at 17 (finding that officers executing an arrest warrant did not have a reasonable belief that the suspect, who was the object of the arrest warrant, was in Duran’s apartment because police acted solely on uncorroborated information from an anonymous source that the suspect was residing in Duran’s apartment).

[45] For these reasons, we find that Deputy Sighting’s statements about the neighbor and door, even if false, were not material to the entry into Silcox’s apartment,

⁷ As the State points out, the record indicates that Deputy Sighting subjectively believed that talking to a neighbor was not necessary to render the entry lawful, as he testified that he would have entered the residence regardless of whether he had received any information from the neighbor that Silcox was inside. See *Exhibits Vol.* at 19. Therefore, there was no need for Deputy Sighting to manufacture facts to justify the entry or for anyone else to engage in a cover up to maintain his alleged false statements.

which led to the search warrant and filing of charges in F6-1118 against Thacker.

c. Actual Conflict of Interest

[46] Even if we agreed both with Thacker’s perjury and/or cover-up allegations and his claim that the officers’ entry was otherwise illegal, neither establishes the existence of an actual conflict of interest for Prosecutor Sonnega, who Thacker seeks to replace with a special prosecutor for the prosecution of both F6-1118 and F2-1958. Under I.C. § 33-39-10-2(b)(2), a special prosecutor may be appointed when there is clear and convincing evidence that the prosecutor has “an actual conflict of interest.” An actual conflict of interest exists when a prosecutor “places himself in a situation inherently conducive to dividing his loyalties between his duties to the State and his personal interests.” *D.R.C.*, 957 N.E.2d at 210. The petitioner has the burden of producing evidence of an actual conflict. *Id.* A potential for a conflict of interest is not sufficient. *See Kubsch v. State*, 866 N.E.2d 726, 732 (Ind. 2007).

[47] Thacker asserts that Prosecutor Sonnega’s relationship with, especially, DPA Dial, Deputy Sighting, and Captain Worth “would hinder” Prosecutor Sonnega’s ability to “act in a ‘disinterested’ manner and seek out the truth,” noting that DPA Dial “is a witness to this case now,” as the defense would be calling her to show the court “that the police lied, and that [she] assisted in covering up the lies.” *Appellant’s Brief* at 27-28, 49. Thus, Thaker argues, Prosecutor Sonnega has an actual conflict of interest because he “must choose between pursuing justice or protecting his deputy prosecutor and the other

police involved in the cover-up” such that appointment of a special prosecutor is necessary to prosecute Thacker’s criminal cases. *Id.* at 37. We disagree, for several reasons, that an actual conflict of interest exists for Prosecutor Sonnega on F6-1118 and F2-1958.

[48] As an initial matter, and as the State points out, all of Thacker’s allegations of misconduct and perjury arise in the context of F6-1118. The crimes alleged in F2-1958 occurred in November 2019 at a different location, and although some of the same MCSD officers were involved in that case, Thacker “put forward no evidence that any officer committed perjury or other misconduct in the [PCA] or depositions in the F2-1958 case” and he “cites to no authority for the proposition that if a prosecutor has an actual conflict of interest in one case, that conflict is automatically imputed to any other case brought against the same defendant.” *Appellee’s Brief* at 21. We thus agree that there is no basis for finding a conflict of interest in F2-1958.

[49] Next, even if we were to agree that DPA Dial engaged in some form of misconduct along the way – and we make no determination on that issue – and she thereby had a conflict in one or both of Thacker’s pending cases, that is not automatically imputed to Prosecutor Sonnega or all of the Morgan County Prosecutor’s Office. *See Herrmann*, 151 N.E.3d at 1259 (recognizing it is not necessary to disqualify the whole office if one deputy prosecutor has a conflict of interest).

[50] As to whether Prosecutor Sonnega has, independently, an actual conflict of interest, we conclude he does not. We recognize that, in criminal proceedings, the prosecutor represents the interests of the State; and, like any other client, the State is entitled to undivided loyalty. *D.R.C.*, 957 N.E.2d at 210 (quotations omitted). However, here, there is no evidence that Prosecutor Sonnega has any personal or financial interest in these prosecutions nor does he have any other personal interest conflicting with his duty of loyalty to the State and its interests. And while Prosecutor Sonnega would have an obvious conflict if he was investigating DPAs Dial or Johnson, or perhaps the deputies, he is not investigating them. Indeed, Prosecutor Sonnega already requested a special prosecutor to investigate the perjury allegations against Deputy Sighting (upon which Thacker's alleged cover up is based), and SP Bookwalter found no probable cause that Deputy Sighting committed perjury.

[51] In sum, Thacker has failed to prove by clear and convincing evidence that Prosecutor Sonnega has an actual conflict of interest in the prosecution of Thacker's two criminal causes. Accordingly, the trial court did not abuse its discretion when it denied Thacker's request for a special prosecutor for the prosecution of F6-1118 and F2-1958.

[52] Judgment affirmed.

Brown, J. and Tavitas, J., concur.