MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

APPELLANT PRO SE

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IN THE COURT OF APPEALS OF INDIANA

Steven E. Ingalls, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 11, 2022

Court of Appeals Case No. 21A-PC-2050

Appeal from the Morgan Circuit Court

The Honorable Matthew Hanson, Judge

Trial Court Cause No. 55C01-2003-PC-386

Brown, Judge.

[1] Steven E. Ingalls, Jr., appeals the denial of his petition for post-conviction relief and asserts that the post-conviction court erred in denying his motion for change of judge and that he was denied the effective assistance of trial counsel and appellate counsel. We affirm.

Facts and Procedural History

[2] The relevant facts as discussed in Ingalls's direct appeal follow:

> B.P. was born in June 2011 and suffered from a number of medical issues including a genetic condition called Fragile X chromosome syndrome, autism, impulse control disorder, anxiety, and obsessive-compulsive disorder. He experienced developmental delays, had limited vocabulary for a child his age, and sometimes exhibited self-harming behavior. B.P. also suffered from pulmonary aspirations, reflux, pediatric pulmonology, and gastrointestinal issues. B.P. was prescribed several psychotropic medications, which [Meghan] Price administered to him, including Sertraline, Clonidine, and Risperidone.
>
> Ingalls and Price had been in a relationship since at least 2013, and Ingalls often stayed at Price's apartment with her and B.P. Ingalls and Price have one child together, S.I., who was born in 2014. The record reflects that Ingalls had great disdain for B.P., viewing him as a burden and an annoyance. He also felt that B.P. interfered with his relationship with Price. On different occasions during B.P.'s life, he had injuries to his body including bumps, bruises, abrasions, a broken arm, and a broken leg. On several occasions, the principal where B.P. attended preschool reported the injuries to the Indiana Department of Child Services, who investigated but did not substantiate abuse. In November 2015, B.P was admitted to the hospital with headaches, congestion, extreme drowsiness, and a slow heart rate. About a year later, in November 2016, B.P. underwent a

surgical procedure for an upper lip laceration, and that same month he went to the emergency room with breathing issues and was diagnosed with croup and possibly asthma.

Sometime after B.P. went to bed on November 22, 2016, he suffered trauma at the hands of one or more other individuals and died in his bedroom. On the morning of November 23, B.P. had blood and other bodily fluid around his mouth, and his upper lip, for which he had undergone surgery, was split open. At 10:13 a.m., Ingalls called 911 from Price's apartment reporting an unconscious and unresponsive child that was not breathing. Emergency personnel arrived in less than two minutes. They found B.P. and Price on the stairs in the entryway to the apartment building. B.P. had no pulse and was not breathing. His skin was mottled, and his body was cold and already in a state of rigor mortis, indicating he had been deceased for some time.

Ingalls was present at the scene when the first responders arrived. He was standing outside of the apartment building holding two-year-old S.I. As described by one emergency responder, Ingalls was "just kind of walking around, or standing there" and appeared as though "he might have been one of the neighborhood people." *Transcript Vol. IV* at 228. Ingalls "didn't really seem upset . . . he was just kind of there." *Id*.

B.P. was transported by ambulance to the hospital as paramedics attempted to resuscitate him. Mooresville Police Department (MPD) Captain Brad Yarnell was going to transport Price to the hospital, but Price asked to return to her apartment first to get some shoes. MPD Detective Chad Richhart and Price's neighbor, Tiffany Hall, accompanied Price back to the apartment. Detective Richhart stood in the doorway to her apartment and saw Price "running around the apartment" and heard "a lot of movement" in the back of the apartment. *Transcript Vol. VII* at 151-52. Hall went with Price to B.P.'s bedroom, where she saw Price climb up onto the top bunk of B.P.'s bed and "mov[e] things around." *Transcript Vol. VIII* at

76. Hall saw a green pillow on top of the bunk bed and a wall-mounted camera above the bed. With regard to the camera, Hall saw Price "jostle it around, like she was getting something." *Id.*

Once Price got her shoes, Captain Yarnell transported Price to the hospital and accompanied her inside. Detective Richhart transported Ingalls and S.I. to the hospital, but just dropped them off and returned to the apartment, where Detective Richhart conducted a "quick walkthrough" because, he explained, police did not know at that point "if there's any other children in the home, any other people in the home" or "if this is a result of an injury, an illness" and had "no idea" what the situation was in the apartment. *Transcript Vol. VII* at 153-54. Inside B.P.'s bedroom, Detective Richhart observed an area on the floor saturated with blood, some blood along the top bedrail and on bedding, and blood on a floor rug. Captain Yarnell, still at the hospital, contacted Detective Richhart to confirm that B.P. was in fact deceased, and the two decided to open an investigation into B.P.'s death.

At Ingalls's request, Detective Yarnell drove Ingalls from the hospital back to the apartment, where police were executing a search warrant on the residence. When Ingalls arrived back at the apartment, Detective Richhart asked Ingalls if he would agree to accompany him to the police station for an interview. Ingalls consented, and, in the interview, Ingalls described being in the apartment the night before, saying that B.P. went to bed as normal, but was found dead in the morning by Price. He indicated that he had no knowledge as to how B.P. died.

Meanwhile, during their search of the apartment, police found medications prescribed to B.P. In B.P.'s bedroom, they found red liquid stains that appeared to be blood spatter on the railing of the bunk bed and on some of the stuffed animals inside of a bin next to the bed. The presence and patterns of the blood spatter indicated to officers that the bleeding had been caused by some kind of trauma. Police saw what appeared to be blood stains on a blue rug and on the carpet. Police also found a green

pillow, shaped as a character from the children's television show Yo Gabba Gabba, on the ground in B.P.'s closet, propped up against a toy bin. The pillow had a red stain, which appeared to be blood, as well as a white stain. Police saw the wall-mounted video camera in B.P.'s bedroom and, at some point that day, Detective Richhart learned that the camera may have recorded video or sent information to an app on Price's phone.

Price arrived back at the apartment about the same time as police were finishing their search. Detective Richhart approached Price in the parking lot and told her that police had found the video camera by B.P.'s bed and understood that it may have recorded information to an app on Price's phone. He asked if he could have her permission to search her phone in order to view the footage from B.P.'s room. Price told him that she did not have her phone nor did she know where it was. Detective Richhart and another officer found it in her bedroom between the bed and the wall, although the phone's battery was dead.

Detective Richhart took the phone to Price, who identified it as hers. The phone was charged in a car in which Price was sitting, and once it powered up, text messages and notifications began arriving. Richhart asked Price to give the phone to him, but Price told Richhart that she needed to check her text messages. Detective Richhart had "a great deal of difficulty getting the phone from [Price]" and she "was frantically doing stuff on her phone" for approximately twenty seconds, as he asked for her phone. *Transcript Vol. VIII* at 88. Believing that Price may have been destroying evidence, Detective Richhart leaned in through the open passenger window and took Price's phone from her.

Shortly thereafter, police obtained a search warrant for Price's phone. Data showed that on November 16, 2016, Price had conducted several internet searches for "risperidone overdose." *State's Exhibit 155*. Data analysis also revealed that at 2:10 p.m. on November 23, which was about the same time that Detective Richhart watched Price pressing the screen of her phone before handing it over to police, she had opened the app

on her phone that was used to access surveillance video for the camera over B.P.'s bed.

An initial autopsy was conducted on November 23. The forensic pathologist observed that B.P. was "very thin and frail" and there were areas of blunt force trauma, including contusions to his face, mouth, and oral cavity. *Transcript Vol. V* at 148. B.P. had two black eyes, a hemorrhage near his nose, and injury to his lips. The presence of injuries to B.P.'s nostrils, the septum of his nose, and injuries to his upper and lower lip areas indicated that B.P. had been smothered by another individual and had died of asphyxiation. The forensic pathologist also found a secondary cause of death: "acute Sertraline, Clonidine, and Risperidone intoxication." *Id*. at 173. Testing showed that the drugs Sertraline and Clonidine were present in B.P.'s blood at levels higher than the normal therapeutic level. The drug Risperidone was also found in B.P.'s blood, though at levels lower than the therapeutic level, but which could have been near the therapeutic range prior to his death.

Detective Richhart conducted a second interview with Ingalls on November 23. Ingalls confirmed that Price had given B.P. his medications on the night he died. Detective Richhart informed Ingalls that the preliminary results of B.P.'s autopsy indicated that B.P. had died as a result of being suffocated. Ingalls denied harming B.P. After the interview, Detective Richhart obtained a warrant to search Ingalls's phone, which revealed the following texts to Price in the days and weeks before B.P.'s death. In the early morning hours of October 1, 2016, Ingalls sent a text to Price that stated, in part:

> [B.P.] needs a foot broken off in his ass to make up for his lack of basic intelligence. . . . No, he's just a spoiled little retard running around disobeying the f*uck out of you and everybody else whos [sic] dumb enough to play into his games. . . . Put your foot up his ass and make him grow up a few years and stop sh*tting and bleeding on himself and then ill [sic]

> think about the slight possibility of not putting him down and beating him to the edge of his life.

State's Exhibit 136. Later in that evening, Ingalls sent Price a text message that stated, in part:

> Im [sic] sorry for getting so upset and going after [B.P.] I dont know how to handle him, maybe its [sic] for the better I stay away from him but that's what makes me hate him. He's always coming between me and you. Even when Im [sic] not around hes [sic] always causing stress and I have really low patience with it bc I just want it to end and it only gets worse as he gets older. Idk.

State's Exhibit 156. On October 15, 2016, Ingalls texted Price that "instead of an asswhooping[,]" B.P. gets "babied" and uses "his condition to take advantage" of Price but she is "too blind" to see it. *Id.*

On November 12, 2016, Ingalls sent the following text message to Price:

> I hate your son, he is nothing but a troublemaking worthless excuse for a retarded [sic] down to his DNA core malnutritioned ugly shouldve [sic] been cum stain that needs to rot in a mental institution playing with his own feces and pissing on himself while the nursing staff beats him until he's deaf dumb and motionless. I want to buy a ticket to the moment he takes his last breath, so I can be the last thing he sees as i [sic] rip his jawbone off of his face and personally cut his brainstem in half just to make sure not one more stupid f*cking thought processes in his two-celled f*cking brain. He'll never have a dad [because] no one in their right f*cking mind will ever stay around more than 5minutes [sic] around that f*cked up kid that cant [sic] go 2 days without

> bashing his own face into hamburger against whatever he can so mommy will love on him. Lol, kill him while he's young and do something with your life before he robs you of any chance of ever being happy or being anything other than a stay at home retard caretaker.

Id. A few minutes later, Ingalls texted the following to Price:

> He's not ruining my life, Ill [sic] run for the f*cking hills before i [sic] stay stressed my entire life or kill him in such a violent way that the news cant [sic] even describe the scene without throwing up. Im [sic] not going to prison over that little scrawny hand-flapper.

State's Exhibit 136. A couple hours later, he texted Price:

> This is exactly why I hate him and want him gone. If it wasnt [sic] for him there would just be [S.I.], life would be happy and you wouldnt [sic] be stuck at home your whole life going nuts and to the doctor twice a day. And I wouldn't have to hear him screaming all day and night and looking at a kid whos [sic] bashing his face in onna [sic] daily basis for attention with blood and meat hanging from his f*cking face.

Id.

The search of Ingalls's phone also showed that he had conducted the following internet searches between October 17 and November 16, 2016: "kill my mentally retarded step son" (October 17); "what's the highest fall a human can survive" (October 18); "beat child fragile x abuse" (October 18); "most painful ways to die" (October 19); "most painful torture" (October 19); "I want to kill my autistic child" (October 21); "untraceable poison" (October 22); "can get brain damage from suffocation" (October 27); "injuries that cause long term

excruciating pain" (November 1); "why do I violently beat my autistic child" (November 3); "homicide by disease" (November 9); "why do I hate my disabled child" (November 12); "can I rip the jaw off a human?" (November 12); "autistic son shot" (November 12); "risperidone overdose difficulty breathing" (November 16). *State's Exhibit 141*; *Transcript Vol. VI* at 102.

Ingalls was interviewed by police again on December 2. Ingalls brought with him a typed timeline of events measured "down to the minute," which Detective Richhart said he did not ordinarily see during interviews. *Transcript Vol. VIII* at 175. Ingalls stated in the interview that Price knew about the above-mentioned internet searches. Ingalls was interviewed again on December 4, after Ingalls contacted Detective Richhart and asked to meet with him. Ingalls told Detective Richhart that, at some point after B.P. died, he learned from Price that she had moved the Yo Gabba Gabba green pillow from B.P.'s top bunk to the closet, which she did when she went into the apartment to get her shoes before going to the hospital. He also said that Price told him she was "scared" about what toxicology testing would reveal because she may have "overdosed [B.P.] with Clonidine." *State's Exhibit 188B* at 11.

The investigation into B.P.'s death continued through early 2017, and included a series of interviews with neighbors, family, school personnel, and medical providers. Detective Richhart received a final autopsy report on February 1, 2017, which confirmed that B.P.'s manner of death was a homicide and that his cause of death was asphyxiation. The placement of the stains on the Yo Gabba Gabba pillow, when compared to the trauma around B.P.'s nose and mouth, suggested to police that he was smothered with that pillow.

In late June 2017, police arrested Ingalls for the murder of B.P. The arrest occurred at Price's apartment, and Price was present at the time. As Ingalls was being taken into custody, Detective Richhart saw Ingalls make eye contact with Price and say to her, "[S]tick to the plan." *Transcript Vol. VIII* at 185.

Ingalls v. State, No. 18A-CR-1751, slip op. at 2-11 (Ind. Ct. App. June 17, 2019), *trans. denied*.

[3] On June 23, 2017, the State charged Ingalls with: Count I, conspiracy to commit murder as a level 1 felony; Count II, neglect of a dependent resulting in death as a level 1 felony; and Count III, neglect of a dependent resulting in serious bodily injury as a level 3 felony.[1] *Id.* at 11. "Ingalls filed a motion in limine pursuant to Ind. Rule Evid. 404(b), asking for exclusion of evidence of Ingalls's 'involvement with and/or use of drugs including but not limited to the fact that he was undergoing Methadone treatment at the time of the offense[.]'" *Id.* at 11-12 (quoting Appellant's Direct Appeal Appendix Volume II at 118). On April 19, 2018, the trial court entered an order instructing the State to redact certain references to prior bad acts committed by Ingalls under Ind. Evidence Rule 404(b), including references to the word "methadone" contained in his statement to Detective Richhart. *Id.* at 12 (quoting Appellant's Direct Appeal Appendix Volume II at 239).

[4] On March 11, 2018, Ingalls's counsel filed a motion in limine requesting an order preventing the State from presenting evidence that B.P. sustained a femur fracture in July 2015 and alleged that the injury was found to be consistent with

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[1] Price was charged with conspiracy to commit murder as a level 1 felony, neglect of a dependent resulting in death as a level 1 felony, and neglect of a dependent resulting in serious bodily injury as a level 3 felony. *Price v. State*, 119 N.E.3d 212, 219 (Ind. Ct. App. 2019), *trans. denied*. Prior to trial, the State dismissed the conspiracy charge. *Id.* A jury found Price guilty of the remaining charges. *Id.* The trial court merged the level 3 felony neglect conviction into the level 1 felony neglect conviction and sentenced Price to a term of thirty-six years. *Id.* This Court affirmed her conviction. *Id.* at 215.

non-accidental trauma and was irrelevant. Ingalls's trial counsel later prepared a jury instruction providing an admonishment regarding the femur fracture. The court instructed the jury that the evidence that B.P. sustained a femur fracture in July 2015 was "not evidence for purposes of the criminal elements of Count 3, Neglect of a Dependent Causing Serious Bodily Injury" and "[t]his cannot be used as evidence of Serious Bodily Injury in Count 3." Appellant's Direct Appeal Appendix Volume III at 37.

[5] The two-week jury trial began on May 14, 2018. *Ingalls*, slip op. at 12. During initial instructions, the trial court stated: "The remaining of this trial is actually going to be held down where you guys . . . where the donuts were this morning. I think [defense counsel] brought those in. Thank you. I got my sugar high this morning." Trial Transcript Volume IV at 144. After the jury was excused for the day, the court had a discussion with the parties and the following exchange occurred:

> [Prosecutor]: I don't think [Ingalls's trial counsel] mean to taint the jury by buying donuts, but it does give the appearance of gifts. I just ask . . .
>
> [Ingalls's Trial Counsel]: I didn't buy them for the jury.
>
> THE COURT: Yeah. He bought them for the courthouse. I said the jury could have them.
>
> [Prosecutor]: You know, but if I started bringing in Cokes . . .
>
> THE COURT: It's fine. I'll say something to them tomorrow morning.

[Prosecutor]: Yeah. We need to keep that out of the record, because . . . .

[Ingalls's Trial Counsel]: (inaudible)

[Prosecutor]: But it taints the . . . it could be seen on appeal that we're buying jurors. And [Ingalls's trial counsel is] not intending. I should have had one myself. But I just think that . . . .

[Ingalls's Trial Counsel]: Yeah, I got two boxes.

[Prosecutor]: Yeah, we just . . .

THE COURT: He bought them for Superior 3, I think he bought them for everybody . . .

[Ingalls's Trial Counsel]: I was just . . . it was a gracious thing for . . . .

[Prosecutor]: Yeah. No, I get that. But if we started bringing snacks . . .

THE COURT: If you want to buy Colts tickets or something for me, you're more than welcome, [Prosecutor].

[Prosecutor]: I just, he didn't mean that. I just think when the record comes out . . .

THE COURT: I'll say something tomorrow to them just when they get there, that they were offered to everybody in the Courthouse. I'll take care of it.

* * * * *

[Prosecutor]: It wasn't intentional, it's just . . .

Trial Transcript Volume IV at 147-148.

[6] The State presented evidence as discussed above. *Ingalls*, slip op. at 12. During Detective Richhart's testimony, the State played the video recording of Ingalls's first interview with Detective Richhart, which occurred about 11:30 a.m. on November 23. *Id.* In the interview, Ingalls described that he "got up at 6:30 a.m. or so, left the home in the morning to visit a health clinic, where he goes every day at 7:30 a.m., returned about 8:30 a.m. and got breakfast for S.I.," and that later, closer to 10:00 a.m., Price woke up and, when she went to wake B.P., found him dead in bed. *Id.* Ingalls said that he came into the room and did see some blood on B.P.'s face, but that that was not unusual because B.P. sometimes hit his head or face. *Id.* Ingalls said he picked up B.P., who was cold and stiff, and brought him to the floor, where he said he and Price attempted CPR. *Id.* He then called 911, and Price carried B.P. to the entryway of the apartment building. *Id.* Referring to B.P., Ingalls stated, "I love the kid. I always have. I always accepted him." *Id.* (quoting State's Exhibit 152A at 66). After the interview concluded, Detective Richhart drove Ingalls back to the apartment. *Id.* He recalled at trial that, while in the car, Ingalls stated, "I always wondered what life would be like if something like this happened[,]" which struck Detective Richhart as "very odd." *Id.* at 12-13 (quoting Trial Transcript Volume VIII at 85).

[7] Regarding the "health clinic" that Ingalls had gone to that morning, the discussion with Detective Ingalls included the following:

> INGALLS: I go to the health clinic every morning.
>
> DETECTIVE: Uh-huh.

> INGALLS: Um, I got to be there at 7:30 to 8:15. So I went there and came back, um, I got there about 8:35. [REDACTED].
>
> DETECTIVE: Gotcha. You get to go every day?
>
> INGALLS: Yeah, pretty much every day, um, unless I don't want to that day, but usually I, that's where I get my medication.
>
> DETECTIVE: Gotcha. Is it methadone?
>
> INGALLS: Methadone, yeah. So I've been on that for about two years.

Id. at 13 (quoting State's Exhibit 152 at 00:27:13-00:27:39). Thereafter, out of the jury's presence, Ingalls moved for a mistrial because the references to "methadone" were admitted over the trial court's prior order in limine. *Id.* The court expressed its frustration with the State for its failure to follow the order, but after taking the matter under advisement, the court denied Ingalls's motion, stating:

> I had to go back and do research, and obviously, my interns helped me out on this. And it's close. And it's something out there now that there . . the . . the State has thrown out there, which could easily be appealable. . . . It is pretty large. With that being said, there are remedies, over objection obviously. The mistrial (inaudible), the Court is going to deny that at this point in time. However, I want you to give [an] in limine instruction initially that basically reads, ladies and gentlemen, before our lunch break the word was discussed in the video [that] should not have been included. This Court has ordered a redact [sic] to that. Any discussion or use of the word methadone, the State negligently and irresponsibly failed to redact the video outside of this Court's order. This discussion of methadone is not admissible evidence. You will not make any reference to this

> word or have any discussion about this word from this point forward. [Defense counsel], I'm going to give you the absolute right to tell me you want more, you want less. I have to give [an] in limine instruction. That's the only possible way to "remedy" this the best I can at this point over your objection.

Id. at 13-14 (quoting Transcript Volume VII at 178-179). While Ingalls's counsel disagreed that an instruction could cure the problem, he declined the court's offer to provide any further limiting instructions. *Id.* at 14. The court confirmed, "so I'm going to read the instruction[,]" but again offered, "I know you don't agree with it, but it is what it is. And if you want me to say something different, you let me know." *Id.* (quoting Trial Transcript Volume VII at 182).

[8] The court then gave the following admonishment to the jury with regard to Exhibit 152:

> I need to read an instruction that has been put together by the Court. So please listen closely. Ladies and gentlemen, before our lunch break, a word was discussed in the video that should not have been included. This Court had ordered to redact any discussion or use of the word methadone. The State negligently and irresponsibly failed to redact the video to coincide with this Court's orders. This discussion of methadone is not admissible evidence. You will not make any reference to this word or have any discussion about this word from this point forward.

Id. at 14-15 (quoting Transcript Volume VII at 184-185).

[9] During the cross-examination of Detective Richhart, Ingalls's counsel asked if the text messages were not one sided, and Detective Richhart answered in the

negative. Outside the presence of the jury, the court stated to Ingalls's trial counsel: "You don't get to pick and choose them either. You either let them all in, or let them all out." Trial Transcript Volume VIII at 224.

[10] Following the State's presentation of evidence, Ingalls moved for a directed verdict on all three counts, which the court denied. *Ingalls*, slip op. at 15. Ingalls then presented his witnesses and evidence. *Id.*

[11] During the testimony of Ingalls's sister, Ingalls's counsel asked if she was aware Ingalls was in a relationship "with another . . . a woman," and she answered affirmatively. Trial Transcript Volume IX at 35. Trial counsel asked who that was, and Ingalls's sister answered: "With another woman, that was . . . her name is Jen." *Id.* Trial counsel stated: "No, I'm talking about . . . ." *Id.* Ingalls's sister said, "I'm sorry," and trial counsel said, "In 2016." *Id.* at 36. Trial counsel asked if Ingalls was in a relationship with another woman and if they had a child together, and she answered affirmatively and identified the woman as Meghan Price.

[12] After the presentation of evidence, the court indicated that it was going to read certain instructions. The written version of Final Instruction No. 15 states:

> A person engages in conduct "knowingly" if, when he engages in this conduct, he is aware of a high probability that he is doing so. If a person is charged with knowingly causing a result by his conduct, he must have been aware of a high probability that his conduct would cause the result.

Appellant's Direct Appeal Appendix Volume III at 42. With respect to Final Instruction No. 15, the transcript states:

> Number fifteen, a person engages in conduct knowingly if when he engages in this conduct he's aware of a high probability that he is doing so. If a person is charged with felony causing a result by his conduct, he must have been aware of a high probability this conduct would cause such result.

Trial Transcript Volume IX at 236.

[13] Final Instruction No. 7 addressed the offense of neglect of a dependent. During deliberations, the jury asked: "Is the jury allowed to ask questions related to a deeper interpretation of the law, question mark. If yes, we would like to understand the definition of dependent, as it applies to a biological parent and live in boyfriend." *Id.* at 245. The court stated in part:

> [T]he only way we can answer a question is first if we all agree the question needs to be answered, and second, we all agree on the answer to be given. So, my understanding of this, I would say no, because the answer was essentially given to them in the definition of these things, and it's really up to them to decide. There is no definition for live in boyfriend as a dependent.

Id. After some discussion, Ingalls's counsel stated: "I don't think we can answer the question." *Id.* at 248. The court stated that it would inform the jury that the question cannot be answered.

[14] The jury found Ingalls guilty as charged. *Ingalls*, slip op. at 15. The court sentenced Ingalls to thirty-nine years in the Department of Correction on Count I, conspiracy to commit murder. *Id.*

[15] On direct appeal, Ingalls argued the evidence was insufficient and the trial court should have granted his request for a mistrial. *Id.* at 16-19. This Court affirmed and remanded to correct the abstract of judgment.[2] *Id.* at 24.

[16] On March 5, 2020, Ingalls filed a *pro se* petition for post-conviction relief. That same day, he also filed a *pro se* Motion for Change of Venue from Judge for "personal bias and prejudice." Appellant's Appendix Volume II at 54. The court denied Ingalls's motion that same day. On February 17, 2021, Ingalls filed an amended petition for post-conviction relief alleging in part that his trial counsel and appellate counsel were ineffective.

[17] On May 26, 2021, the court held a hearing. Ingalls mentioned his request for change of judge, and the court stated in part: "I was attempting to defuse [the prosecutor] from what I considered his position to be irrational . . . ." Transcript Volume II at 4. Ingalls presented the testimony of his trial counsel

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[2] This Court acknowledged "some discrepancy between the trial court's sentencing order and the abstract of judgment." *Ingalls*, slip op. at 15 n.2. The trial court's written sentencing order, as well as its oral statements at the sentencing hearing, reflected that the trial court intended to merge the two neglect convictions (Counts II and III) into the conspiracy conviction (Count I), and the court sentenced Ingalls to thirty-nine years on Count I. *Id.* The abstract of judgment, however, reflected convictions on Counts I, II, and III and concurrent sentences of thirty-nine years for each. *Id.* We remanded to the trial court with instructions to correct the abstract of judgment and vacate Counts II and III.

and appellate counsel. On August 18, 2021, the court entered a thirty-one page order denying Ingalls's petition for post-conviction relief.

Discussion

[18] Before discussing Ingalls's allegations of error, we observe that he is proceeding *pro se*. Such litigants are held to the same standard as trained counsel. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. To the extent Ingalls fails to cite to the record or develop a cogent argument, his claims are waived. *See Cooper v. State*, 854 N.E.2d 831, 834 n.1 (Ind. 2006) (holding that the defendant's contention was waived because it was "supported neither by cogent argument nor citation to authority").

[19] We also note the general standard under which we review a post-conviction court's denial of a petition for post-conviction relief. The petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence. *Fisher v. State*, 810 N.E.2d 674, 679 (Ind. 2004); Ind. Post-Conviction Rule 1(5). When appealing from the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment. *Fisher*, 810 N.E.2d at 679. On review, we will not reverse the judgment unless the evidence as a whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court. *Id.* "A post-conviction court's findings and judgment will be reversed only upon a showing of clear error – that which leaves us with a definite and firm conviction that a mistake has been made." *Id.* In this review, we accept findings of fact unless clearly erroneous, but we accord no deference to conclusions of law. *Id.* The

post-conviction court is the sole judge of the weight of the evidence and the credibility of witnesses. *Id.*

I.

[20] The first issue is whether the post-conviction court erred in denying Ingalls's motion for change of judge. Ind. Post-Conviction Rule 1(4)(b) provides:

> Within ten [10] days of filing a petition for post-conviction relief under this rule, the petitioner may request a change of judge by filing an affidavit that the judge has a personal bias or prejudice against the petitioner. The petitioner's affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists, and shall be accompanied by a certificate from the attorney of record that the attorney in good faith believes that the historical facts recited in the affidavit are true. A change of judge shall be granted if the historical facts recited in the affidavit support a rational inference of bias or prejudice. For good cause shown, the petitioner may be permitted to file the affidavit after the ten [10] day period. No change of venue from the county shall be granted. In the event a change of judge is granted under this section, the procedure set forth in Ind. Criminal Rule 13 shall govern the selection of a special judge.

[21] The Indiana Supreme Court has held:

> This rule requires the judge to examine the affidavit, treat the historical facts recited in the affidavit as true, and determine whether these facts support a rational inference of bias or prejudice. A change of judge is neither automatic nor discretionary, but calls for a legal determination by the trial court. It is presumed that the PC court is not biased against a party and disqualification is not required under the rule unless the judge holds a *personal* bias or prejudice. Typically, a bias is personal if

> it stems from an extrajudicial source—meaning a source separate from the evidence and argument presented at the proceedings.

Pruitt v. State, 903 N.E.2d 899, 939 (Ind. 2009) (internal quotation marks, brackets, and citations omitted), *reh'g denied*.

[22] On March 5, 2020, Ingalls filed a *pro se* Motion for Change of Venue from Judge for "personal bias and prejudice." Appellant's Appendix Volume II at 54. He alleged the trial court stated in part to the prosecutor: "If you want to buy Colts[] tickets or something for me, you're more than welcome." Appellant's Appendix Volume II at 54. The court summarily denied Ingalls's motion that same day. In its August 18, 2021 order, the court stated in part that the statement regarding the Colts tickets was made in jest to try and diffuse the prosecutor's concern over the donuts and that the statement was clearly made in levity.

[23] Based upon the record, we cannot say that the court erred in denying Ingalls's motion for change of judge. *See Pruitt*, 903 N.E.2d at 939 (noting, where Pruitt's post-conviction review judge was the same judge who presided over his trial, that "Pruitt's affidavit in support of his motion for change of judge shows no historical facts that demonstrate personal bias or prejudice on the part of [the trial judge]" and that he "merely cites [the judge's] trial rulings against him, which are not indicia of personal bias" and concluding "that Pruitt was provided with a full and fair PCR hearing before an impartial judge").

II.

[24] The next issue is whether Ingalls was denied the effective assistance of trial counsel and appellate counsel. To prevail on a claim of ineffective assistance of counsel a petitioner must demonstrate both that his counsel's performance was deficient and that the petitioner was prejudiced by the deficient performance. *French v. State*, 778 N.E.2d 816, 824 (Ind. 2002) (citing *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984), *reh'g denied*). A counsel's performance is deficient if it falls below an objective standard of reasonableness based on prevailing professional norms. *Id.* To meet the appropriate test for prejudice, the petitioner must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* A reasonable probability is a probability sufficient to undermine confidence in the outcome.[3] *Perez v. State*, 748 N.E.2d 853, 854 (Ind. 2001). Failure to satisfy either prong will cause the claim to fail. *French*, 778 N.E.2d at

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[3] Ingalls argues that the post-conviction court applied an incorrect legal standard to its conclusions regarding his claims of ineffective assistance of counsel by finding that he failed to prove "that a different outcome would have been had in this case" instead of concluding that there was not a reasonable probability sufficient to undermine confidence in the outcome. Appellant's Brief at 57. The post-conviction court's order states that, in order to succeed on a claim of ineffective assistance of trial counsel, Ingalls must prove by a preponderance of the evidence not only that his trial counsel's representation fell below an objective standard of reasonableness, but also that his counsel's errors were so serious as to deprive him of a fair trial because of a "reasonable probability that, but for counsel's unprofessional errors, the result would have been different." Appellant's Appendix Volume II at 30. The court also observed that "[t]he same standard of review applied to claims of ineffective assistance of trial counsel applies to appellate counsel as well." *Id.* at 37. We cannot say that the post-conviction court applied an incorrect standard.

824. Most ineffective assistance of counsel claims can be resolved by a prejudice inquiry alone. *Id.*

[25] When considering a claim of ineffective assistance of counsel, 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, 1072 (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). Evidence of isolated poor strategy, inexperience, or bad tactics will not support a claim of ineffective assistance of counsel. *Clark v. State*, 668 N.E.2d 1206, 1211 (Ind. 1996), *reh'g denied*, *cert. denied*, 520 U.S. 1171, 117 S. Ct. 1438 (1997). "Reasonable strategy is not subject to judicial second guesses." *Burr v. State*, 492 N.E.2d 306, 309 (Ind. 1986). We "will not lightly speculate as to what may or may not have been an advantageous trial strategy as counsel should be given deference in choosing a trial strategy which, at the time and under the circumstances, seems best." *Whitener v. State*, 696 N.E.2d 40, 42 (Ind. 1998). In order to prevail on a claim of ineffective assistance due to the failure to object, the defendant must show a reasonable probability that the objection would have been sustained if made. *Passwater v. State*, 989 N.E.2d 766, 772 (Ind. 2013).

A. *Trial Counsel*

1. *Final Instruction No. 15*

[26] Ingalls argues that his trial counsel was ineffective for failing to object to Final Instruction No. 15. He contends that the second sentence of Instruction No. 15 "was primarily suffered by the altered words 'felony' from what should have been 'knowingly' and 'this' from what should have been 'his,' . . . ." Appellant's Brief at 15. He also argues that the instruction removed the State's burden.

[27] The transcript of the trial indicates that the court stated the following:

> Number fifteen, a person engages in conduct knowingly if when he engages in this conduct he's aware of a high probability that he is doing so. If a person is charged with felony causing a result by his conduct, he must have been aware of a high probability this conduct would cause such result.

Trial Transcript Volume IX at 236. The written version of Final Instruction No. 15 states:

> A person engages in conduct "knowingly" if, when he engages in this conduct, he is aware of a high probability that he is doing so. If a person is charged with knowingly causing a result by his conduct, he must have been aware of a high probability that his conduct would cause the result.

Appellant's Direct Appeal Appendix Volume III at 42.

[28] The post-conviction court found that the use of the word "felony" instead of "knowingly" and the use of the word "this" instead of "his" in the transcript constituted typographical errors. The written instruction did not contain the typographical errors. With respect to the State's burden, Final Instruction No.

2 instructed the jury "to consider all of the instructions [both preliminary and final] together" and "not single out any certain sentence or any individual point or instruction and ignore the others."[4] Appellant's Direct Appeal Appendix Volume III at 28. Final Instruction No. 21 informed the jury that "a person charged with a crime is presumed to be innocent," "you should fit the evidence presented to the presumption that the Defendant is innocent, if you can reasonably do so," "[i]f the evidence lends itself to two reasonable interpretations, you must choose the interpretation consistent with the defendant's innocence," and "[t]o overcome the presumption of innocence, the State must prove the Defendant guilty of each element of the crime charged, beyond a reasonable doubt." *Id.* at 48. Final Instruction No. 23 stated that the "burden is upon the State to prove beyond a reasonable doubt that the Defendant is guilty of the crime(s) charged," "[i]t is a strict and heavy burden," and "[t]he State must prove each element of the crime(s) by evidence that firmly convinces each of you and leaves no reasonable doubt." *Id.* at 50. We cannot say Ingalls has demonstrated that reversal is required on this basis.

2. *Neglect Instruction*

[29] Ingalls argues that none of the jury instructions "described to any degree *what* requisite evidentiary factors/circumstances legally constituted/substantiated

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[4] Bracketed text appears in original.

neglect 'care' criminal culpability" and the instructions failed to include a definition of a dependent. Appellant's Brief at 30.

[30] Final Instruction No. 7 discussed the offense of neglect of a dependent as follows:

> A person at least eighteen (18) years of age having the care of a dependent, who knowingly places said dependent in a situation that endangers the dependent's life or health and results in the death of a dependent, who is less than fourteen (14) years of age.
>
> Before you may convict the defendant, the State must have proved each of the following, beyond a reasonable doubt:
>
> 1. The defendant being at least eighteen (18) years of age and having the care of a dependent.
>
> 2. In Morgan County, Indiana
>
> 3. Knowingly
>
> 4. Placed a dependent in a situation that endangered the dependent's life or health
>
> 5. And the offense resulted in the death of a dependent, who was less than fourteen (14) years of age.
>
> If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of neglect of a dependent resulting in death, a Level 1 Felony, as charged in Count 2.

Appellant's Direct Appeal Appendix Volume III at 34.

[31] At the time of the offense, Ind. Code § 35-46-1-4, which governs the offense of neglect of a dependent, provided in part that "[a] person having the care of a

dependent, whether assumed voluntarily or because of a legal obligation . . . ." At the post-conviction hearing, Ingalls referenced the jury instructions regarding neglect and stated that "the language quote whether assumed voluntarily or because of a legal obligation unquote had been redacted from the neglect jury instructions." Transcript Volume II at 67. Ingalls's trial counsel indicated that the lack of that instruction helps and "creates confusion in a jury and if they can't come to a firm conclusion on it, they've got to acquit you." *Id.* at 68. He also stated that Ingalls had given statements to police that he was the child's caregiver and "like a father to the child" and "[i]f those got admitted the last thing I want the jury to be instructed on is . . . they can find that if you voluntarily assume a responsibility for a child then you are in position to commit the crime of neglect." *Id.* Moreover, we note that the trial court's written sentencing order, as well as its oral statements at the sentencing hearing, reflected that the trial court intended to merge the two neglect convictions under Counts II and III into the conspiracy conviction under Count I. While the abstract of judgment reflected convictions on Counts I, II, and III, this Court remanded to the trial court with instructions to correct the abstract of judgment and vacate Counts II and III. *Ingalls*, slip op. at 15 n.2.

3. *Text Messages*

[32] Ingalls argues his trial counsel failed to present exculpatory cell phone text messages. He asserts Price's text messages in response to his own were "positively exculpatory because they unequivocally would have added pertinent context and demonstrated for fairness against conspiracy . . . ." Appellant's

Brief at 36. He argues that Price's disagreements would have helped his case by disproving any conspiratorial agreement to murder.

[33] "[T]he decision whether to utilize exculpatory evidence . . . is a matter of trial strategy." *Fisher v. State*, 878 N.E.2d 457, 464 (Ind. Ct. App. 2007) (quoting *Reynolds v. State,* 536 N.E.2d 541, 545 (Ind. Ct. App. 1989), *trans. denied*), *trans. denied.* At the post-conviction hearing, Ingalls referenced text messages from Price in response to his messages and stated:

> [S]ome of the State's strongest evidence included text messages that I sent to Price on the date of 11/12 of 2016 . . . where I unfortunately sent her a message that said, I hate your son . . . among other things, kill him while he's young . . . before he robs you of any chance of having a life. Things like that the State presented against me, I believe those were the messages you were . . . arguing to the jury were the State's right hand and left hook. Now, in direct response to those messages. I believe these were the messages you were referring to as exculpatory. . . . I'm just going to read some of them off and ask you . . . if you recall any of these. [W]ithin the following minutes and in between some of my filing messages which were also involved where Ms. Price responded um . . . hey keep sending me more malevolent, vindictive, evil text messages it's only going to help my case in court when I file for child support. Please keep it coming please. Um, we are over and done leave me alone. Uh, who do you think you are. Uh, why the heck are you sending text messages like this? Get help. Um, I'm going to call the police was one of her responses. Uh we are done for good Steven. Live your life for yourself we are done. Done. Um, I am not happy, you make me miserable. I am done. I'm sorry for the previous text messages it is unsafe for you to be in this house. We are done Steven move on. I am not finding anyone new. I am focusing on my kids. You had your chance you blew it. I'm done. End

> of conversation. Now these are all responses um oh here's another one. You say God awful things about my son, you want to kill him, no not okay. I done final straw I can't do this anymore. So, these are obviously, we have 15 20 texts here where she's consistently disagreeing with me. Would those have been the messages that you have referred to as exculpatory?

Transcript Volume II at 50-51.

[34] Ingalls's trial counsel answered in part that he thought the messages were not exculpatory because Ingalls did not leave the house and stayed that night. He stated that he did not know that Price's statements that Ingalls was unsafe to be around and that she was going to focus on her children would have helped Ingalls at all. He indicated that "that was a strategic decision to not put them all in." *Id.* at 53. During cross-examination, trial counsel testified that he did not think that the text messages were "going to present in a favorable fashion" and would not "do anything to ultimately" change the theory of the case that "the State doesn't have enough" and "Price is responsible for this." *Id.* at 87. He further testified that he also "thought there would be more potentially harmful information than . . . gainful than positive information I guess." *Id.* at 88. The post-conviction court found that trial counsel gave a "cogent and well-argued reason for keeping out all of the text messages in the belief that the totality of the messages did not fit the defense narrative." Appellant's Appendix Volume II at 28. We cannot say reversal is warranted on this basis.

4. *Lack of Preparation*

[35] Ingalls argues his trial counsel did not prepare for trial. When asked if pre-trial investigation included witness depositions, Ingalls's trial counsel answered: "Yes many." Transcript Volume II at 38. He also indicated that he reviewed the forensic phone downloads. On cross-examination, Ingalls's trial counsel stated that he felt "very confident" that he reviewed the volumes of discovery that were present. *Id.* at 80. He indicated that he filed seven separate motions in limine, a motion to stay execution of a DNA warrant, a "couple of 404b motions," and a motion to dismiss with an accompanying legal memorandum. *Id.* at 82. He also stated that he performed a search for independent experts. The post-conviction court found that it was "clear that [trial counsel] spent countless hours preparing for the case and defending Ingalls." Appellant's Appendix Volume II at 36. We cannot say that the evidence as a whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court.

5. *Mention of Methadone*

[36] Ingalls argues that his trial counsel neglected to review State's Exhibit 152 prior to trial and allowed the State to violate Ind. Evidence Rule 404(b) and harpoon him "by playing on a big screen television the forbidden inadmissible character and credibility-damaging police-interrogation video-evidence that at the time-frame and date of the alleged offenses, Ingalls was a long-term patient at a methadone drug addiction clinic . . . ." Appellant's Brief at 53.

[37] Ingalls's trial counsel stated at the post-conviction hearing that he litigated the issue regarding the reference to methadone "for a year and . . . made it very clear that we didn't want any mention of your methadone use in the trial transcript . . . ." Transcript Volume II at 31. When asked if it was his job to check the evidence prior to trial, Ingalls's trial counsel answered: "I guess and . . . I think if I remember just remembering correctly I think the CD was produced maybe the day of trial if I remember the redacted because we were dealing with redactions in the interviews for weeks. I don't remember when the trial one came." *Id.* at 54. He also stated: "[W]e were dealing with a lot of redactions to your interviews and . . . the transcript that was provided . . . the State . . . did not include the methadone comment. Obviously, the video did and so . . . that's the basis for the mistrial." *Id.* at 55. He further stated that he thought the redacted video "came that day." *Id.* Further, the record reveals that Ingalls's trial counsel objected and moved for a mistrial and the trial court admonished the jury. Ingalls has not demonstrated that reversal is required on this basis.

6. *Femur Fracture*

[38] Ingalls argues his trial counsel failed to object to evidence regarding a previously healed femur fracture. The record reveals that Ingalls's trial counsel filed a motion in limine in March 2018 requesting that the court prevent the State from presenting evidence of the femur fracture sustained in 2015, and the court instructed the jury that the evidence that B.P. sustained a femur fracture in July 2015 could not be used as evidence of serious bodily injury in Count

III.[5] At the post-conviction hearing, Ingalls asked his trial counsel if there was any reason he did not object to the admissibility of the femur fracture with relation to Counts I and II, and trial counsel answered: "No because it didn't apply to those counts." Transcript Volume II at 59. The post-conviction court found that "it is clear the issue was addressed by [trial counsel] to the court" and Ingalls presented no evidence as to why this was prejudicial. Appellant's Appendix Volume II at 34. Even assuming that trial counsel was deficient, we cannot say that Ingalls was prejudiced in light of the strength of the remaining evidence.

7. *Testimony of Ingalls's Sister*

[39] Ingalls argues that his trial counsel questioned his sister as a defense witness and revealed that he was in a relationship with another woman. During the testimony of Ingalls's sister at trial, Ingalls's counsel asked if she was aware Ingalls was in a relationship "with another . . . woman," and she answered affirmatively. Trial Transcript Volume IX at 35. Trial counsel asked who that was, and Ingalls's sister answered: "With another woman, that was . . . her name is Jen." *Id.* Trial counsel stated: "No, I'm talking about . . . ." *Id.* Ingalls's sister said, "I'm sorry," and trial counsel said, "[i]n 2016." *Id.* at 36. Trial counsel asked if Ingalls was in a relationship with another woman and if

[5] Final Instruction No. 10 states: "You have been provided evidence that [B.P.] sustained a femur fracture in July, 2015. This injury is not evidence for purposes of the criminal elements of Count 3, Neglect of a Dependent Causing Serious Bodily Injury. This cannot be used as evidence of Serious Bodily Injury in Count 3." Appellant's Direct Appeal Appendix Volume III at 37.

they had a child together, and she answered yes and identified the woman as Meghan Price.

[40] The post-conviction court found that it was clear that trial counsel was attempting to elicit information about Price and Ingalls's relationship. It found that, if trial counsel had objected to the comment from his own witness, this "would have drawn even more attention to the premise that Ingalls now objects" and that "nothing [trial counsel] did regarding the unresponsive answer given by Ingalls's sister was ineffective." Appellant's Appendix Volume II at 35. We cannot say that Ingalls has demonstrated that his counsel was deficient or that he was prejudiced in this respect or that the alleged errors together require reversal.

B. *Appellate Counsel*

[41] We apply the same standard of review to claims of ineffective assistance of appellate counsel as we apply to claims of ineffective assistance of trial counsel. *Williams v. State*, 724 N.E.2d 1070, 1078 (Ind. 2000), *reh'g denied*, *cert. denied*, 531 U.S. 1128, 121 S. Ct. 886 (2001). Ineffective assistance of appellate counsel claims fall into three categories: (1) denial of access to an appeal; (2) waiver of issues; and (3) failure to present issues well. *Garrett v. State*, 992 N.E.2d 710, 724 (Ind. 2013). To show that counsel was ineffective for failing to raise an issue on appeal thus resulting in waiver for collateral review, the defendant must overcome the strongest presumption of adequate assistance, and judicial scrutiny is highly deferential. *Id.* To evaluate the

performance prong when counsel waived issues upon appeal, we apply the following test: (1) whether the unraised issues are significant and obvious from the face of the record and (2) whether the unraised issues are clearly stronger than the raised issues. *Id.* If the analysis under this test demonstrates deficient performance, then we evaluate the prejudice prong which requires an examination of whether the issues which appellate counsel failed to raise would have been clearly more likely to result in reversal or an order for a new trial. *Id.*

[42] Ingalls argues that his appellate counsel waived a claim of judicial bias and points to the trial court's statement regarding the Colts tickets. Ingalls's appellate counsel testified that she read the exchange in the record and took the trial court's comment as a joke because she did not think "any Judge would have that in the record if in fact that's what's going on" and Ingalls's trial counsel "didn't do anything with it." Transcript Volume II at 105. As mentioned above, the post-conviction court found that the statement regarding the Colts tickets was made in jest to diffuse the prosecutor's concern over the donuts and that the statement was clearly made in levity. We cannot say Ingalls has demonstrated his appellate counsel was ineffective or that reversal is warranted on this basis.

[43] For the foregoing reasons, we affirm the post-conviction court's order.

[44] Affirmed.

May, J., and Pyle, J., concur.