No.

IN THE
SUPREME COURT OF THE UNITED STATES

Steven Ingalls, Jr., Petitioner,
vs.
Keith Vinardi, Respondent-Warden.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

APPENDIX

TO

PETITION FOR WRIT OF CERTIORARI

Steven Ingalls, Jr.
Petitioner, *pro se*
DOC #271088
IDOC-WVCF
6908 S. Old U.S. Hwy 41
Carlisle, IN 47838.

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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted July 24, 2024
Decided November 26, 2025

Before

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

No. 24-1293

STEVEN INGALLS, JR.,
Petitioner-Appellant,

v.

FRANK VANIHEL,
Respondent-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Terre Haute Division.

No. 2:22-cv-00229-MPB-MJD

Matthew P. Brookman,
Judge.

ORDER

Steven Ingalls, Jr., has filed a notice of appeal from the denial of his petition under 28 U.S.C. § 2254 and an application for a certificate of appealability. This court has reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is DENIED. Ingalls's motions for appointment of counsel and to proceed in forma pauperis are DENIED. All other relief is DENIED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

STEVEN INGALLS, JR.,
Petitioner,
v.
FRANK VANIHEL,
Respondent.

No. 2:22-cv-00229-MPB-MJD

ORDER DENYING PETITION FOR A WRIT OF HABEAS CORPUS, CERTIFICATE OF APPEALIBILITY, AND EMERGENCY MOTION FOR PRELIMINARY INJUNCTION

Steven Ingalls was convicted of conspiracy to commit murder in an Indiana state court. Mr. Ingalls now seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254 based on ineffective assistance of counsel. For the reasons set forth in this order, the Court **denies** the petition. A certificate of appealability shall not issue.

I.
Background

Federal habeas review requires the Court to "presume that the state court's factual determinations are correct unless the petitioner rebuts the presumption by clear and convincing evidence." *Perez-Gonzalez v. Lashbrook*, 904 F.3d 557, 562 (7th Cir. 2018); *see* 28 U.S.C. § 2254(e)(1). The Indiana Court of Appeals' determination of the facts on direct appeal are lengthy. The Court briefly summarizes them here and will provide additional factual background in the analysis of each of Mr. Ingalls' claims.

Mr. Ingalls was in a relationship with Meghan Price who had a young son, B.P. Ms. Price's son suffered from numerous medical issues including Fragile X chromosome syndrome and autism. His mother managed his psychotropic prescriptions for sertraline, clonidine, and

risperidone. "The record reflects that Mr. Ingalls had great disdain for B.P., viewing him as a burden and an annoyance." *Ingalls v. State*, 129 N.E.3d 815, 2019 WL 2496527, *1 (Ind. Ct. App. 2019) ("*Ingalls I*"). The record also reflects that B.P. suffered numerous injuries during his life, including a broken arm and broken leg, that his preschool principal reported to the Indiana Department of Child Services (DCS). After investigation, DCS did not substantiate physical abuse. *Id.*

On November 12, 2016, Mr. Ingalls' texts to Ms. Price included: "I hate your son. . . I want to buy a ticket to the moment he takes his last breath. . . Lol, kill him while he's young. . ." Between October 17 and November 16, 2016, Mr. Ingalls conducted internet searches including: "most painful ways to die," "why do I violently beat my autistic child," and "can get brain damage from suffocation." *Id.* at 4.

At 10:13 a.m. on November 23, 2016, Mr. Ingalls called 911 from Ms. Price's apartment "reporting an unconscious and unresponsive child that was not breathing." *Id.* at 1. When emergency personnel arrived to the apartment less than two minutes later, they discovered that B.P. had no pulse and was not breathing. Further, "[h]is skin was mottled, and his body was cold and already in a state of rigor mortis, indicating he had been deceased for some time." *Id.* at 1. Despite this, paramedics attempted to resuscitate B.P. on the way to the hospital. A police officer offered to drive Ms. Price to the hospital, but she said she needed to go back into the apartment to get shoes. *Id.* at 2. A neighbor accompanied Ms. Price into the apartment and saw Ms. Price climb onto B.P.'s top bunk bed and move things around, including a green pillow and a wall-mounted camera. *Id.* Police later found B.P.'s medications in his room, apparent blood spatter on the railing of his bed and nearby stuffed animals, and a green pillow with an apparent blood stain in the closet. *Id.* When a detective asked to search for video evidence on Ms. Price's phone, she said she had to

check her messages first. She then proceeded to "frantically" do something on her phone until the detective took it from her. *Id.* at 3. Later analysis of the phone revealed that she had opened the video camera's app just before the detective retrieved the phone. *Id.*

An initial autopsy revealed that B.P. was thin, frail, and had suffered numerous blunt force traumas to his face indicating that he had been smothered. *Id.* at 3. Acute intoxication with sertraline, clonidine, and risperidone was identified as a secondary cause of death. *Id.* The final autopsy report confirmed that B.P.'s cause of death was asphyxiation. *Id.* at 5.

Mr. Ingalls was charged with conspiracy to commit murder, neglect of a dependent resulting in death, and neglect of a dependent resulting in serious bodily injury. App. Vol. 2, dkt. 9-2 at 2. At trial, his theory of defense was that the State could not meet its burden of proof, particularly as to whether there was an agreement between Mr. Ingalls and Ms. Price.

The jury convicted Mr. Ingalls of conspiracy to commit murder.[1] He was sentenced to 39 years in prison. The conviction was upheld on direct appeal. Mr. Ingalls' state petition for post-conviction relief was denied after an evidentiary hearing and that denial was upheld on appeal. He then filed this federal petition for writ of habeas corpus, alleging that trial and appellate counsel were ineffective.

II.
Applicable Law

A federal court may grant habeas relief only if the petitioner demonstrates that he is in custody "in violation of the Constitution or laws . . . of the United States." 28 U.S.C. § 2254(a). The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") directs how the Court

[1] The jury also convicted Mr. Ingalls of neglect of a dependent resulting in death and neglect of a dependent, but those convictions were merged into the conspiracy to commit murder conviction at sentencing. The Indiana Court of Appeals noted that the abstract of judgment did not reflect this merger and remanded to the trial court to correct the abstract by vacating the two neglect counts. *Ingalls I,* 2019 WL 2496527 at *5, n1.

must consider petitions for habeas relief under § 2254. "In considering habeas corpus petitions challenging state court convictions, [the Court's] review is governed (and greatly limited) by AEDPA." *Dassey v. Dittmann*, 877 F.3d 297, 301 (7th Cir. 2017) (en banc) (citation and quotation marks omitted). "The standards in 28 U.S.C. § 2254(d) were designed to prevent federal habeas retrials and to ensure that state-court convictions are given effect to the extent possible under law." *Id.* (citation and quotation marks omitted).

A federal habeas court cannot grant relief unless the state court's adjudication of a federal claim on the merits:

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

"The decision federal courts look to is the last reasoned state-court decision to decide the merits of the case, even if the state's supreme court then denied discretionary review." *Dassey*, 877 F.3d at 302. "Deciding whether a state court's decision 'involved' an unreasonable application of federal law or 'was based on' an unreasonable determination of fact requires the federal habeas court to train its attention on the particular reasons—both legal and factual—why state courts rejected a state prisoner's federal claims, and to give appropriate deference to that decision[.]" *Wilson v. Sellers*, 138 S. Ct. 1188, 1191-92 (2018) (citation and quotation marks omitted). "This is a straightforward inquiry when the last state court to decide a prisoner's federal claim explains its decision on the merits in a reasoned opinion." *Id.* "In that case, a federal habeas court simply reviews the specific reasons given by the state court and defers to those reasons if they are reasonable." *Id.*

"For purposes of § 2254(d)(1), an unreasonable application of federal law is different from an incorrect application of federal law." *Harrington v. Richter*, 562 U.S. 86, 101 (2011). "A state court's determination that a claim lacks merit precludes federal habeas relief so long as fairminded jurists could disagree on the correctness of the state court's decision." *Id.* "If this standard is difficult to meet, that is because it was meant to be." *Id.* at 102. "The issue is not whether federal judges agree with the state court decision or even whether the state court decision was correct. The issue is whether the decision was unreasonably wrong under an objective standard." *Dassey*, 877 F.3d at 302. "Put another way, [the Court] ask[s] whether the state court decision 'was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.'" *Id.* (quoting *Richter*, 562 U.S. at 103). "The bounds of a reasonable application depend on the nature of the relevant rule. The more general the rule, the more leeway courts have in reaching outcomes in case-by-case determinations." *Schmidt v. Foster*, 911 F.3d 469, 477 (7th Cir. 2018) (en banc) (citation and quotation marks omitted).

III.
Discussion

Mr. Ingalls alleges that his trial counsel was ineffective because he 1) failed to offer exculpatory text messages from Ms. Price; 2) failed to object to the trial court's misreading of jury instruction 15; 3) failed to object to mentions of drug use in Mr. Ingalls' police interview; 4) failed to object to evidence of B.P.'s previous femur fracture; 5) elicited damaging testimony from Mr. Ingalls' sister; and 6) presented experts who agreed with the state's cause of death determination. Mr. Ingalls alleges that his appellate counsel was ineffective because she failed to raise a claim of judicial bias based on the judge's statements before trial. The Court will address each claim in turn.

A. Trial Ineffective Assistance of Counsel

A criminal defendant has a right under the Sixth Amendment to effective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). To establish that "counsel's assistance was so defective as to require reversal," a petitioner must show: (1) counsel's performance was deficient; and (2) counsel's deficient performance prejudiced the petitioner. *Id.* "This inquiry into a lawyer's performance and its effects turns on the facts of the particular case, which must be viewed as of the time of counsel's conduct." *Laux v. Zatecky*, 890 F.3d 666, 673–74 (7th Cir. 2018) (citation and quotation marks omitted). "As for the performance prong, because it is all too easy to conclude that a particular act or omission of counsel was unreasonable in the harsh light of hindsight, *Strickland* directs courts to adopt a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 674 (citation and quotation marks omitted). "The prejudice prong requires the defendant or petitioner to 'show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Id.* (quoting *Strickland*, 466 U.S. at 694).

The Indiana Court of Appeals correctly stated this standard. *Ingalls v. State*, 187 N.E.3d 233, 246-47 (Ind. Ct. App. 2022) ("*Ingalls II*"). Thus the Court reviews whether the appellate court reasonably applied this standard to each of Mr. Ingalls' alleged instances of counsel's deficient performance.

1. Instruction 15

Mr. Ingalls alleges that his trial counsel was ineffective when counsel failed to object to Final Instruction No. 15. The written version of the instruction read:

> 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 **his** conduct would cause such result.

Tr. Appx. Vol. III, dkt. 9-3 at 42 (emphasis added). The Court read the instruction aloud to the jury with two errors:

> [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 **felony** causing a result by his conduct, he must have been aware of a high probability **this** conduct would cause such result.

Tr. Trans. Vol. IX, dkt. 9-12 at 236 (emphasis added).

Mr. Ingalls argues that the misread text bypassed the State's burden of proof by instructing the jury that the fact that Mr. Ingalls had been charged with a felony necessarily meant that he must have been aware of a high probability that his conduct would cause the result it did. Dkt. 2 at 15. The Indiana Court of Appeals affirmed the post-conviction court's finding that the two changes were typographical errors in the trial transcript that were not present in the written instructions. *Ingalls II*, 187 N.E.3d at 247-48. The court also noted that other instructions required the jury to presume that Mr. Ingalls was innocent, highlighted that the State carried the burden of proving that Mr. Ingalls was guilty of every element of the crime beyond a reasonable doubt, and requiring the jury to consider all of the instructions as a whole. *Id.* The Indiana Court of Appeals' conclusion did not explicitly apply either element of *Strickland*: "We cannot say that Ingalls has demonstrated that reversal is required on this basis." *Id.* at 248. However, it affirmed the post-conviction court's finding that Mr. Ingalls had failed to demonstrate that his counsel's failure to object to the incorrect reading of the instruction was deficient or that he had been prejudiced by it. PCR Appx. Vol. II, dkt. 9-15 at 25-26.

Despite the appellate court's brevity on this issue, it did not apply *Strickland* unreasonably. There is no question that the jury had the correct written instructions with them in the jury room

("Because the Court will give you these instructions, you may be able to answer your question by reviewing them." Dkt. 9-12 at 242-43). Mr. Ingalls is not entitled to relief on this claim.

2. Text Message

Mr. Ingalls alleges that his counsel performed deficiently when counsel failed to offer into evidence certain text messages from Ms. Price that he believes were exculpatory. Dkt. 2 at 5, 9-10. But trial counsel did attempt to admit only selected messages from Ms. Price. Tr. Trans. Vol. VIII 220. The court denied the request and made clear it would not allow only selected messages to be admitted. *Id.* at 223. At the post-conviction hearing, trial counsel testified that he did not opt to admit all of the messages because, as a whole, they were more harmful than helpful. PCR Tr. Vol. II 88. The lack of message from Ms. Price also allowed counsel to argue that the State had failed to prove a conspiracy between Mr. Ingalls and Ms. Price. Tr. Vol. IX 208.

The Indiana Court of Appeals affirmed the post-conviction court's finding that counsel's decision not to admit all of the text messages was strategic because the messages—including that Ms. Price did not think it was safe for Mr. Ingalls to be in her home and that she was going to focus on her children—did not help Mr. Ingalls' defense theory that Ms. Price was solely responsible for her son's death. *Ingalls II*, 187 N.E.3d at 249-50. This was a reasonable application of *Strickland* which emphasized that trial counsel's strategic decisions are "virtually unchallengeable" when there is no allegation that the strategy was based on a failure to investigate. *Strickland*, 466 U.S. at 691. As his counsel did not perform deficiently in this respect, Mr. Ingalls is not entitled to relief on this claim.

3. Police Interview Transcript

Mr. Ingalls argues that his trial counsel was ineffective for allowing the admission of his police interview which included a mention of his methadone use. Dkt. 2 at 17. But trial counsel

filed a motion in limine to exclude all references to Mr. Ingalls' methadone treatment and the motion was granted. App. Vol. II 118, 138. After the interview with the solitary mention of methadone was published to the jury, Mr. Ingalls' counsel moved for a mistrial. Tr. Vol. VII 164. The court denied the motion and gave the jury a limiting instruction. At the post-conviction hearing, Mr. Ingalls' counsel testified that the transcript provided to him by the State before trial did not contain the methadone reference. PCR Tr. Vol. II 55.

The post-conviction court held that Mr. Ingalls' counsel's performance in this regard was not deficient. Dkt. 9-15 at 33. The Indiana Court of Appeals affirmed by stating that Mr. Ingalls had not demonstrated that reversal was required on this ground. This was a reasonable application of *Strickland*. Mr. Ingalls is not entitled to relief on this claim.

4. Evidence of Femur Fracture

Mr. Ingalls argues that his trial counsel was ineffective for allowing the admission of evidence that B.P. had a healed femur fracture. But again, counsel did seek to exclude this evidence at trial. When his motion in limine was denied, he drafted an admonishment to the jury that the evidence could not be used to support the neglect of a dependent charge against Mr. Ingalls. The post-conviction court held that counsel was not deficient in this regard and that Mr. Ingalls had not shown prejudice. Dkt. 9-15 at 34.

The Indiana Court of Appeals affirmed by stating that, even if deficiency was presumed, Mr. Ingalls was not prejudiced by this evidence in light of the strength of the other evidence against him.[2] *Ingalls II*, 187 N.E.3d at 251. This was a reasonable application of *Strickland*. First, counsel did seek to exclude this evidence, and then provided an admonishment to limit the potential impact

[2] The Indiana Court of Appeals also held that Mr. Ingalls failed to demonstrate that he was prejudiced by the alleged errors cumulatively, although the court had not determined any of Mr. Ingalls' claims on the prejudice prong only or found that his trial counsel had performed deficiently in any way. *Ingalls II*, 187 N.E.3d at 251.

of the evidence when his motion in limine was denied. This was not deficient performance. Second, there is no reasonable likelihood that the outcome at trial would have been different if evidence that B.P. previously suffered a broken leg had been excluded. There was no dispute at trial over whether B.P.'s death was homicide. The only question was whether Mr. Ingalls conspired to murder him or his mother acted alone. Evidence of a previous broken leg did not increase the likelihood that the jury would conclude that Mr. Ingalls was involved. This is particularly true in light of the numerous inculpatory text messages Mr. Ingalls sent to Ms. Price. He is not entitled to relief on this claim.

5. **Elicited Testimony**

Mr. Ingalls next argues that his trial counsel was ineffective when he elicited testimony from his sister at trial regarding a woman named Jen and that the jury may have inferred from this testimony that Mr. Ingalls was promiscuous. Trial counsel questioned Mr. Ingalls' sister:

> Q. In 2016, did you have a brother/sister relationship with Steven?
>
> A. That is correct.
>
> Q. Did .. were you aware of whether he was in relationship with another .. a woman?
>
> A. Yes.
>
> Q. And who was that?
>
> A. With another woman, that was .. her name is Jen.
>
> Q. No, I'm talking about ..
>
> A. I'm sorry.
>
> Q. In 2016.
>
> A. Yes.
>
> Q. Was he in a relationship with another woman, they had a child

together?[3]

A. Oh, yes, Meghan.

Tr. Trans. Vol. 9, dkt. 9-12 at 35-36.

The Indiana Court of Appeals held that counsel's performance was not deficient. The court echoed the post-conviction court's findings that trial counsel was attempting to elicit information about Mr. Ingalls and Ms. Price's relationship and that objecting to the random mention of "Jen" would have drawn more attention to the testimony. *Ingalls II*, 187 N.E.3d at 251. This was a reasonable application of *Strickland*. Mr. Ingalls is not entitled to relief on this claim.

6. Expert Opinions

Mr. Ingalls argues that trial counsel was ineffective because he presented two experts at trial who did not dispute that B.P. was smothered. Although he raised this issue in state court, neither the post-conviction court nor the Court of Appeals addressed it. The respondent concedes that this Court's review of the issue is therefore *de novo*. Dkt. 8 at 31, citing *Warren v. Baenen*, 712 F.3d 1090, 1096 (7th Cir. 2013).

Trial counsel's defense theory was that the State had not proven that Mr. Ingalls was involved in B.P.'s death. He called two experts for the strategic purpose of demonstrating that the State's investigation was inadequate. PCR Tr. Vol. II 40–41, 104-05. The experts did not dispute the State's cause of death, but because the theory of defense was that Mr. Ingalls was not involved in the death, counsel did not believe the cause of death determination would affect Mr. Ingalls' defense. PCR Tr. Vol. II 41. This was a reasonable strategy call, and Mr. Ingalls is not entitled to relief on this claim. *Strickland*, 466 U.S. at 691 (strategic decisions are "virtually unchallengeable").

[3] Mr. Ingalls and Ms. Price had a child together who was approximately three years younger than B.P. and is not otherwise mentioned in the record. *Ingalls I*, 2019 WL 2496527at *1.

B. Appellate Ineffective Assistance of Counsel—Judicial Bias Claim

Mr. Ingalls argues that his appellate counsel was ineffective because she failed to raise a claim of judicial bias based on an exchange that occurred on the record before trial began:

> MR. SONNEGA: I don't think Allen meant to taint the jury by buying donuts, but it does give the appearance of gifts. I just ask ..
>
> MR. LIDY: I didn't buy them for the jury.
>
> THE COURT: Yeah. He bought them for the courthouse. I said the jury could have them.
>
> MR. SONNEGA: You know, but if I started bringing in Cokes ..
>
> THE COURT: It's fine. I'll say something to them tomorrow morning.
>
> MR. SONNEGA: Yeah. We need to keep that out of the record, because ..
>
> MR. LIDY: (inaudible).
>
> MR. SONNEGA: But it taints the .. it could be seen on appeal that we're buying jurors. And Allen's not intending. I should have had one myself. But I just think that ..
>
> MR. LIDY: Yeah, I got two boxes.
>
> MR. SONNEGA: Yeah, we just ..
>
> THE COURT: He bought them for Superior 3, I think he bought them for everybody ..
>
> MR. LIDY: I was just .. it was a gracious thing for ..
>
> MR. SONNEGA: 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, Mr. Sonnega.
>
> MR. SONNEGA: 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.

MR. SONNEGA: Yeah, that way we're not mucking up the record. Yeah.

MR. LIDY: Yeah.

Tr. Trans. Vol. IV, dkt. 9-7 at 147-48.

"The general *Strickland* standard governs claims of ineffective assistance of appellate counsel as well as trial counsel." *Makiel v. Butler*, 782 F.3d 882, 897 (7th Cir. 2015) (noting that when the claim is poor issue selection, "appellate counsel's performance is deficient under *Strickland* only if she fails to argue an issue that is both 'obvious' and 'clearly stronger' than the issues actually raised").

Appellant counsel raised two issues on direct appeal: sufficiency of the evidence and abuse of discretion on behalf of the trial court by denying trial counsel's request for a mistrial after the state failed to redact a reference to Mr. Ingalls' methadone treatment in his videotaped police interview. Dkt. 8-3. The Indiana Court of Appeals was not persuaded by either argument.

Appellate Counsel testified at the post-conviction hearing that, when she reviewed the record, she did not believe that the judge's statement regarding Colts tickets was an actual solicitation of a bribe. PCR Tr. Vol. II 104–05. The Indiana Court of Appeals stated the correct standard for review of appellate counsel and upheld the post-conviction court's finding that appellate counsel was not ineffective. *Ingalls II*, 187 N.E.3d at 251-52. This was not an unreasonable application of *Strickland*. Although neither claim raised on appeal garnered Mr. Ingalls meaningful relief, the judicial bias claim was not clearly stronger than the two claims selected by appellate counsel. Mr. Ingalls is not entitled to relief on this claim.[4]

[4] To the extent Mr. Ingalls intended to raise this issue as a separate claim that the post-conviction court denied him due process when it denied his motion for a change of judge, such claim also fails. First, he did not fairly present a federal claim through one complete round of review in state court. His petition to transfer to the Indiana Supreme Court included one sentence on this issue with no citation to any law: "This Court should reverse Ingalls' . . . motion for change of judge denial – for the lawful reasons articulated on appeal.

IV.
Certificate of Appealability

"A state prisoner whose petition for a writ of habeas corpus is denied by a federal district court does not enjoy an absolute right to appeal." *Buck v. Davis*, 137 S. Ct. 759, 773 (2017). Instead, a state prisoner must first obtain a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1). "A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In deciding whether a certificate of appealability should issue, "the only question is whether the applicant has shown that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Buck*, 137 S. Ct. at 773 (citation and quotation marks omitted).

Rule 11(a) of the Rules Governing Section 2254 Proceedings in the United States District Courts requires the district court to "issue or deny a certificate of appealability when it enters a final order adverse to the applicant." No reasonable jurist would disagree that Mr. Ingalls' claims are meritless. Therefore, a certificate of appealability is **denied.**

Dkt. 8-14 at 16. Even if the Court bypassed the question of procedural default and addressed this claim on the merits, it would find that Mr. Ingalls is not entitled to relief. The Due Process Clause "requires a fair trial in a fair tribunal before a judge with no actual bias against the defendant or interest in the outcome of his particular case." *Bracy v. Gramley*, 520 U.S. 899, 904-5 (1997) (cleaned up). As the state court held, the judge's comment was clearly made in jest in response to the prosecutor's concern about defense counsel's provision of donuts to the trial court and jury. There is no evidence of actual bias against Mr. Ingalls or interest in the outcome of his case.

V.
Conclusion

Mr. Ingalls' petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **denied**, and a certificate of appealability is **denied**. Final Judgment in accordance with this decision shall issue.

In addition, Mr. Ingalls' emergency motion for preliminary injunction, dkt. [18], is **denied**. In the motion, Mr. Ingalls argues that his access to legal mail was recently denied or delayed for approximately 5 days. No filings were made in this case during that time. The clerk is directed to include a copy of the docket sheet with Mr. Ingalls' copy of this order.

IT IS SO ORDERED.

Dated: February 1, 2024

Matthew P. Brookman, Judge
United States District Court
Southern District of Indiana

Distribution:

STEVEN INGALLS, JR.
271088
WABASH VALLEY - CF
WABASH VALLEY CORRECTIONAL FACILITY - Inmate Mail/Parcels
Electronic Service Participant – Court Only

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

STEVEN INGALLS, JR.,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 2:22-cv-00229-MPB-MJD
	)	
FRANK VANIHEL,	)	
	)	
Respondent.	)	

FINAL JUDGMENT

The Court now enters FINAL JUDGMENT in favor of the respondent and against the petitioner.

The petitioner's petition for writ of habeas corpus is denied and the action is dismissed with prejudice.

Dated: February 1, 2024

Matthew P. Brookman, Judge
United States District Court
Southern District of Indiana

Roger A.G. Sharpe, Clerk

BY: _____
Deputy Clerk, U.S. District Court

Distribution:

STEVEN INGALLS, JR.
271088
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

December 30, 2025

CERTIFIED COPY

Before

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

No. 24-1293

STEVEN INGALLS, JR.,
Petitioner-Appellant,

v.

FRANK VANIHEL,
Respondent-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Terre Haute Division.

No. 2:22-cv-00229-MPB-MJD

Matthew P. Brookman,
Judge.

ORDER

On consideration of Appellant's petition for panel rehearing and/or rehearing en banc, filed December 15, 2025, no judge in active service has requested a vote on the petition for rehearing en banc, and all judges on the original panel have voted to deny the petition for panel rehearing.[1]

Accordingly, the petition for panel rehearing and/or rehearing en banc filed by Appellant is DENIED.

[1] Circuit Judge Rebecca Taibleson did not participate in the consideration of this petition for rehearing.

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

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[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.

STATE OF INDIANA
COUNTY OF MORGAN

IN THE MORGAN CIRCUIT COURT
CAUSE NO. 55C01-2003-PC-000386

STEVEN INGALLS, JR.,
Petitioner,

vs.

STATE OF INDIANA,
Respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW THE COURT and having held a hearing on May 26, 2021 and the Petitioner appearing by Zoom video, pro se and the State appearing by Zoom video by Cassandra Starnes and James Martin and the parties having presented evidence and arguments and the court now finds as follows:

1) That on March 5, 2020 the Petitioner (hereinafter "Ingalls") filed a pro se Petition for Post-Conviction Relief.

2) The Petition initially set forth the basic grounds of: "Constitutionally ineffective assistance of trial counsel" and "Constitutionally ineffective assistance of appeal counsel."

3) Ingalls was represented by Allen Lidy in his trial in chief.

4) Ingalls was represented by Cara Wieneke in his direct appeal.

5) That on February 17, 2021 Ingalls filed an Amended Petition for Post-Conviction Relief.

6) That in this Amended Petition more specific grounds for the petition were set forth.

7) Breaking each down to their basic core, these included:
   a. Counsel Lidy failed to object to an instruction given to the jury, correct misspellings and proffer a correct statement of law;
   b. Counsel Lidy failed to object to the lack of language being included in the neglect of a dependent jury instruction;
   c. Counsel Lidy failed to admit exculpatory material from a co-conspirator's phone;
   d. Counsel Lidy mistakenly mis-tendered the "reasonable theory of innocence" instruction and then misled the jury with false promises;
   e. Counsel Lidy, due to the four listed errors and additional errors was cumulatively ineffective;
   f. Counsel Wieneke ignored a bribe being sought by the trial court that should have been raised on appeal;
   g. Counsel Wieneke ignored and waived on appeal an erroneous instruction.
   h. Counsel Wieneke ignored and waived on appeal the lack of language being included in the neglect of a dependent jury instruction.

8) That on March 15, 2021 the State answered the amended petition.

9) That upon the completion of the presentation of evidence the court ordered the preparation of the transcript from the proceeding.

10) That the court provided the parties with sixty (60) days in which to provide their findings of fact and conclusions of law after they received the transcript.

11) That the transcript was sent out on June 10, 2021.

12) That on August 2, 2021 the court received Ingalls's findings of fact and conclusions of law.

13) That on August 9, 2021 the court received the States findings of fact and conclusions of law.

14) Any conclusions of law that are more appropriately findings of fact are deemed findings of fact and all findings of fact more appropriately conclusions of law are deemed conclusions of law.

FACTS

15) Initially, the Court of Appeals set out clear facts in their denial of Ingalls initial appeal which are utilized below.

16) "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 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 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 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.

On June 23, 2017, the State charged Ingalls with Level 1 felony conspiracy to commit murder (Count I); Level 1 felony neglect of a dependent resulting in death (Count II); and Level 3 felony neglect of a defendant resulting in serious bodily injury (Count III). 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[.]" *Appellant's Appendix Vol. 2* 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 Evid. R. 404(b), including references to the word "methadone" contained in his statement to Detective Richhart. *Id.* at 239.

The two-week jury trial began on May 14, 2018. The State presented evidence as discussed above. 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. In it, 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. 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. 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. He then called 911, and Price carried B.P. to the entryway of apartment building. Referring to B.P., Ingalls stated, "I love the kid. I always have. I always accepted him." *State's Exhibit 152A* at 66. After the interview concluded, Detective Richhart drove Ingalls back to the apartment. 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 statement struck Detective Richhart as "very odd." *Transcript Vol. VIII* at 85.

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.

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. The trial 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. Mr. Lidy

[counsel for Ingalls], 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.

Transcript Vol. VII at 178-79. While Ingalls's counsel disagreed that an instruction could cure the problem, he declined the court's offer to provide any further limiting instructions. The trial 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.* at 182.

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 184-85.

Following the State's presentation of evidence, Ingalls moved for a directed verdict on all three counts, which the trial court denied. Ingalls presented his witnesses and evidence, and the jury thereafter found Ingalls guilty as charged. The trial court sentenced Ingalls to thirty-nine years in the Indiana Department of Correction on Count I, conspiracy to commit murder." *Ingalls v. State*, 129 N.E.3d 815 (Ind. Ct. App. 2019).

17) Ingalls sought a direct appeal arguing that (1) the evidence was insufficient to support his convictions and (2) the trial court committed reversible error in denying Ingalls' motion for mistrial based on the State's failure to redact the recording of Detective Richhart.

18) That on June 17, 2019 the Indiana Court of Appeals affirmed the judgment of the Circuit Court in an unpublished opinion. *Ingalls v. State*, 129 N.E.3d 815.

19) Thereafter, Ingalls sought transfer, which was denied on September 5, 2019. *Ingalls v. State*, 134 N.E.3d 1005 (Ind. 2019).

STANDARDS ON POST-CONVICTION RELIEF
(Ingalls's allegation of ineffective assistance of trial counsel)

20) Post-conviction proceedings are collateral, quasi-civil proceedings that are separate and distinct from the underlying criminal trial. *Hall v. State*, 849 N.E.2d 466, 472 (Ind. 2006).

21) The Indiana Supreme Court has noted the purpose and scope of such review as follows: Post-conviction proceedings are civil proceedings that provide defendants the opportunity to raise issues not known or available at the time of the original trial or direct appeal. *Conner v. State,* 711 N.E.2d 1238, 1244 (Ind. 1999). Thus, if an issue was known and available but not raised on direct appeal, the issue is procedurally foreclosed. *Timberlake v. State,* 753 N.E.2d 591, 597 (Ind. 2001). If an issue was raised and decided on direct appeal, it is res judicata. *Id.* If a claim of ineffective assistance of trial counsel was not raised on direct appeal, that claim is properly raised at a post-conviction proceeding. *Id.*

22) In post-conviction proceedings, the defendant bears the burden of proof by a preponderance of the evidence. *Wallace v. State,* 553 N.E.2d 456, 458 (Ind. 1990).

23) A post-conviction petition is not a substitute for an appeal. Further, post-conviction proceedings do not afford a petitioner a 'super-appeal.' *Stephenson v. State*, 864 N.E.2d 1022, 1028 (Ind. 2007).

24) All post-conviction rules contemplate a *narrow remedy* for subsequent collateral challenges to convictions. *Reed v. State*, 856 N.E.2d 1189, 1194 (Ind. 2006) (citations omitted) (emphasis in original).

FINDINGS OF FACT AND CONCLUSIONS OF LAW
(Ingalls's allegation of ineffective assistance of trial counsel)

25) That although broken down above at the start of this petition, this breakdown states the issues most concisely and will be designated by the same letters used in finding #7 above (a-e for Lidy and f-h for Wieneke).

26) That Ingalls claims his trial lawyer rendered professional deficient representation by: (a) failing to object to final instruction #15 and proffer another: (b) failing to object to the final jury instruction with language missing for neglect of a dependent; (c) failing to move to admit evidence of Meghan Price's responses to his text messages; (d) telling the jury it would receive an instruction the trial court had indicated it would not give; (e) the omissions and errors of his counsel cumulatively violates his 6th Amendment right to effective counsel.

Individual allegations of trial counsel ineffectiveness.
Failure to object to final instructions
(Courts designated (a) and (b)).

(a)

27) Courts (a) regards the allegation that Lidy did not object to final instruction #15.

28) To show ineffective assistance based on failure to make an objection, a petitioner must demonstrate that the trial court would have sustained the objection. *Glotzbach v. State*, 783 N.E.2d 1221, 1224 (Ind. Ct. App. 2003)). The petitioner must also establish prejudice by counsel's failure to properly object. *Timberlake*, 690 N.E.2d at 259.

29) Initially, the court has a difficult time seeing anything here that was even objectionable.

30) As it was prepared and read to the jury, the instruction defines knowingly and commands the jury they had to find that the charged individual was aware of a high probability that his conduct would cause the result necessary to support a guilty verdict for Count 2, Count 3, or a lesser-included offense of Count 3.

31) That the issue apparently first raised by Ingalls here is that the transcript of what the judge said does not match the proposed instruction, the approved instruction and the instruction that physically was given to the jurors to have in their possession during final deliberations.

32) That the transcript, as typed by the transcriber reads: "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." Tr. Vol. 9 at 236. (Bold and italics added to indicate typos).

33) In the Court's proposed final instructions filed on May 24, 2018, what was listed as Instruction No. 12 reads: "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".

34) Likewise, in the Court's approved final instructions that were filed on May 29, 2018, Instruction No. 15 reads: "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".

35) Finally, in Instruction No. 31, in the last part of said instruction, the court states "...Because [the Court has] [I have] given you those instructions, you may be able to answer your questions by reviewing them."

36) It is clear after a review of the physical paper that was prepared and distributed in this case and to the parties that the transcript has two typos that Ingalls has found and that he relies upon for his arguments that Instruction No. 15 was improper.

37) Quite simply, the physical instruction, as typed in the proposed and final instructions, which were then distributed to the jury, in no way supports Ingalls's position.

38) That typos in the transcript cannot overcome what was actually done and provided to the jury in this case.

39) Ingalls's claim that Instruction #15, based upon the typos in the transcript, are unfounded and unproven and therefore must fail.

40) Ingalls also argues that Instruction 9.0120 should have been given rather than 9.05 which he claims was "outlawed" in his Amended Petition.

41) Initially, Ingalls fails to understand that all jury instructions are malleable, workable and may or may not be included based upon the wishes of the parties or judge in a case.

42) That pattern instructions are provided to judges and attorneys to help them frame issues for juries and are never required to be utilized in all situations.

43) Likewise, jury instructions can be created from the evidence and caselaw and even be created and used for the first time in a trial when parties are being creative and/or facing new issues never contemplated.

44) That while some instructions over the years have been struck down by a higher court after review, there is no evidence and no caselaw stating that 9.05 has been "outlawed".

45) Ingalls's invitation to find otherwise is not well founded and will not be taken here.

46) That while it is clear from review here that 9.0120 could have been used, there is nothing to indicate, that 9.05 was sufficient and capable of being given as well.

47) Ingalls's argument that 9.0120 had to be used over 9.05 is unfounded and unsupported by the evidence presented.

48) As well, there was absolutely no proof presented by Ingalls that the giving of 9.0120 rather than 9.05 would have resulted in a different outcome in his trial.

49) Third is the issue of a shifting of presumptions that Ingalls seems to argue.

50) In reviewing both 9.05 and 9.0120, the language that is not included in the newer instruction essentially is that of "the State is required to prove (beyond a reasonable doubt)".

51) Ingalls's argument then essentially states that without the language found in 9.0120, the instruction given here directs a mandatory presumption on the jury that he possessed the requisite mens rea for the offense.

52) The instruction, however, does the opposite by emphasizing to the jury that it must find that Ingalls was aware of the high probability that his conduct would cause B.P.'s death, serious bodily injury, or bodily injury, in order to find him guilty of any of the neglect of a dependent charges.

53) It is unreasonable for anyone to construe this instruction as doing anything but telling the jury the state of the law and their responsibility in weighing the defendant's innocence or guilt.

54) It should be noted that neither Lidy nor Wieneke determined that this instruction leads to the premise argued by Ingalls.

55) The words of Final Instruction #15 make clear that the jury was required to find that Ingalls had the prescribed awareness in order to find him guilty, but the instructions as a whole allow no other interpretation. See *Lee*, 91 N.E.3d at 986.

56) It should be noted that the jury in this case was given other instructions that included number four "you are to consider all of the instructions together. Do not single out any certain sentence, or any individual point or instruction, and ignore the others." Tr. Vol. 4 at 159.

57) As well, the jury was instructed in number 12 "You should fit the evidence presented to the presumption that the defendant is innocent, if you can reasonably do so. If the evidence lends itself to two reasonable interpretations, you must choose the interpretation consistent with the defendant's innocence. Tr. Vol. 4 at 162.

58) The instructions further apprised the jury that, "To overcome a presumption of innocence, the State must prove the defendant guilty of each element of the crime charged beyond a reasonable doubt. The defendant is not required to present any evidence to prove his innocence, or to prove or explain anything." Tr. Vol. 4 at 162.

59) It is clear the jury was instructed time and again through various instructions as to the burden of proof of guilt needed, the mens rea and the presumption of innocence the jury needed to consider.

60) Likewise, there is no proof that the burden ever was shifted onto Ingalls whatsoever.

61) It is clear therefore that Ingalls has not shown that Lidy was deficient by not objecting to the instruction, as it was proper, or for failing to tender another instruction in its place.

62) Ingalls also fails to show there was any prejudice from Lidy's failure to object, had he been able/required to do so.

63) Therefore, Ingalls's claim of ineffective assistance of trial counsel on instruction #15 was not proven by a preponderance of evidence.

(b)

64) Courts (b) alleges that Lidy failed to object to the jury instruction that did not include some of the statutory language regarding the Neglect of a Dependent charge.

65) That there was discussion between the court and parties about the exclusion of the language and although the court indicated it was too late to fix the issue once caught, Lidy, on direct questioning of Ingalls at the post-conviction hearing, believed the exclusion of the language in this statute benefitted Ingalls.

66) That Lidy testified that the absence of the statutory language in the instruction was advantageous to the defense: "...I would argue that that helps. That creates confusion in a jury and if they can't come to a firm conclusion on it, they've got to acquit you. And so, from my perspective and again (inaudible) with your interviews that you gave to police where you if I remember correctly did basically say you were the child's caregiver and like a father to the child if I remember correctly. If those got admitted the last thing I want the jury to be instructed on is that you that they can find that if you voluntarily assume a responsibility for a child then you are in position to commit the crime of neglect. I wanted them to believe that the only person who could neglect this child was the child's mother and not you, because you weren't there." (PCR. 68).

67) Attorney Lidy added, "and the last thing I wanted them to know was that you could voluntarily, the law allows ... you the defendant to voluntarily assume that duty and based upon your interviews with police I didn't want them to be instructed that way" (PCR. 69).

68) That Lidy's strategy gave indications of possible success as he explained in the PCR hearing that a question from the jurors during deliberations "led me to believe that potentially that they could not reach a consensus uh in light of ... the uncertainty of Mr. Ingalls relationship to the child and whether or not legally he could be found to be an obligated person who could be prosecuted and convicted of neglect" (PCR. 71).

69) While this strategy may have been planned or simply arose when the language was excluded on review by the court and parties, defense counsel saw an opportunity and realized the lack of language benefitted Ingalls.

70) While this strategy may be looked upon by Ingalls as being one that is deficient now, Lidy in fact articulated a reasonable, record-based strategy for declining to seek inclusion of the statutory language or failing to point out the language was not included.

71) "Reasonable strategy is not subject to judicial second guesses." *Perryman v. State*, 13 N.E.3d 923 at 931 (quoting *Burr v. State*, 492 N.E.2d 306, 309 (Ind. 1986)).

72) The reviewing court, "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).

73) Here, either no one caught the missing language or Lidy's strategy was to ignore the absence of language when he saw it until it was too late so it could be used for Ingalls's advantage.

74) In either case, Lidy's strategy was sound and showed signs of causing confusion to the jury which clearly benefitted Ingalls.

75) That Lidy's strategy to hopefully cause confusion and/or get a jury to come back hung or come back with an acquittal since they could not come to a consensus is a tactic used in almost every criminal case.

76) That Ingalls has failed to prove, by a preponderance of the evidence, that Lidy was ineffective for failing to object or for failing to include particular language in the neglect of a dependent instruction.

77) Finally, Ingalls has also failed to prove, by any standard of evidence, that he was prejudiced or that a different outcome based upon the absence of the language would have resulted.

Failure to offer Meghan Price's responses to Ingalls's text messages — (Courts designated (c)).

78) Ingalls alleges that trial counsel was ineffective for failing to offer for admission Meghan Price's (hereinafter Price) responses to his text messages to her about the child.

79) During the trial there were discussions between Lidy and the court regarding the inclusion of all of Price's responses.

80) That the court made it clear that if any of Price's responses were to be introduced to the jury that all of those would be coming in. (Tr. Vol. 8 at 224).

81) That Lidy testified that due to the "back and forth" between the court regarding Price's responses he made the strategic decision to keep them out. (PCR. 50).

82) That during the hearing Lidy testified, upon leading questions from Ingalls, that he did not agree with Ingalls's assessment that Price's messages were "exculpatory" (PCR. 51).

83) That while Lidy argued during trial that some of the text messages might have been exculpatory, as presented in the record, he clearly believed that the inclusion of all of them would have been more harmful than helpful. (Tr. Vol. 8, 220-226)

84) That in fact Lidy 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.

85) Likewise, although Ingalls pushed at the hearing to try to dissuade Lidy from his decision not to admit the text messages, Lidy made it clear that including those messages did not fit with the "spin whatsoever" and that the messages do not match up with the medical reports received as evidence in the case. (PCR. 51).

86) Lidy's decision was also premised upon not letting the jury hear more negative comments about Ingalls as they already had a vast amount of disturbing messages presented to them through other evidence. (PCR. 52, 87-88).

87) Here, a reasonable strategy utilized by an attorney is not subject to judicial second guessing. *Perryman*, 13 N.E.3d at 931.

88) As such, Ingalls has not shown that Lidy's decision to exclude all of Price's responses was an improper decision.

89) In fact, it is clear from Lidy's testimony and conclusions about his strategy that it is highly likely the admission of those messages would have in fact hurt Ingalls's case.

90) That Ingalls has failed to prove, by a preponderance of the evidence, that Lidy's actions in excluding the messages was ineffective.

Failure to tender an instruction based on solely circumstantial evidence (Courts designated (d)).

91) Ingalls argues that Lidy knowingly misled the jury by telling them in closing that, "There's going to be an instruction. If there are two reasonable theories of innocence. Or two reasonable theories of conclusion on the case, you must choose the one that points to Ingalls innocence." Tr. Vol. 9 at 220.

92) Ingalls's jury was so instructed two times during the trial.
   a. First, Preliminary Instruction #12 stated, "If the evidence lends itself to two reasonable interpretations, you must choose the interpretation consistent with the defendant's innocence." Tr. Vol. 4 at 162.
   b. Second, Final Instruction #21 charged the jury, "If the evidence lends itself to two reasonable interpretations, you must choose the interpretation consistent with the defendant's innocence." Tr. Vol. 9 at 236-37. Accordingly, the jury was instructed in the manner Lidy told them they would be.

93) That the court finds this argument by Ingalls difficult to follow.

94) Initially, in his findings, Ingalls apparently "abandons the singular aspect of his amended claim concerning counsel Lidy's alleged erroneous proffer to the trial Court of the

"reasonable theory of innocence" instruction and reduces this claim to the focus of counsel's ineffectiveness for having intentionally made related false promises to the jury."

95) That despite this abandonment, the court will address the claim as it was produced in the Amended Petition and is still tangentially argued.

96) In the first place, Lidy correctly paraphrased both of the instructions in telling the jury essentially that if there were two reasonable theories in the case then they must choose the one that points to Ingalls's innocence.

97) While Lidy perhaps did not quote the instructions directly, his comments to the jury were accurate to what was instructed.

98) That somehow Ingalls wishes now to have this court believe that because of Lidy's statement that was correct under the law and correct as to the instructions that were admitted and read, that another instruction was inferred that was not included.

99) In other words, Ingalls thinks that Lidy's statement required the admission of a particularly worded instruction and by failing to include that instruction, his statement was somehow deficient/improper.

100) That for this part of the argument, although abandoned, there is no proof that Lidy failed to proffer an instruction as alleged in the Amended Petition.

101) Ingalls's argument that Lidy's statements then somehow put him in peril as he "lied" to the jury are unfounded and lack support.

102) That in fact Lidy testified that he did in fact request a particular instruction that was denied by the court.

103) In Lidy's direct testimony elicited by Ingalls, Lidy stated "you asked a good question...the court should have given the reasonable theory of innocence instruction...therefore I think arguing it is completely appropriate even though the courts didn't give that instruction...it firmly fit the facts of the case and how it should have applied." (PC Vol. 1, pp. 77-78).

104) In other words, Lidy disagreed with the courts exclusion of the instruction he had proposed but still believed he could address and argue the language as it fit to Ingalls's case.

105) Lidy was permitted, as are all attorneys, to make arguments and state their beliefs in arguments to how they see the law and how the jury should therefore apply the law.

106) Here, while the particular instruction Lidy wished to be given was not, there were two other instructions of a similar nature, covering similar ideas.

107) That since no one objected and no objection was sustained, Lidy still had the chance to argue his idea of the law and even act under the belief that his instruction on that area of law would be given/should have been given.

108) That Ingalls's argument invites the court to find that Lidy made some giant promise to the jury of the inclusion of some instruction in the case that, when it was not included, caused substantial prejudice or was fundamentally damaging.

109) The invitation to do so will be denied.

110) Ingalls has failed to show that Lidy was ineffective in making the statement that was cited and has failed to prove at all that somehow the statement was even false.

111) Likewise, there is no evidence that this statement was some sort of lie that created any fundamental flaw in Lidy's performance.

112) That Ingalls has failed to prove, by any standard of evidence, that Lidy was ineffective for failing to submit a proper instruction (although Ingalls apparently abandoned this argument) or that Lidy made some sort of detrimental false statement.

Cumulative Prejudice of Trial Counsel
(Courts designated (e)).

113) In addition to the four designations above regarding Lidy's specific performance, Ingalls asserts other actions taken/not taken during the trial should be seen as a cumulative and overall ineffectiveness of counsel.

114) In order to succeed on a claim of trial counsel ineffectiveness, 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. *Stevens v. State*, 770 N.E.2d 739, 746 (Ind. 2002) (citing *Bell v. Cone*, 535 U.S. 685 (2002); *Williams v. Taylor*, 529 U.S. 362, 390 (2000); *Strickland v. Washington*, 466 U.S. 668, 687 (1984); and *Woods v. State*, 701 N.E.2d 1208, 1224 (Ind. 1998)).

115) There is a strong presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Id.* (citing *Strickland*, 466 U.S. at 690).

116) Likewise, counsel is afforded considerable discretion in choosing strategy and tactics, and these decisions are entitled to deferential review. *Id.* at 746-47 (citing *Strickland*, 466 U.S. at 689) and isolated mistakes, poor strategy, inexperience, and instances of bad judgment do not necessarily render representation ineffective. *Id.* at 747

(citing *Perez v. State*, 748 N.E.2d 853, 854 (Ind. 2001); *Timberlake v. State*, 753 N.E.2d 591, 603 (Ind. 2001)).

117) Initially, Ingalls suggests that trial counsel's overall performance was ineffective and represents a reasonable probability of a different outcome had Lidy not committed the alleged errors and omissions.

118) As noted above under designations addressing a-d, Ingalls failed to establish any act or omission on Lidy's part that was ineffective.

119) As well above, Ingalls failed to establish in designations a-d that had there been something ineffective in Lidy's performance, there was any reasonable probability of causing a different verdict.

120) Here, Ingalls provides additional allegations regarding Lidy's representation as follows:

a. Lidy failed to view the recording of his interview with Richhart before it was played for the jury, after Lidy had successfully argued for redaction of any mention of methadone;
b. Lidy failed to object to Richhart's testimony that he saw Ingalls mouthing "stick to the plan" to Price when he was being placed under arrest, and;
c. Lidy did not object to the admission of leg injury testimony;
d. Lidy "threw more dirt on Ingalls's already tainted character and credibility" by "exposing him for his unfaithful lifestyle.";
e. Lidy failed to present "known and available" admissibly materially exculpatory evidence (addressed above);
f. Lidy bolstered the State's case by conceding Price's homicide/murder of the child in closing;
g. Lidy failed to object to the exclusion of language in the neglect of a dependent instruction (addressed above);
h. Lidy "iced the State's cake and complete the illusion of a jury" while the judge desecrated the "legal alterpieces" of the legal system.

121) The issues "addressed above" will not be discussed in this section.

122) First, is the issue regarding the use of the word "methadone" in a transcript.

123) That during the trial, the record is clear that Lidy successfully moved in limine to redact any mention of the word "methadone" from an interview taken with Detective Richhart. Tr. Vol. 7 at 166.

124) That the court agreed that the use of this word or even a mention of where Ingalls was the morning of the crime was irrelevant.

125) That the court instructed the removal of this word and relied upon the State, who produced and wished to present the video as evidence, to do so.

126) That during trial, the video was played, had clearly not been redacted as promised by the State, and the word "methadone" was heard by the jury.

127) That immediately following the playing of the video, outside the presence of the jury, Lidy made an impassioned plea for a mistrial.

128) That at the post-conviction hearing, Lidy testified: "I didn't produce the video Mr. Ingalls. I don't know what you mean. I ... reacted as a trial lawyer would and objected and moved for mistrial when the State violates a pretrial order ... I cannot stop the State from violating court orders" (PCR. 55).

129) That despite Lidy's objection and request, the court denied the motion for mistrial and instead read an admonishment to the jury regarding the word "methadone".

130) That the Indiana Court of Appeals also reviewed this allegation made herein by Ingalls that the use of the word "methadone" made his trial unfair and they found:

> Here, there was considerable evidence implicating Ingalls in B.P.'s death and demonstrating that he and Price conspired to get rid of her son. The jury viewed Ingalls's four interviews with police, they saw his disturbing texts from Ingalls to Price about violently killing B.P., they saw the many internet searches in the weeks prior to B.P.'s death, which included death by suffocation and risperidone overdose. By the time that Exhibit 152 was played, the jury had already heard from over twenty-five witnesses, including the medical examiner who testified that B.P., while in his bed, had been smothered by another person and that a secondary cause of death was intoxication from his prescription medications. The jury thereafter heard testimony from an additional fifteen State's witnesses and over a dozen defense witnesses. The reference to methadone in Exhibit 152 was minimal in the context of the entire trial, and the evidence of guilt was substantial. The reference to methadone did not render Ingalls's trial fundamentally unfair. *Ingalls v. State*, 129 N.E.3d 815 (Ind. Ct. App. 2019).

131) In this case, Lidy did his job and successfully had the word in question redacted.

132) That Lidy is not responsible to carry out orders to another party and the State here was the one at fault for not following through on those orders.

133) That after the violation by the State, Lidy properly moved for a mistrial which was denied.

134) That after the conviction, Ingalls appealed the rejection of the mistrial and the Indiana Court of Appeals found the use of the word did not render the trial as fundamentally unfair. *Ingalls v. State*, 129 N.E.3d 815 (Ind. Ct. App. 2019).

135) That the actions by Lidy in successfully moving for a motion in limine and thereafter moving for a mistrial were in no way deficient.

136) That the actions by Lidy in not reviewing the redacted video that was evidence of the state after they were ordered by the court to redact said video also was in no way deficient.

137) As such, Ingalls has failed to show that Lidy's actions surrounding the word "methadone" were insufficient or deficient.

138) Second, Ingalls argues that Lidy was ineffective for failing to object to Detective Richhart's testimony that he could see Ingalls mouthing "stick to the plan" to Price as he was being arrested.

139) As has been the case for years in Indiana courts, a statement "offered against an opposing party" and "made by the party" is not hearsay. Ind. Evid. Rule 801(d)(2).

140) That as with almost every rule in court there are exceptions and as all lawyers know there are a myriad of exceptions to hearsay statements.

141) Initially, the court could not find that during the case in chief there was ever an objection by Lidy to this statement.

142) Likewise, there was no mention of this issue in the appeal that ensued in this case.

143) That reviewing the post-conviction notes there was no testimony elicited from Lidy about this statement, nor was there any information elicited from Lidy about what objection could have been raised over this statement.

144) First, it is clear this statement from the defendant, used in his trial against him, was not hearsay.

145) That even if some creative lawyer could get around the basic premise that this was not hearsay, it is clear from the record that Ingalls elicited exactly no information from anyone as to how this is hearsay or even if there is an exception.

146) As such, the court must find that Ingalls has failed to raise any issue of Lidy being ineffective on this point.

147) Likewise, Ingalls has failed to present any evidence that if Lidy had objected that a different outcome on this case would have been had.

148) Third, Ingalls claimed testimony of a leg injury was not relevant and should not have been discussed.

149) There was substantial discussions about the leg injury and how exactly, if at all, it played into the case at hand.

150) That Lidy argued it was inadmissible for all purposes while the State believed it was totally admissible.

151) That in reviewing Instruction No. 10, it is apparent that the court limited the discussion of the femur fracture in noting within, "[t]his cannot be used as evidence of Serious Bodily Injury in Count 3."

152) So essentially here, Lidy did object to the evidence and was able to convince the court to craft out an instruction and limiting its use.

153) Ingalls's blanket statement that Lidy therefore was deficient for permitting the leg injury issue into trial is a false one as it is clear the issue was addressed by Lidy to the court.

154) As well, Ingalls presented no evidence as to why this was so prejudicial nor addressed how this information, if kept out of the trial completely, would have changed the outcome.

155) Ingalls has therefore failed to present any evidence that this leg injury issue was in fact inadmissible or not relevant and further it is false that Lidy did not object to its' admission.

156) Fourth, Ingalls's claims regarding his sister's testimony is confusing.

157) Here, Ingalls's sister, on direct examination, was being questioned about Ingalls's relationship with Price when she responded "her name is Jen." Tr. Vol. 9 at 35.

158) That at the time of the question, it is clear that Lidy was attempting to elicit information about Price and Ingalls's relationship. Tr. Vol. 9 at 35-36.

159) Thereafter Lidy did not again mention "Jen" nor did he elicit any other information from any other witness about her.

160) That Ingalls now asserts that this mentioning of "Jen" resulted in a prejudice against him because the jury could infer that he was perhaps promiscuous or had been with other women.

161) That initially it should be noted that Lidy was not even talking about "Jen" when Ingalls's own sister tried to correct him.

162) That "Jen" had not come up in the questioning, had not been addressed and was not ever relevant to the proceedings.

163) That Ingalls's sister was his witness and on direct chose to pop out the name of someone named "Jen".

164) That while Lidy could have objected to the comment from his own witness, this would have brought even more attention to an irrelevant party and would have drawn even more attention to the premise that Ingalls now objects.

165) That it is clear that Lidy did not elicit this testimony, that the witness simply proffered it before the jury, and the proper thing for attorneys to do when direct witnesses are non-responsive is to redirect them and keep them on task.

166) Here, Lidy did just that and there was nothing deficient about his performance.

167) That nothing Lidy did regarding the unresponsive answer given by Ingalls's sister was ineffective.

168) Likewise, Ingalls has not shown by any level of proof that had there been a deficiency in Lidy's failure to object on this issue that a different outcome would have been had in this case.

169) Ingalls claims that Lidy's statements admitting essentially that Price committed homicide/murder were detrimental to his case.

170) That Ingalls argues that Lidy was deficient in basically selling Price up the river in his arguments and that his claims further tossed away any chance Ingalls had at success on his case.

171) That this allegation is unfounded and is exactly the opposite of the strategy that anyone reading this transcript of the trial could see put in place by Lidy.

172) Simply, Lidy argued throughout that Ingalls was innocent, had no duty to watch or care for the child and that another person (Price) killed the child.

173) Ingalls provides no support for his position other than once again, he believed Lidy's strategy was improper, particularly after he lost the trial.

174) Ingalls's claim fails for a complete lack of support in showing, once more, that Lidy's statements were anything more than directed at the strategy implemented in this case.

175) Nothing Lidy said in his closing about Price was ineffective.

176) Finally, is the clam that Lidy simply sat back while the judge "desecrated" the "legal altarpieces" of the legal system.

177) This illogical claim against Lidy will simply be ignored and found to be false.

178) That in reviewing all of the allegations against Lidy's performance in a cumulative view, it is clear that nothing he did was deficient.

179) That Ingalls has failed to present evidence on all of the individual claims that Lidy ever was ineffective or deficient in his representation.

180) That in Lidy's testimony at the post-conviction proceeding, it was clear that Lidy was an attorney in good standing who had worked a substantial amount of criminal cases.

181) That Lidy had also enlisted the help of another attorney that essentially sat second chair in this case, had sought out expert witnesses, had reviewed mounds of discovery, conducted multiple depositions and prepared properly for all aspects of the trial. (PCR. 62, 84, 91).

182) From his testimony as well as his performance in the trial it is clear that Lidy spent countless hours preparing for the case and defending Ingalls.

183) That Lidy made it clear in his testimony that expert testimony from the State as well as Ingalls's own text messages made the case a challenging one but it is clear from is statements to Ingalls questions that he had a strategy that he believed would work the best and he stuck to his beliefs throughout trial. (PCR. 78-79 and 87-88).

184) That it is clear from Lidy's testimony, preparation and presentation at trial that there was nothing deficient in his performance and nothing he did fell below an objective standard of reasonableness.

185) Likewise, there is no proof that any errors, if proven, were so serious as to deprive Ingalls of a fair trial and that a different result would have been had.

186) That in light of these findings, Ingalls has failed to show by a preponderance of the evidence that Lidy was ineffective in any manner.

187) As well, for any failures to object to items during the trial, Ingalls has failed to show by a preponderance of the evidence that had Lidy been ineffective in his failures to object, a different outcome would have been had.

188) Ingalls establishes no deficiency or prejudice regarding Lidy's representation. His allegation of ineffective assistance of trial counsel fail individually and collectively.

189) As such, Ingalls's request for post-conviction relief as to the actions of Lidy are denied.

Appellate Counsel

STANDARDS ON POST-CONVICTION RELIEF
(Ingalls's allegation of ineffective assistance of appellate counsel)

190) The same standard of review applied to claims of ineffective assistance of trial counsel applies to appellate counsel as well. *Burnside v. State,* 858 N.E.2d 232, 238 (Ind. Ct. App. 2006).

191) The Indiana Supreme Court has recognized three categories of alleged appellate counsel ineffectiveness: (1) denying access to an appeal; (2) failing to raise issues; and (3) failing to present issues competently. *Timberlake v. State*, 753 N.E.2d 591, 603 (Ind. 2001).

192) When reviewing a claim of ineffective assistance of appellate counsel regarding the selection and presentation of issues, the defendant must overcome the strongest presumption of adequate assistance. *Seeley v. State,* 782 N.E.2d 1052, 1059 (Ind. Ct. App. 2003).

193) From a review of the petition, it seems that Ingalls is arguing sections 2 and 3 under the standard set out above.

194) The Court will designate (f), (g) and (h) as the three claims made by Ingalls as to his appellate counsel.

Individual allegations of appellate counsel ineffectiveness.
Failure to raise issue of trial court bias
(Courts designated (f))

195) Ingalls's first allegation of appellate counsel ineffectiveness is Wieneke's failure to raise a claim of fundamental or structural error with respect to the trial court's statements after the prosecutor raised a concern of the defense trying to influence the jury improperly.

196) Out of the presence of the jury, the prosecutor (Steve Sonnega, hereinafter "Sonnega") raised his concern that Ingalls's defense counsel bought jurors some donuts.

197) That the prosecutor began a narrative with the court regarding this concern which is recited here:

MR. SONNEGA: I don't think Allen meant to taint the jury by buying donuts, but it does give the appearance of gifts. I just ask ..

MR. LIDY: I didn't buy them for the jury.

THE COURT: Yeah. He bought them for the courthouse. I said the jury could have them.

MR. SONNEGA: You know, but if I started bringing in Cokes ..

THE COURT: It's fine. I'll say something to them tomorrow morning.

MR. SONNEGA: Yeah. We need to keep that out of the record, because ..

MR. LIDY: (inaudible).

MR. SONNEGA: But it taints the .. it could be seen on appeal that we're buying jurors. And Allen's not intending. I should have had one myself. But I just think that ..

MR. LIDY: Yeah, I got two boxes.

MR. SONNEGA: Yeah, we just ..

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

MR. LIDY: I was just .. it was a gracious thing for ..

MR. SONNEGA: 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, Mr. Sonnega.

MR. SONNEGA: 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.

MR. SONNEGA: Yeah, that way we're not mucking up the record. Yeah.

MR. LIDY: Yeah.

THE COURT: I know what you did, Allen, don't worry about it.

MR. SONNEGA: It wasn't intentional, it's just ..

THE COURT: All right, anything else we need to mess with?

MR. LIDY: Oh, that's fine.

THE COURT: Do you have enough clothes for tomorrow, Mr. Ingalls?

MR. INGALLS: Yes, Your Honor.

THE COURT: Okay, easy enough. We'll see you tomorrow. Tr. Vol. 4 at 147-48.

198) Ingalls has asserted time and again that this discussion between counsel suggests that the court was seeking out Colts tickets and therefore was asking for a bribe.

199) Ingalls goes further, without justification of any sort, to infer that the statement made in jest somehow then affected his ability to receive a fair trial because the court made a comment to try and diffuse Sonnega's ridiculous concern over donuts that the jury were given and that were bought by his counsel.

200) Ingalls's assertions and beliefs, while believed by him to be a solicitation or bribe attempt clearly is just that, his belief.

201) That anyone (other than Ingalls) reading or hearing the transcript would in fact know that the conversation elevated to what it did due to the continuing statements by Sonnega that somehow the jury could be influenced by a few donuts bought by Ingalls's counsel and given to the jury.

202) Sonnega's persistence and concern over the donuts was as ridiculous as the suggestion by Ingalls that the court attempted to solicit a bribe.

203) The court's statement was clearly meant in levity of the ridiculous situation that Sonnega continued to build upon and was nothing more than banter between parties and an attempt to steer Sonnega away from his trite concern over donuts.

204) That the entire matter was held outside the presence of the jury, was a ridiculous discussion on a ridiculous issue and simply something needed to be said to calm Sonnega down.

205) As well, nothing in the exchange and no proof otherwise has been presented by Ingalls that a bribe was ever taken, that the conversation impacted the court's performance or that his trial would have had a different result had the court not made the statement, in jest and to calm Sonnega down.

206) When the impartiality of a trial judge is challenged on appeal, the Court presumes that the judge is unbiased and unprejudiced. *Tharpe v. State*, 955 N.E.2d 836, 839 (Ind. Ct. App. 2011). To rebut that presumption, the defendant "must establish from the judge's conduct actual bias or prejudice that places the defendant in jeopardy." "To assess whether the judge has crossed the barrier into impartiality, we examine both the judge's actions and demeanor." *Id.* (quoting *Perry v. State*, 904 N.E.2d 302, 307.08 (Ind. Ct. App. 2009) (citations omitted), *trans. denied.* Merely asserting bias and prejudice does not make it so. *Smith v. State*, 770 N.E.2d 818, 823 (Ind. 2002). Bias and prejudice places a defendant in jeopardy "only where there is an undisputed claim or where the judge expressed an opinion of the controversy over which the judge was presiding." *Id.*

207) Here, no objection or concern was raised by either party regarding the trial court's response to the situation.

208) Without an objection there initially was nothing preserved for appeal on this issue. See *Pigg v. State*, 929 N.E.2d 799, 803 (Ind. Ct. App. 2010).

209) However, as the court is aware, it is always possible to raise fundamental error when something is so egregious or damaging that it is apparent to anyone reviewing the issue that the defendant did not receive a fair trial.

210) To be fundamental, an error must "constitute a blatant violation of basic principles, the harm or potential for harm must be substantial, and the resulting error must deny the defendant fundamental due process." *Tharpe*, 955 N.E.2d at 839 (quoting *Deane v. State*, 759 N.E.2d 201, 204 (Ind. 2001)).

211) In response to Ingalls's questions, Wieneke even responded, "Yeah, I read it, if it's in the record I would have read it. I took it as a joke" (PCR. 104). Wieneke added, "I don't think any Judge would have that in the record if in fact that's what's going on, but also your trial attorney didn't do anything with it. So, I assumed it was just a joke." (PCR. 104).

212) Nothing was here to object to in the verbal exchange and nothing exists that is so fundamental of an error that any logical appellate counsel would have considered this an issue to be raised.

213) As this issue was first not preserved by an objection and thereafter absolutely nothing was even close to being a fundamental error, Ingall's claim here must be denied.

214) As such, Wieneke was not deficient and Ingalls has presented no cogent evidence that she improperly failed to raise the issue of judicial bias.

215) As well, Ingalls showed no evidence that he was prejudiced as he tangentially alleges.

Failure to raise fundamental error regarding Final Instruction #15 (Courts designated (g))

216) Ingalls asserts here that Final Instruction #15 should have been objected to and/or that not doing so raised fundamental error.

217) As noted above in discussions about Final Instruction #15, there is nothing improper about the instruction other than the typos within the transcript.

218) That any cogent lawyer, reviewing the physical proposed and final instructions can see that the proper instruction was tendered, read and provided to the jury.

219) Typos in the transcript of the trial simply do not overcome the physical instructions that were able to be reviewed by Wieneke.

220) If there was nothing clearly improper about the instruction itself there cannot be anything improper to appeal.

221) As in (f), however, even without an objection, there is still the possibility that a failure to object to something that resulted in fundamental error can still be argued on appeal.

222) "Failure to object to a jury instruction results in waiver on appeal, unless giving the instruction was fundamental error." *Barthalow v. State*, 119 N.E.3d 204, 211 (Ind. Ct. App. 2019) (quoting *Wright v. State*, 730 N.E.2d 713, 716 (Ind. 2000)).

223) An error may be fundamental and thus not subject to waiver, if it is a "substantial blatant violation of basic principles." *Id.* (quoting *Moreland v. State*, 701 N.E.2d 288, 294 (Ind. Ct. App. 1998) (internal quotation omitted). The error must be so prejudicial to the defendant's rights as to make a fair trial impossible. *Id.*

224) Once more on examination by Ingalls, Wieneke stated that her review of the instructions revealed no viable arguments for appeal. (PCR. 109).

225) Here, Wieneke cannot be held accountable for not raising something that was not objected to during trial.

226) Further still, Wieneke did not see anything fundamentally improper about the instructions and therefore concluded properly that there were no viable arguments for appeal.

227) As such, Ingalls has failed to prove that Wieneke was deficient or prejudiced by her failure to raise this issue.

228) Ingalls's claim here is denied and does not establish any grounds for post-conviction relief.

Failure to raise fundamental error regarding Final Instruction #7
(Courts designated (h))

229) Ingalls claims Wieneke failed to raise a claim of fundamental error with regard to the elements instruction on Neglect of Dependent, namely, that it does not include the statutory phrase, *"whether assumed voluntarily or because of a legal obligation."* See Ground (a)(2), supra.

230) As explained above regarding claims against Lidy, he either strategically elected to or purposely did not fix (trial strategy) the jury instruction on Neglect of a Dependent.

231) That as stated above, Lidy believed the exclusion of said language benefitted his client and gave teeth to his arguments and theme of the trial.

232) That as stated above Lidy did not object to this exclusion and therefore, once more, there was no issue for Wieneke to appeal.

233) As in a and b, however, even without an objection, there is still the possibility that a failure to object to something that resulted in fundamental error can still be argued on appeal.

234) "Failure to object to a jury instruction results in waiver on appeal, unless giving the instruction was fundamental error." *Barthalow v. State*, 119 N.E.3d 204, 211 (Ind. Ct. App. 2019) (quoting *Wright v. State*, 730 N.E.2d 713, 716 (Ind. 2000)).

235) An error may be fundamental and thus not subject to waiver, if it is a "substantial blatant violation of basic principles." *Id.* (quoting *Moreland v. State*, 701 N.E.2d 288, 294 (Ind. Ct. App. 1998) (internal quotation omitted). The error must be so prejudicial to the defendant's rights as to make a fair trial impossible. *Id.*

236) Once more on examination by Ingalls, Wieneke stated that her review of the instructions revealed no viable arguments for appeal. (PCR. 109).

237) That as Lidy believed the exclusion benefitted Ingalls in this case it is difficult to see how the exclusion of this language was detrimental to his case.

238) In fact, excluding the language enabled Lidy to argue that Ingalls was not a father figure to the child, had not assumed such a duty, and therefore elements of the crimes charged against him could not be met.

239) As well, as noted above, Lidy had hope when questions were raised by the jury about this issue when they were deliberating as they were confused enough to perhaps not be able to find his client guilty of the offenses charged.

240) Nothing presented by Ingalls indicates that any rights were violated, let alone a fundamental one, by the exclusion of language from this instruction.

241) As such, Ingalls has failed to prove that Wieneke was deficient or prejudiced by her failure to raise this issue.

242) Ingalls's claim here is denied and does not establish any grounds for post-conviction relief.

243) Ingalls establishes no deficiency or prejudice regarding Wieneke's representation. His allegations against her fail completely.

244) As such, Ingalls's request for post-conviction relief as to the actions of Wieneke are denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

245) Petitioner has failed to prove any of his allegations by a preponderance of the evidence.

246) Where necessary in this petition to be shown, Petitioner has also failed to present any evidence that he faced prejudice, that fundamental rights were trampled upon, or that a different result would have come about in his case had his initial allegations been found to be true.

247) For the stated reasons above and here, the Amended Petition for Post-Conviction Relief is denied in all respects.

August 18, 2021

Matthew Hanson
Judge, Morgan Circuit Court

FILE
PROSECUTOR
INGALLS

In the Indiana Supreme Court

Steven E. Ingalls, Jr.
Appellant(s),

v.

State Of Indiana,
Appellee(s).

Court of Appeals Case No.
21A-PC-02050

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

Order

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

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

Done at Indianapolis, Indiana, on 5/25/2022.

Loretta H. Rush
Chief Justice of Indiana

All Justices concur.

Ingalls complains, as it simply commands the jury to make a finding that the charged individual was aware of a high probability that his conduct would cause the result necessary to support a guilty verdict for Count 2, Count 3, or a lesser-included offense of Count 3, i.e., death, serious bodily injury, or bodily injury, respectively.

The instruction of which Ingalls complains read:

> 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.

Tr. Vol. 9 at 236. Ingalls argues the above instruction directs a mandatory presumption on the jury that he possessed the requisite *mens rea* for the offense. Respectfully, the instruction does the contrary by emphasizing to the jury that it must find that Ingalls was aware of the high probability that his conduct would cause B.P.'s death, serious bodily injury, or bodily injury, in order to find him guilty of any of the permutations of neglect of a dependent before the jury for consideration.

The instruction was not construed by Attorney Lidy or Appellate Counsel Wieneke as directing the jury to presume Ingalls' *mens rea*, nor would any reasonable lay-person juror construe it in that manner. In *Sandstrom v. Montana*, the United States Supreme Court held that the Fourteenth Amendment of the U.S. Constitution requires the State to prove beyond a reasonable doubt every material element of a crime, and that a jury instruction that shifts that burden to the defendant violates the defendant's due process rights. *McCorker v. State*, 797 N.E.2d 257, 263 (Ind. 2003)(citing *Sandstrom*, 442 U.S. 510, 524 (1979)). Not only do the express words of Final Instruction #15 make clear that the jury was required to find that Ingalls had the prescribed awareness in order to find him guilty, but the instructions as a whole allow no other interpretation. See *Lee*, 91 N.E.3d at 986.

STATE OF INDIANA	)	IN THE CIRCUIT COURT
	) SS:	OF MORGAN COUNTY
COUNTY OF MORGAN	)	
STEVEN INGALLS, JR.,	)	
Petitioner,	)	
	)	
-v-	)	CAUSE NO. 55C01-2003-PC-386
	)	
STATE OF INDIANA,	)	
Respondent.	)	

REQUEST FOR ADMISSIONS

Comes now Petitioner Steven Ingalls, Jr., pro se, pursuant to Indiana Rule PC 1, §5, and respectfully submits this Request to counsel Cassie Starnes for Respondent the State of Indiana:

1) The certified Morgan criminal Cause No. 55C01-1706-F1-1252 trial Record which the Post-Conviction Court took judicial notice of on 5-January 2021 over no objection is a genuine and true "transcript of the evidence so recorded." (Tr.Vol. 10, p. 26).

☐ True. ☐ Deny.

STATE OF INDIANA	)	IN THE MORGAN CIRCUIT COURT
	)	
COUNTY OF MORGAN	)	
STEVEN INGALLS	)	
	)	
VS.	)	CAUSE NO.: 55C01-2003-PC-000386
	)	
STATE OF INDIANA	)	

STATE'S ANSWERS TO REQUEST FROM ADMISSIONS

Comes now the State of Indiana, by Cassie Mellady Starnes, Chief Deputy Prosecuting Attorney, and files its answers to all the Petitioner's Requests for Admissions as follows:

1. Admit
2. Deny, Mooresville Police Department currently has the phone. The Court is in control of the data from the phone as it was entered into evidence at trial.
3. Unable to answer, this statement does not make sense; therefore, object and deny.
4. Deny. Exculpatory evidence does not exist in this case to the State's knowledge.
5. Objection and deny; this question is too broad.
6. Deny, The State does not have the phone, it is in the custody of Mooresville Police Department and the Court has the downloaded evidence from the phone.
7. Objection and deny. This does not make sense.

take .. see his last breath. And where was he, on the stairwell, and B.P. was laid .. almost laid to rest as if it was time for her to call, and he was there. Think about what Mr. Lidy said, but when you come back to the big picture, the big case, what this is all about, you will come away with the conclusion, based upon the evidence, the trail of evidence that Chad followed for a long time with a lot of work to present to you in a package, that wasn't easy. That you will come away ..

THE COURT: Time.

MR. SONNEGA: Thank you, Judge.

THE COURT: Ladies and gentlemen, we're now going to read instructions that will be provided to you. I will begin reading these .. you got them here, you already handed them out? You already handed those out? Go ahead and hand those out. Instruction number one, members of the jury, it is now my responsibility to give you final instructions for your consideration of the law that's applicable to this case, you are instructed as follows: Number two, you are to consider all of the instructions, both preliminary and final together, do not single out any certain sentence or individual point or instruction and ignore the others. Number three, under the Constitution of Indiana, you have the right to determine both the law and the facts. The Court instructions are your best source in determining the law. Number four, in this case, the State of Indiana has charged the defendant with conspiracy to commit murder, and neglect of a dependent resulting in death, and neglect of a dependent resulting in serious bodily injury. The charges read as follows: Count one, the State of Indiana versus Steven Ingalls, Junior. Brian K. Chambers says that between October 15, 2016, and November 23, 2016,

Morgan County, State of Indiana, Steven Ingalls Junior with the intent to commit a felony, to wit, murder, did agree with Meghan E. Price, to commit the felony of murder, and in furtherance of said agreements, Steven Ingalls Junior did perform an overt act, to wit, one, Google Risperidone overdose, and/or two, research methods of torture causing death, and/or three, communicate with Meghan E. Price about the abuse, torture, and killing of B.P., and/or four, Steven Ingalls, Jr., and/or Meghan E. Price suffocated B.P. and/or in furtherance of said agreement Meghan E. Price did perform an overt act, to wit, five, overmedicated B.P. Count two, neglect of a dependent resulting in death. Brian K. Chambers said that between July 1st, 2014 and November 23, 2016, in Morgan County, State of Indiana, Steven Ingalls Junior, being at least eighteen years of age, and having the care of B.P., a dependent less than fourteen years of age, did knowingly place said dependent in a situation that endangered dependent's life or health, which resulted in the death of B.P. Count three, neglect of a dependent resulting in serious bodily injury. Brian K. Chambers says that between July 1st, 2014, and November 23, 2016, in Morgan County, State of Indiana, Steven Ingalls, Junior, having the care of B.P., the dependent, did knowingly place said dependent in a situation that endangered dependent's life or health, and that said act resulted in serious bodily injury to said dependent. The statute defining the offense charged against the defendant which was in force in Indiana at the time the offenses allegedly occurred reads in pertinent parts as follows: Number six, conspiracy to commit murder, 35-41-5-2. The crime of conspiracy to commit murder is defined by law as follows: A person conspires to commit a felony when, with intent to commit the felony, agrees with another person to commit the felony.

neglect of a dependent resulting in serious bodily injury. If the State proves the defendant guilty of neglect of a dependent resulting in serious bodily injury as charged in count three, you need not consider the included crimes. However, if the State failed to prove that the defendant committed neglect of a dependent resulting in serious bodily injury, you may consider whether the defendant committed neglect of a dependent resulting in bodily injury, or whether the defendant committed the offense of neglect of a dependent, both of which the Court will define for you. Number one, Indiana Code 35-46-1-4(a)(1), neglect of a dependent resulting in serious bodily injury. The crime of neglect of a dependent resulting in serious bodily injury is defined by law as follows: A person having the care of a dependent who knowingly places the dependent in a situation that endangered the dependent's life or health results .. we put results in there twice, in serious bodily injury to the dependent. Before you may convict the defendant, the State must have proved each of the following beyond a reasonable doubt. The defendant, having the care of a dependent, in Morgan County, Indiana, knowingly, placed a dependent in a situation that endangered the dependent's life or health, and the offense resulted in serious bodily injury to the dependent. If the State failed to prove each of the elements beyond a reasonable doubt, you must find the defendant not guilty of neglect of a dependent resulting in serious bodily injury, a level 3 felony, as charged in count three. Number ten, you've been provided evidence that B.P. sustained a femur fracture in July of 2015. The injury is not evidence for purposes of a criminal elements of count three, neglect of a dependent causing serious bodily injury. This cannot be used as evidence of serious bodily injury in count three. Number eleven, a lesser included of neglect of a dependent resulting in

Before you may convict the defendant, the State must have proved each of the following beyond a reasonable doubt: The defendant, in Morgan County, Indiana, agreed with another person to commit the crime of murder, with the intent to commit the crime, when the defendant, or the other person performed an overt act in furtherance of the agreement. If the State failed to prove each of these elements beyond a reasonable doubt, you must find the defendant not guilty of conspiracy to commit murder, a level 1 felony, charged in count one. Number seven, 35-46-1-4(a)(1), neglect of a dependent resulting in death. The crime of neglect of a dependent resulting in death is defined by law as follows: A person at least eighteen years of age having the care of a dependent who knowingly places said dependent in a situation that endangered the dependent's life or heath, and results in the death of the dependent who is less than fourteen years of age. Before you may convict the defendant, the State must have proved each of the following beyond a reasonable doubt: The defendant, being at least eighteen years of age, and having the care of a dependent in Morgan County, Indiana, knowingly placed a dependent in a situation that endangered the dependent's life or health, and the offense resulted in the death of the dependent, who was less than fourteen 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 one felony, as charged in count two. Instruction number eight, 35-46-1-4(a)(1) neglect of a dependent resulting in serious bodily injury. The Defendant is charged in count three with neglect of a dependent resulting in serious bodily injury. The crimes of neglect of dependent resulting in bodily injury and neglect of a dependent, are included in count three, the

serious bodily injury, count three, neglect of a dependent resulting in bodily injury. The crime of neglect of a dependent resulting in bodily injury is defined by law as follows: A person who having the care of a dependent who knowingly places the dependent in a situation that endangers the dependent's life or health, resulting in bodily injury. Before you may convict the defendant, the State must prove each of the following beyond a reasonable doubt. The defendant, having the care of a dependent, in Morgan County, Indiana, knowingly placed the dependent in a situation that endangered the dependent's life or health, and the offense resulted in bodily injury to the dependent. 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 bodily injury, a lesser included of count three. Number twelve, a lesser included of neglect of a dependent resulting in serious bodily injury in count three is neglect of a dependent. The crime of neglect of a dependent is defined by law as follows: A person having the care of a dependent who knowingly places the dependent in a situation endangers the dependent's life or health. Before you may convict the defendant, the state must have proved each of the following beyond a reasonable doubt: The defendant, having the care of a dependent, in Morgan County, Indiana, knowingly placed a dependent in a situation that endangered the dependent's life or health. 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, a lesser included of count three. To the information, a plea of not guilty has been entered on behalf of the defendant. The charge to which has been filed is the formal method of bringing the defendant to trial. The filing of

the charge, or the defendant's arrest, is not to be considered by you as any evidence of guilt. A plea of not guilty has been entered on behalf of the defendant. Number fourteen, the attached are words and phrases which may be applicable to this case. 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. Sixteen, the term dependent is defined by law as meaning an unemancipated person who is under eighteen years of age, or a person of any age who is mentally or physical disabled. Number seventeen, the term conspiracy is defined as follows: a person conspires to commit a felony when in an attempt to commit a felony, a person agrees with another person to commit the felony. Number eighteen, the term murder of a person, when a person knowingly or intentionally kills another human being. Number nineteen, the term bodily injury defined by law means any impairment of physical condition, including physical pain. Number twenty, the term serious bodily injury is defined by law meaning bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement, unconsciousness, extreme pain, permanent or protracted loss or impairment of the function of a bodily member or organ, or loss of a fetus. Number twenty-one, under the law in the State of Indiana a person charged with a crime is presumed to be innocent. This presumption of innocence continues in favor of the defendant throughout each stage of the trial. And you should fit the evidence presented to the presumption that the defendant is innocent if you can reasonably do so. If the evidence lends itself to two reasonable

interpretations, you must choose the interpretation consistent with the defendant's innocence. If there is only one reasonable interpretation, you must accept that interpretation and consider the evidence with all of the other evidence of the case in making your decision. To overcome the presumption of innocence, the State must prove the defendant guilty of each element of the crime charged beyond a reasonable doubt. The defendant is not required to present any evidence to prove his innocence, or prove or explain anything. Number twenty-two, the parties in this case may prove a fact by one of two types of evidence. Direct evidence or circumstantial evidence. Direct evidence is direct proof of a fact, circumstantial evidence is indirect proof of a fact. For example, direct evidence that an animal ran in the snow might be the testimony of someone who actually saw the animal run in the snow. On the other hand, circumstantial evidence that the animal ran in the snow might be the testimony of someone who only saw the animal's tracks in the snow. It is not necessary that any fact by proved by direct evidence. You may consider both direct evidence and circumstantial evidence as proof. Twenty-three, the burden is on the State to prove beyond a reasonable doubt the defendant is guilty of the crimes charged. It is a strict and heavy burden. The evidence must overcome any reasonable doubt concerning the defendant's guilt. But it does not mean that the defendant's guilt must be proven beyond all possible doubt. A reasonable doubt is a fair, actual, and logical doubt based upon reason and common sense. A reasonable doubt may arise either from the evidence, or lack of evidence. Reasonable doubt exists when you are not firmly convinced of the defendant's guilt, after you've weighed and considered all of the evidence. A defendant must not be convicted on suspicion or speculation.

It is not enough for the State to show the defendant is probably guilty. On the other hand, there are very few things in this world we know with absolute certainty. The State does not have to overcome every possible doubt. The State must prove each element of the crimes by evidence that firmly convinces each of you and leaves no reasonable doubt. The proof must be so convincing you can rely and act upon this in the matter of highest importance. If you find that there is reasonable doubt that the defendant is guilty of the crimes, you must give the defendant the benefit of the doubt, and find the defendant not guilty of the crime under consideration. Number twenty-four, you are the exclusive judges of the evidence, which may be the witness's testimony or exhibits. In considering the evidence, it is your duty to decide the value to give to the exhibits you receive and the testimony you hear. In determining the value to give to a witness's testimony, some factors you may consider are: The witness's ability and opportunity to observe, the behavior of a witness while testifying, any interest, bias, or prejudice the witness may have, any relationship with people involved in a case, the reasonableness of the testimony considering the other evidence, your knowledge, common sense, and life experiences. You should not disregard the testimony of any witness without a reason and without careful consideration. If you find conflicting testimony, you may have to decide what testimony you believe, and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it. The quantity of evidence, or number of witnesses need not control your determination of the truth. You should give the greatest value to the evidence you find most convincing. Number twenty-five, during this trial, the Court may have ruled that certain questions may not be answered, or that certain

exhibits may not be allowed into evidence. You must not concern yourselves with the reasons for these rulings. The Court's rulings are strictly controlled by law. Occasionally I may have struck evidence, or the record, after you've already seen it or heard it. You must not consider such evidence in making your decision. Your verdict should be based only upon the evidence admitted and the instructions on the law. Nothing that I say or did is intended to recommend what facts or verdict you should find. Statements made by attorneys are not evidence. Number twenty-six, you must decide the facts from your memory of the testimony and exhibits admitted for your consideration. You may have taken notes from the trial, however, I hope you did not become so involved in notetaking you failed to listen carefully and observe witnesses as they did testify. Twenty-seven, if any of you should, during deliberations, be reminded of or should assert any personal knowledge regarding this case, it is your duty to promptly notify me or the Bailiff of the believe that you have such personal knowledge. I will then discuss the matter with attorneys, we will decide if your personal knowledge is such that you should be excused as a juror. Number twenty-eight, no defendant may be compelled to testify. A defendant has no obligation to testify, the defendant did not testify. You must not consider this in any way. Twenty-nine, at various times the Bailiff has brought in questions asked by you, the Jury. All questions are considered by me and the attorneys in this case in discussions held outside your presence. Some of those questions were previously answered in the evidence presented, would not have been appropriate to repeat that testimony. Some of the questions were answered in testimony presented after questions were brought to our attention. Some of the questions were answered in arguments presented

by the attorneys in their closing summations. It may be the questions that were not answered as indicated above is because they could not be answered under the statutes and rules, applicable criminal trials and no inferences should be drawn from a fact a question might not have been answered or was answered differently than you had anticipated. Number, thirty, members of the jury, you are to return three verdicts in this case. As to count one, if you find the defendant, Steven Ingalls, Jr., not guilty of the offense of Conspiracy to commit murder, charged in count one in this case, then your form of verdict may be, we the jury find the defendant Steven Ingalls Jr., not guilty of the offense of conspiracy to commit murder as charged in count one. Or, if you find the Defendant Steven E. Ingalls, Jr., guilty of the offense of conspiracy to commit murder, as charged in count one in this case, then your form of verdict may be, we the jury find the defendant Steven Ingalls Jr., guilty of the offense of conspiracy to commit murder, as charged in count one. And, as to count two, if you find the defendant, Steven Ingalls Jr., is not guilty of the offense of neglect of a dependent resulting in death, charged in count two of this case, then your form of verdict may be; We the Jury find the Defendant, Steven Ingalls Jr., not guilty of the offense of neglect of a dependent resulting in death, as charged in count two. Or, if you find the defendant, Steven Ingalls, Jr. is guilty of the offense of neglect of a dependent resulting in death as charged in count two of this case, then your form of verdict may be, we the Jury find the defendant, Steven Ingalls Jr., guilty of the offense of neglect of a dependent resulting in death as charged in count two. And, as to count three, if you find the defendant Steven Ingalls Jr. is not guilty of the offense of neglect of a dependent resulting in serious bodily injury, as charged in count three of this

case, then your form of verdict may be, we the Jury find the defendant Steven Ingalls Jr. not guilty of the offense of neglect of a dependent resulting in serious bodily injury as charged in count three, or, if you find the defendant Steven Ingalls, Jr. guilty of the offense of neglect of a dependent resulting in serious bodily injury as charged in count three of this case, then your form of verdict may be, we the Jury find the defendant, Steven Ingalls Jr., guilty of the offense of neglect of a dependent resulting in a serious bodily injury as charged in count three. However, if you find a lesser included of neglect of a dependent resulting in bodily injury applies, then as to the lesser included of count three, neglect of a dependent resulting in bodily injury, which is lesser included as neglect of dependent resulting in bodily injury, if you find the defendant Steven Ingalls Jr., is not guilty of the offense of neglect of a dependent resulting in bodily injury as a lesser included count three of this case, then you form of verdict may be, we the Jury find the defendant, Steven Ingalls Jr., not guilty of the offense of neglect of a dependent resulting in bodily injury as a lesser included of count three, or, if you find the defendant Steven Ingalls Jr. guilty of the offense of neglect of a dependent resulting in bodily injury as a lesser included of count three in this case, then your form of verdict may be, we the jury find the defendant Steven Ingalls Jr. guilty of the offense of neglect of a dependent resulting in bodily injury as a lesser included to count three. However, if you find the lesser included neglect of a dependent applies, that is the lesser included to count three, neglect of a dependent, if you find the defendant Steven Ingalls Jr. is not guilty of the offense of neglect of a dependent as a lesser included to count three in this case, then your form of verdict may be, we the jury find the defendant, Steven Ingalls, Jr., not guilty of

the offense of neglect of a dependent as a lesser included of count three. Or, if you find the defendant Steven Ingalls Jr. guilty of of the offense of neglect of a dependent as a lesser included to count two .. it should be count three, there, I'm sorry. Count three, do you agree counsel?

MR. LIDY: Yes, Judge.

MR. SONNEGA: Yes, Judge.

THE COURT: So that should actually be count three right there of of this case, then your form of verdict may be, we the Jury find the defendant Steven Ingalls Jr., guilty of the offense of neglect of a dependent as a lesser included to count three. To return a verdict each of you must agree to it. Each of you must decide this case for yourself, but only after considering the evidence with the other jurors. It is your duty to consult with each other. You should try to agree on a verdict if you can do so without compromising your individual judgment. Do not hesitate to reexamine your own views, and to change your mind if you believe you are wrong, but do not give up your honest belief just because the other jurors may disagree, or just to end the deliberations. After the verdict is read in Court, you may be asked individually whether you agree with it. When you begin, select one of your members as foreperson to manage the deliberations. No one will be allowed to hear your discussions, and no recording will be made of what you say. The Bailiff is available to assist you with personal needs but cannot answer any questions about this case. Any questions for the Court must be in writing, given to the Bailiff. I'm often not able to do anything, not allowed to answer your questions, except by re-reading all of the jury instructions. Because the Court will give you these instructions, you may be able to answer your question by reviewing

them. If there's a break in deliberations, do not talk about this case among yourselves, or with anyone else. I'm submitting to you forms of possible verdicts that you may return. The foreperson should sign and date the verdicts to which you all agree. Do not sign any verdict form for which there is not unanimous agreement. Sign only one verdict form for each count. The foreperson must return all verdict forms signed or unsigned. When you've agreed upon a verdicts in this case, inform the Bailiff. When the parties are present you'll be brought back to the Court for the verdicts to be read. After you return the verdicts, you are under no obligation to discuss this case with anyone. You alternate Jurors in this case, Ms. Pressley, Ms. Vandeventer, you have been selected as alternates. Your duties are the same as those of regular jurors, except you must not participate in deliberations or voting in the jury, unless I direct you to do so. The Foreperson shall prevent alternate jurors from deliberating or voting with the jury. The foreperson shall promptly report any violation of this instruction to me. Thirty-three, these instructions do not contain any information concerning possible sentence. The Court alone is responsible for sentencing if there is a conviction. Thirty-four, members of the jury, this is submitted to you in confidence you will faithfully discharge your duty as jurors, without being moved by any undue demand for conviction, nor swayed from the proper performance of your duty by any appeal to your sympathy. Neither sympathy nor prejudice should influence you in your deliberations or verdict in this case. You should bear in mind that the liberty of the accused should not be trifled away nor taken by careless or inconsiderate judgment. But if after a careful consideration of the law and the evidence in this case, you're satisfied beyond a reasonable doubt the defendant

is guilty, you should return a verdict accordingly. Your duty demands that you be equally just to the defendant and the State. As citizens charged with the duty of assisting the Court in the administration of justice, put aside all consideration of public approval or disapproval, look steadfastly to the law and the evidence, and return your verdict or verdicts as warranted thereby. Verdict forms will be furnished for your use. A copy of the final instructions will also be furnished for your use during deliberations. You will now be in charge of the Bailiff. Madam Bailiff, will you approach please? Raise your right hand for me. Do you swear or affirm under the penalties of perjury to keep the jury in this case together in the jury room in this courthouse, to furnish them with food as directed by the Court. To permit no person to speak or communicate with them, or speak or communicate with them yourself only by order of the Court, or to ask whether they've agreed upon a verdict, and return them into Court when so agreed, or when so ordered by the Court. Do you further affirm you will not communicate to any person state of deliberations of the jury so help you God?

BY BAILIFF: I do.

THE COURT: With that you're in charge of the Bailiff. All rise, please.

(JURORS ARE EXCUSED FOR DELIBERATIONS)

THE COURT: Be seated. Anything for the record Mr. Lidy?

MR. LIDY: No, Judge.

THE COURT: Anything for the record Mr. Sonnega?

MR. SONNEGA: No sir.

THE COURT: All right. Stay close. Let's have phone numbers from you.

VERIFICATION OF AUTHENTICITY

I verify under penalty of perjury that the foregoing documents listed in this Appendix are true, authentic, and accurate copies of the original records and exhibits entered into evidence.

Executed on January 13, 2026.

Steven Ingalls

Steven Ingalls, Jr.
Petitioner-Affiant.