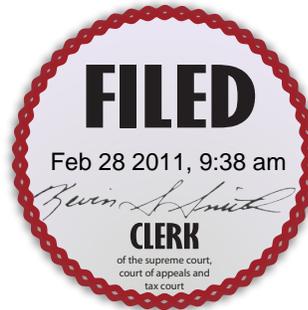


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

TYRONE L. JONES,)
)
 Appellant-Defendant,)
)
 vs.) No. 49A02-1006-PC-687
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark D. Stoner, Judge
Cause No. 49G06-0204-PC-103605

February 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Tyrone Jones, *pro se*, appeals the post-conviction court's denial of his petition for post-conviction relief. Jones raises two issues, which we revise and restate as:

- I. Whether Jones was deprived of a procedurally fair post-conviction hearing; and
- II. Whether Jones was denied the effective assistance of trial counsel.

We affirm.

The relevant facts as discussed in Jones's direct appeal follow:

In February 2002, Sam Alexander lived at the Lamplighter Apartments in Indianapolis. Alexander was fifty-five years old and weighed approximately 138 pounds. He walked with a limp and suffered from emphysema. Alexander and Jones used drugs together on occasion. In February 2002, Jones was thirty-three years old and weighed 230 pounds.

During the weekend of February 8, 2002, Jones and Annessa Harris were getting high on crack cocaine at Alexander's apartment. At some point, Alexander asked Jones and Harris to leave, and Harris left. Harris later saw Jones carrying Alexander's television, and when she inquired what Jones was doing with it, he stated that Alexander had "pawned it to him." Jones sold the television to a friend of Robert Crabtree. Crabtree and Harris both lived across the street from Alexander's apartment.

Harris went back to Alexander's apartment that night, and although she saw someone looking through the peephole of the door, no one answered. When she returned the next day, the door was locked and, again, no one answered. On Sunday, February 17, 2002, after noticing that Alexander's apartment lights were on all the time, Harris returned to Alexander's apartment with a friend. When she and her friend approached Alexander's door, they both smelled "a foul odor." Later that evening when she saw a police officer, Harris asked the officer to check on Alexander. At some point that weekend, Jones called Crabtree and asked him if he had a valid identification because Jones wanted to pawn a microwave.

Indianapolis Police Officer Stephen Hart arrived at Alexander's apartment and noticed a foul odor. When he could not gain entry into the apartment, he called for the fire department to bring a ladder. Once firemen arrived, they gained entry into Alexander's apartment through the back door. They discovered Alexander's body on the floor. His hands had been tied behind his back, his feet tied at the ankles, and a piece of cloth had been tied over his mouth as a gag. Alexander's body was in an advanced stage of decomposition.

On February 18, 2002, forensic pathologists at Indiana University examined Alexander's body and prepared an autopsy report for the Marion County Coroner. Dr. Dean Hawley, a forensic pathologist at IU, testified regarding the findings in that report. Specifically, he confirmed that Alexander's body was in an advanced stage of decomposition and described three types of wounds: lacerations to the head, a skull fracture which caused both carotid arteries to tear, and ligature bonding of the mouth, wrists and ankles. Dr. Hawley stated that Alexander died from blunt force injury to the head. He also stated that as a result of the skull fracture that damaged his arteries, Alexander would have experienced profuse bleeding from his ears, nose and mouth. He testified that the skull fracture was consistent with Alexander's head being struck against a concrete wall and, although possible, he doubted that the fracture would have been the result of a person's fist. He also described at great length how tight Alexander's wrists, ankles and mouth had been bound with various items, including a leather belt, an electrical cord, a cloth belt from a bathrobe, and other pieces of cloth. He stated further that Alexander could have died within minutes of sustaining the blunt force head injury.

During a police investigation, Harris identified Jones as the person who had been in Alexander's apartment when she had last seen Alexander alive.

Jones v. State, No. 49A02-0305-CR-416, slip op. at 2-4 (Ind. Ct. App. February 11, 2004) (internal citations omitted). Indianapolis Police Detective Charles Benner discovered that Jones was wanted for three warrants. On April 10, 2002, Jones was found and brought to police headquarters. Jones signed a form dated April 10, 2002, that contained an "ADVICE OF RIGHTS" and "WAIVER OF RIGHTS." State's Trial

Exhibit 47. Detective Benner interviewed Jones and noticed that the soles of his shoes appeared to be the same shoe print that he saw on a pillowcase. Detective Benner asked if he could take Jones's clothing and shoes, and Jones said yes. The police also interviewed Jones twice on April 11, 2002, and Jones gave two statements.

In his first statement, Jones admitted that he had spent the weekend of February 8 at Alexander's apartment. He denied that he had taken any of Alexander's things and claimed he did not know what had happened to Alexander.

In his second statement, however, Jones stated Alexander had agreed to give Jones his television in exchange for drugs. According to Jones, at some point, Alexander wanted more drugs, became angry and came at him with a pocketknife. Jones stated that he pushed Alexander, that Alexander's head hit the wall, and that Jones then hit him in the head with his fists a few times. Alexander was unconscious, and Jones stated that he gathered his things and left. He then returned and took the television. He stated that he returned a third time and decided to bind Alexander's hands and feet and gag his mouth. He stated that he sold the television to a man who lived across the street from Alexander but denied taking the microwave.

Slip op. at 4-5.

The State charged Jones with murder, felony murder, robbery as a class A felony, and criminal confinement as a class B felony. Id. at 2. At the bench trial, Jones's counsel argued self-defense. The State moved to admit a Laboratory Examination Report dated February 27, 2003, alleging that the DNA profile from Jones's shoe matched Alexander's DNA profile. Jones's trial counsel stated "since there's no real issue about Mr. Jones' presence in the apartment on, on the day that the incidents that give rise to this charge occurred . . . we stipulate to" the admission of the Laboratory Examination Report. Trial

Transcript at 164. Following the bench trial, the court found him guilty on all charges. Slip op. at 2. The court then merged the murder, robbery and criminal confinement counts into the felony murder count and entered judgment of conviction on felony murder. Id. The court sentenced Jones to a term of sixty-five years. Id.

On appeal, Jones argued that the State presented insufficient evidence to sustain his convictions for murder and felony murder and that the trial court erred when it imposed sentence. Id. This court affirmed. Id.

On June 25, 2004, Jones filed a petition for post-conviction relief which was withdrawn without prejudice on June 29, 2006. On January 17, 2007, Jones filed a second petition for post-conviction relief. On June 1, 2009, Jones filed a Memorandum of Law in Support of Petitioner's Amended Petition for Post-Conviction Relief. Jones alleged that his trial counsel was ineffective on ten separate grounds.

The record reveals a CCS entry dated August 28, 2008, which states that Jones filed a Request for Issuance of Subpoenas Duces Tecum on July 18, 2008, and the court denied the motion.¹ October 17, 2008, Jones filed a Motion to Reconsider Request for Subpoena Duces Tecum, and the court granted the motion and issued a subpoena duces tecum by registered mail.² The court granted Jones's request for a subpoena duces tecum and issued a subpoena to ZLB Bioplasma, Inc. The subpoena commanded ZLB Bioplasma, Inc. to produce a copy of any and all medical or business records pertaining

¹ The record does not contain Jones's request or the court's order.

² The record does not contain Jones's request or the court's order.

to the donation of plasma made by Jones between February 1, 2002, and February 17, 2002. On January 7, 2009, the court received subpoenaed records from ZLB Bioplasma, Inc.

On January 16, 2009, Jones filed a Motion for Action/Subpoena Duces Tecum requesting that the court order ZLB Bioplasma, Inc. to deliver “the plasma donation records, specifically sign in sheet of time petitioner signed in” Appellant’s Appendix at 132. Jones’s affidavit attached to his motion stated: “Plasma donation records are required for the post-conviction relief claim for the following reason(s): Records of Medline Plus would place petitioner there at the time State’s witness claimed to have spoken to Petitioner in reference to a stolen microwave, which the Court ultimately relied upon to convict him.” Id. at 142-143. On January 21, 2009, the court issued an order denying Petitioner’s Motion for Action/Subpoena Duces Tecum.

On September 3, 2009, and October 29, 2009, the court held hearings on Jones’s petition. On January 7, 2010, the court informed the parties that they were to submit proposed findings of fact and conclusions no later than March 31, 2010. A chronological case summary (“CCS”) entry dated April 1, 2010, indicates that the State filed a motion for enlargement of time and the court extended the deadline until May 3, 2010.³ A CCS entry dated May 7, 2010, indicates that the State filed a motion for enlargement of time on May 6, 2010. The court granted the motion and indicated that the State had until May

³ The CCS entry does not specify the date of the motion filed by the State, and the record does not contain the State’s motion.

21, 2010 to file proposed findings of fact. At some point, Jones filed a written objection to the court's grant of extension of time to the State.⁴ A CCS entry dated May 21, 2010 states:

THE OBJECTION INCORRECTLY CLAIMS THAT THE STATE OF INDIANA HAS NOT SOUGHT AN EXTENSION OF TIME FROM THE PRIOR DEADLINE OF MAY 3, 2010. THE COURT PREVIOUSLY GRANTED AN ADDITIONAL EXTENTION [sic] THROUGH MAY 21, 2010. THE OBJECTION REQUESTS THAT THE COURT FIND THE ARGUMENTS IN THE PETITION FOR POST CONVICT RELIEF. THE COURT DENIES THIS REQUEST. THE COURT WILL TAKE THE MATTER UNDER ADVISEMENT UPON RECEIPT OF THE STATE'S PROPOSED FINDINGS AND CONCLUSIONS.

Id. at 40. On May 21, 2010, the State filed its proposed findings of fact and conclusions of law. In June 2010, the court denied Jones's petition in a nineteen-page order.

Before discussing Jones's allegations of error, we note that although Jones is proceeding *pro se*, such litigants are held to the same standard as trained counsel and are required to follow procedural rules. Evans v. State, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), trans. denied. 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

⁴ The record does not contain a copy of Jones's written objection.

whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court. Id. Further, the post-conviction court in this case entered findings of fact and conclusions thereon in accordance with Indiana Post-Conviction Rule 1(6). 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.

The first issue is whether Jones was deprived of a procedurally fair post-conviction hearing. Jones argues that the post-conviction court was biased. Indiana law presumes that a judge is unbiased and unprejudiced. Everling v. State, 929 N.E.2d 1281, 1287 (Ind. 2010); Ind. Judicial Conduct Canon 2.2 (“A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.”). To rebut this presumption, a defendant must establish from the judge’s conduct actual bias or prejudice that places the defendant in jeopardy. Everling, 929 N.E.2d at 1287. Jones argues that the court was biased against him on a number of grounds.

A. Comment During the Hearing

During Jones’s direct examination of Detective Benner regarding Jones’s shoes and whether Jones had given consent to the police to take his shoes, the court made the following statement: “If you’re successful in showing you didn’t give consent, which,

quite frankly, I don't think you're successful at this point." Post-Conviction Transcript at 238. Jones argues that this statement "demonstrates bias for multiple reasons." Appellant's Brief at 32. Jones argues that the State did not argue consent and that the court "ruled in conformity with its expressed predetermined opinion regarding this particular issue." Id. We cannot say that Jones has established actual bias or prejudice that placed him in jeopardy by the court's mere comment informing Jones of the court's view of the evidence at a certain point in the hearing.

B. Denial of Subpoena

Jones argues that the court denied his request for a subpoena to obtain the sign-in sheets from ZLB Bioplasma, Inc. and then faulted him for "not demonstrating the time of his arrival at ZLB Bioplasma, Inc. and the duration of his stay there."⁵ Appellant's Brief at 33. Jones argues that "[t]he Court thus prevented Jones from obtaining, through compulsory process, the evidence he needed to demonstrate his claims yet subsequently faulted him for failing to introduce this evidence." Id. The State argues that "[t]he post-conviction court issued the subpoena requesting any and all documentation regarding Jones' donation history at the blood donation center." Appellee's Brief at 21. The State argues that "[h]aving already issued an all-encompassing document request, the post-conviction court acted within its discretion in refusing to issue further requests for documents to a third party." Id.

⁵ We observe that Jones's Motion for Action/Subpoena Duces Tecum did not request documents relating to the duration of time that Jones was present at ZLB Bioplasma, Inc.

It is within the post-conviction court's discretion to determine whether to grant or deny a petitioner's request for a subpoena. Allen v. State, 791 N.E.2d 748, 756 (Ind. Ct. App. 2003), trans. denied. "An abuse of discretion has occurred if the court's decision is against the logic and effect of the facts and circumstances before the court." Id.

The record reveals that the court issued a subpoena duces tecum which commanded ZLB Bioplasma, Inc. to produce:

A copy of any and all MEDICAL AND/OR BUSINESS RECORDS including but not limited to plasma donation records, office notes, lab reports, invoices, nurse's and doctor's notes, letters of protection, waivers, narrative reports and all remaining documents in your possession pertaining to the donation of plasma made by TYRONE L. JONES on any dates between February 1, 2002 and February 17, 2002.

Appellant's Appendix at 138. On January 7, 2009, the court received subpoenaed records from ZLB Bioplasma, Inc.

On January 16, 2009, Jones filed a Motion for Action/Subpoena Duces Tecum requesting that the court order ZLB Bioplasma, Inc. to deliver "the plasma donation records, specifically sign in sheet of time petitioner signed in" and stating that he did not receive the "sign in sheet of times of donors [sic] arrival to the business." Id. at 132. On January 21, 2009, the court issued an order denying Jones's motion because Jones had not shown that such a document was in possession of the business. The court stated: "Should [Jones] demonstrate that ZLB Bioplasma is, or is likely to be, in possession of said document, the Court will reconsider the request." Id. at 131.

In summary, the trial court issued a broad subpoena duces tecum commanding ZLB Bioplasma, Inc. to submit a copy of “any and all” medical or business records pertaining to Jones’s donation. Jones does not argue that he demonstrated that ZLB Bioplasma, Inc. was or was likely to be in possession of said document after the court stated that he could do so. Further, Crabtree testified that he saw Jones on a Tuesday morning and that Jones asked him if he had any identification because Jones had a microwave he was trying to pawn, but Jones does not point to the record to support what time Crabtree saw Jones. Thus, even if ZLB Bioplasma, Inc. provided a time that Jones signed in at its business such evidence alone would not have impeached Crabtree’s testimony. Under the circumstances, we cannot say that Jones has established actual bias or prejudice.

C. Denial of Objection

Jones appears to argue that the court erroneously denied his objection to the belated extension of time sought by the State. Specifically, Jones argues that “[t]he effect of a default is that the *facts* alleged are deemed true.” Appellant’s Brief at 33. Jones argues that “[a]lthough the State might have been able to show cause to excuse the default, the court did not require this.” Id. Lastly, Jones argues that “[t]he Court also did not provide Jones with sufficient time to respond to the State’s motion, granting the belated motion as a matter of course.” Id. The State argues that “Trial Rule 52(C) pertaining to proposed findings of fact and conclusions thereon does not provide for

automatic judgment against a party who does not timely file its proposed facts and conclusions.” Appellee’s Brief at 21-22.

Jones does not point to the record to support his implication that a default was granted. Jones also does not develop a cogent argument to support his statements that a default judgment should have been entered. Consequently, this issue is waived. See, e.g., 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”); Shane v. State, 716 N.E.2d 391, 398 n.3 (Ind. 1999) (holding that the defendant waived argument on appeal by failing to develop a cogent argument).

D. Court’s Order

Jones argues that “[t]he Court’s bias is further demonstrated by the post-conviction court’s admission that Jones had met his burden.” Appellant’s Brief at 33. Jones points to the court’s statement that “Jones has shown that his employer’s testimony would have produced a different result.” Id. The State points out that “[t]hat conclusion of law came after the post-conviction court’s conclusion that the employer’s testimony did not establish an alibi for Jones and before its conclusion that the blood donation center’s records did not establish an alibi either.” Appellee’s Brief at 21. The State continues: “Thus, when viewed in context, it is apparent that the quoted passage contained a scrivener’s error and was not illustrative of any post-conviction court bias.”

Id.

The court’s order stated:

74. As previously found by the Court, Wade's testimony does not establish an alibi for Jones. Even assuming his attorneys did not contact Wade, Jones has shown that his employer's testimony would have produced a different result at trial.

75. Similarly, the records contained from Aventis Bio-Services do not establish an alibi for Jones. While Petitioner's Exhibit 6 indicates that Jones was at the plasma facility on February 11, 2002, the time of his arrival and the length of his stay are not noted.

76. Jones has not shown that admission of this exhibit at trial would have affected the result. He cannot prevail on his claim that he received ineffective assistance because counsel failed to call available witnesses. *See Brown v. State*, 691 N.E.2d 438, 447 (Ind. 1998) ("A decision regarding what witnesses to call is a matter of trial strategy which an appellate court will not second-guess.").

Appellant's Appendix at 61. Given the context of the court's statement, we agree with the State that the passage contained a scrivener's error and was not illustrative of any post-conviction court bias.

E. Cumulative Effect

Jones argues that the cumulative effect of these errors clearly demonstrates that he was denied a procedurally unfair hearing. Jones also argues that "this Court should remand this matter for consideration by a different judge, thereby providing Jones with the opportunity to litigate his case in a procedurally fair setting." Appellant's Brief at 34. We cannot say that the cumulative effect of the alleged errors demonstrates that Jones was denied a procedurally unfair hearing.

II.

The next issue is whether Jones was denied the effective assistance of trial 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. Ben-Yisrayl v. State, 729 N.E.2d 102, 106 (Ind. 2000) (citing Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984), reh'g denied), reh'g denied, cert. denied, 534 U.S. 830, 122 S. Ct. 73 (2001). A counsel's performance is deficient if it falls below an objective standard of reasonableness based on prevailing professional norms. French v. State, 778 N.E.2d 816, 824 (Ind. 2002). 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. 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 824. Most ineffective assistance of counsel claims can be resolved by a prejudice inquiry alone. Id.

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). “When an ineffective assistance of counsel claim is based on trial counsel’s failure to make an objection, the appellant must show that, had a proper objection been made, it would have been sustained.” Sauerheber v. State, 698 N.E.2d 796, 807 (Ind. 1998).

Jones argues that his trial counsel was ineffective on several grounds.

A. Self-Defense

Jones argues that his “attorneys were ineffective for utilizing the claim of self-defense.” Appellant’s Brief at 11. Jones argues that “[t]his defense required counsel to concede Jones’s guilt, thereby guaranteeing conviction in this case.” Id. Jones states that he “maintained his innocence with regard to this matter,” and “did not want to use the defense of self-defense.” Id. at 12-13. Jones also argues that “[t]his course of action mandated that the attorneys concede Jones’s guilt over his explicit objection.” Id. at 11. Jones notes: “Although Jones’s objection is not specifically outlined in the Record, Jones filed a Motion to Dismiss Counsel as a result of his fundamental disagreement with counsel regarding this defense.” Id. at 11 n.1.

Our review of the record reveals that Jones filed a motion to dismiss counsel on September 19, 2002, which stated that a strong conflict of interest existed between Jones and his counsel but makes no mention of the substance of the conflict of interest or

Jones's desire to not argue self-defense. Jones does not cite to the record to support his arguments that he maintained his innocence, that he did not want to argue self-defense, or that his motion to dismiss counsel was the result of a disagreement with counsel regarding this defense. We cannot say that Jones has demonstrated that his counsel's performance was deficient. Accordingly, his claim of ineffective assistance on this basis fails.

Jones also argues that self-defense was not an available defense for felony murder. Jones argues that self-defense was not applicable because "the amount of force cannot be said to be reasonable," "the murder in this case was the direct result of criminal activity," and because he "voluntarily entered into combat with the victim." Appellant's Brief at 15-16. The State argues that Jones is correct that self-defense is not a viable defense where the defendant is in the midst of committing a crime such as robbery but that "self-defense is a viable defense to murder, another charge that the State had filed against Jones." Appellee's Brief at 14.

Jones's counsel testified that he thought that Jones's best chance at trial was to raise self-defense and that he pursued the defense based upon one of Jones's statements to police and from his discussions with Jones. During examination by Jones, Jones's counsel recalled that Jones's statement to the police was that Jones was "with the fellow who ended up getting dead, that there was some kind of argument, he came at you with a knife, you pushed him up against the wall, and he hit his head." Post-Conviction Transcript at 193-194. Jones's counsel also testified: "I know that if you're committing a

robbery you can't assert self-defense. Our contention was there had been no robbery, or the State could not prove that there had been a robbery.” Id. at 194. Jones’s counsel also characterized the State’s case on the charge of robbery as “weak” because “while there may have been some evidence where somebody saw you at some point in time with a microwave, they couldn’t relate it to the day that the victim was killed.” Id. at 202.

We also observe that Jones’s statements to the police were admitted at trial. Jones told the police that Alexander pulled a pocket knife on Jones when Jones told Alexander that he did not have any drugs. According to Jones, Alexander stood up and Jones thought he was going to “try to do something you know, to [him] with the knife so [he] knocked the knife out of his hand and pushed him over, and he fell against the wall and hit his head” State’s Exhibit 51 at 6.

Under the circumstances, we cannot say that the decision of Jones’s trial counsel to argue a theory of self-defense was unreasonable or constituted ineffective assistance. See Terry v. State, 563 N.E.2d 1301, 1305 (Ind. Ct. App. 1990) (holding that it was reasonable for defendant’s counsel to present a theory of self-defense).

B. Admission of Evidence

Jones appears to argue that his trial counsel was ineffective for failing to file a motion to suppress or object to the admission of his shoes and clothes.⁶ Jones argues that

⁶ Jones appears to focus his arguments on the admission of his clothes and shoes. Jones also states that “all of the inculpatory evidence was admissible” and that “the statements were inadmissible.” Appellant’s Brief at 22. To the extent that Jones challenges evidence other than his shoes and clothes, we conclude that Jones fails to put forth a cogent argument. Consequently, this issue is waived. See, e.g., Cooper, 854 N.E.2d at 834 n.1 (holding that the defendant’s contention was waived because it was

his trial attorneys “should have challenged the admissibility of evidence based upon the legal doctrines enunciated in” Pirtle v. State, 263 Ind. 16, 323 N.E.2d 634 (1975), and Sims v. State, 274 Ind. 495, 413 N.E.2d 556 (1980). Appellant’s Brief at 18. Jones argues that “the theory of self-defense resulted from [his] statements to the police,” and that “[t]hose incriminating statements were the poisonous fruits of the illegal, warrantless seizure of Jones’s clothes and shoes.” Id. at 22.

The State argues that “the *Pirtle* doctrine only applies when a defendant is asked for consent to an unlimited search,” and that Detective Benner asked Jones for his shoes and clothes, “which was not a request for an unlimited search of Jones’ person, his automobile, or his dwelling.” Appellee’s Brief at 16. The State also argues that “Jones conceded that he was at Alexander’s home that evening, and, thus, his defense was not negatively impacted by any evidence related to his shoes.” Id.

Jones does not develop a cogent argument that the mere admission of his shoes or clothing prejudiced him. As the State points out, Jones admitted to being present in Alexander’s apartment and striking him. To the extent that Jones suggests that his statements to the police claiming self-defense were the poisonous fruits of the seizure of his clothes and shoes, Jones does not argue that these statements were obtained as a direct result of the search of his shoes and clothing. Further, we note that the Laboratory Examination Report indicating that the DNA profile from Jones’s shoe matched Alexander’s DNA profile was dated February 27, 2003, well after Jones’s statements to

“supported neither by cogent argument nor citation to authority”); Shane, 716 N.E.2d at 398 n.3 (holding that the defendant waived argument on appeal by failing to develop a cogent argument).

the police in April 2002. We cannot say that Jones has demonstrated that he was prejudiced by the admission of his shoes or clothing. Accordingly, his claim of ineffective assistance on this basis fails.

C. Failure to Investigate

Jones appears to argue that his trial counsel failed to investigate evidence that would have challenged Crabtree's testimony. Without citation to the record, Jones states that "Crabtree had testified that Jones asked him if he had valid identification that could be used to pawn a microwave . . . between 10:30 a.m. and 11:00 a.m." Appellant's Brief at 26. Our review of the record reveals that Crabtree testified at trial that he met Jones in February 2002, that he saw Jones on a Tuesday morning following the night he had first met Jones, and that Jones asked him if he had any identification because Jones had a microwave he was trying to pawn.

Jones argues that his trial counsel "failed to interview available witnesses and investigate his whereabouts." Id. Specifically, Jones contends that counsel should have subpoenaed the keeper of the records of ZLB Bioplasma, Inc., who "would have testified, coupled with company records, that Crabtree could not have seen Jones on the morning of February 11, 2002 because Jones was donating plasma at the time." Id. Jones argues that his trial counsel should have called Carlos Wade. Without citation to the record, Jones states that "Wade testified at the post-conviction hearing that he picked Jones up at 10:30 a.m. on February 11, 2002, and picked him up between 8:00 a.m. and 9:00 a.m. on February 12, 2002." Id. Jones argues that he was with Wade at that time on both

February 11 and 12, 2002. Jones concludes that “[i]f Jones was at work with Wade at 10:30 a.m., he did not have a conversation with Crabtree.” Id. Jones also argues that Crabtree was arrested on February 12, 2002, and that his trial counsel “could have shown that Crabtree was in jail at the time he alleges having a conversation with Jones.” Id. at 27. Jones cites to a copy of Crabtree’s criminal history which contains a date of arrest of February 12, 2002, but does not reveal the time of the arrest.⁷

The post-conviction court’s relevant findings follow:

21. The next day, which Crabtree testified was a Tuesday, Crabtree encountered Jones who asked for assistance in pawning a microwave. [Trial Transcript] at 63-65.
22. This conversation took place sometime in the morning. *Id.* at 63. The approximate time is not known from the evidence.
23. Based upon the evidence, the Court infers that this conversation took place on Tuesday, February 12, 2002.⁸

⁷ Specifically, Petitioner’s Exhibit 3 contains a column titled:

DATE OF ARREST
OR SUMMONS
ARREST TYPE
BOOKING NAME

Petitioner’s Exhibit 3. Under that heading is the following entry:

02/12/02
OUT
CRABTREE
ROBERT
V

Id.

⁸ Jones would appear to agree with the dates as found by the Court. At the evidentiary hearing, Jones asked questions of witness Carlos Wade about February 12, 2002, as it related to Jones’ availability to speak to Crabtree about the microwave.

* * * * *

36. Despite Jones' assertions to the contrary, Wade's testimony does not provide him with a complete alibi for either February 11 or 12, 2002. Based upon the evidence presented at trial, the exact time of Alexander's death is unknown and the conversation between Crabtree and Jones regarding a microwave could easily have taken place prior to the time Wade picked up Jones for work on the morning of the 12th.

* * * * *

55. Jones has failed to provide credible evidence of an alibi for either the time of the killing or the subsequent conversation with Robert Crabtree regarding the need to pawn a microwave.
56. Jones claims that Crabtree was incarcerated in the Marion County Jail on February 12, 2002. To that end, Jones has admitted a copy of Crabtree's Marion County criminal history. *See Petitioner's Exhibit 3*. He contends that this proves Crabtree could not have engaged him in a conversation about pawning the microwave on February 12th.
57. This argument fails for a variety of reasons. Crabtree never testified at trial that this conversation took place on February 12, 2002. He only mentioned that it was Tuesday, or the next day, following his initial contact with Jones.
58. Even assuming this conversation took place on February 12th, Exhibit 3 indicates only that Crabtree was arrested on February 12, 2002. The time of his arrest is not noted. It is entirely plausible that Crabtree could have had this conversation with Jones in the morning hours, as he claimed, and been arrested later on the same day.
59. Similarly, Jones' claim of an alibi for February 11, 2002 fails.
60. Petitioner's Exhibit 6 shows that at some point in the day on February 11th, Jones had an appointment at Aventis Bio-Services (formerly ZLB Bioplasma, Inc.), which the Court knows to be a

facility where patients donate blood plasma for money. The time and duration of Jones' appointment is not shown on the exhibit.

61. The evidence at trial suggests that Alexander was killed in the early morning hours of February 11th. Jones would have had ample time to present himself at the plasma clinic later in the day during regular business hours.

Appellant's Appendix at 53-58.

Based upon our review of the record, we agree with the post-conviction court's findings and conclusions that Wade's testimony, Crabtree's criminal history, and the blood donation records do not demonstrate that there was a reasonable probability that the result of the proceeding would have been different.⁹ Accordingly, Jones's claim of ineffective assistance fails.

For the foregoing reasons, we affirm the post-conviction court's denial of Jones's petition for post-conviction relief.

Affirmed.

RILEY, J., concurs.

ROBB, C.J., concurs in result.

⁹ Jones also appears to argue that his trial and appellate counsel were ineffective for failing to object to prosecutorial misconduct on the basis that Crabtree's testimony was false because Crabtree was in jail at the time of his conversation with Jones. We do not find Jones's argument persuasive because Crabtree's criminal history did not contain the time that he was arrested.