IN THE SUPREME COURT OF IOWA
Supreme Court No. 20-0786

JAMES FARNSWORTH II,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR CERRO GORDO COUNTY
THE HONORABLE CHRIS FOY, JUDGE

APPELLEE'S BRIEF

THOMAS J. MILLER
Attorney General of Iowa

KYLE HANSON
Assistant Attorney General
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319
(515) 281-5976
(515) 281-4902 (fax)
kyle.hanson@ag.iowa.gov

CARLYLE DALEN
Cerro Gordo County Attorney

ATTORNEYS FOR RESPONDENT-APPELLEE

FINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES 4

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW 6

ROUTING STATEMENT 8

STATEMENT OF THE CASE 8

ARGUMENT 11

I. Farnsworth Failed to Prove Ineffective Assistance from Trial Counsel's Choice Not to Hire an Independent Forensic Pathologist. 11

A. Hiring an independent pathology expert was not the only reasonable course of action. 13

B. An independent expert would not have overcome all of the evidence disproving the self-defense theory. 18

II. Farnsworth Failed to Prove Ineffective Assistance Just Because Trial Counsel Did Not Mention the Phrase "Reasonable Doubt" During Closing Arguments 25

III. Farnsworth Failed to Prove Ineffective Assistance Because the Prosecutor's Closing Argument Accurately Stated the Law and Because Sufficient Evidence Proved Farnsworth "Started or Continued" the Fatal Incident. 30

IV. Farnsworth Failed to Prove His Miscellaneous Ineffective Assistance Complaints. 38

A. Farnsworth failed to prove his attorney was incompetent or was burdened by a conflict of interest. 41

B. Farnsworth was not harmed by his attorney's efforts to secure more favorable bond conditions. 44

C. Farnsworth failed to prove that any unsequestered trial witnesses caused prejudice. 45

D. Farnsworth never would have accepted the supposed plea offer. 46

E. Counsel had no duty to object to the prosecutor's correct statement about jury unanimity. 48

F. Farnsworth did not prove ineffective cross examination of the medical examiner. 48

G. Farnsworth did not prove counsel delivered in ineffective closing argument. 50

H. Farnsworth was not prejudiced by any of counsel's shortcomings on direct appeal. 51

I. Farnsworth fails to demonstrate "cumulative error." 52

CONCLUSION 53

REQUEST FOR NONORAL SUBMISSION 53

CERTIFICATE OF COMPLIANCE 54

TABLE OF AUTHORITIES

Federal Cases

Mickens v. Taylor, 535 U.S. 162 (2002) 42

Missouri v. Frye, 566 U.S. 134 (2012) 47

Strickland v. Washington, 466 U.S. 668 (1984) 11, 12

State Cases

Cuevas v. State, 415 N.W.2d 630 (Iowa 1987) 32

Dempsey v. State, 860 N.W.2d 860 (Iowa 2015) 46

Hart v. State, 448 N.W.2d 682 (Iowa Ct. App. 1989) 46

State v. Artzer, 609 N.W.2d 526 (Iowa 2000) 51

State v. Bratthauer, 354 N.W.2d 774 (Iowa 1984) 33

State v. Coffman, 562 N.W.2d 766 (Iowa Ct. App. 1997) 35, 36

State v. Farnsworth, No. 13-0401, 2014 WL 2884732 (Iowa Ct. App. June 25, 2014) 32, 35, 43, 51

State v. Fordyce, 940 N.W.2d 419 (Iowa 2020) 35

State v. Hernandez, No. 05-0051, 2005 WL 3115850 (Iowa Ct. App. Nov. 23, 2005) 17

State v. Letscher, 888 N.W.2d 880 (Iowa 2016) 44

State v. MacLaird, No. 08-1559, 2009 WL 2960408 (Iowa Ct. App. Sept. 2, 2009) 35

State v. Marhal, 493 N.W.2d 758 (Wis. Ct. App. 1992) 52

State v. McKinley, 860 N.W.2d 874 (Iowa 2015) 42

State v. Meek, No. 16-0797, 2017 WL 706334 (Iowa Ct. App. Feb. 22, 2017) 52

State v. Mulatillo, 907 N.W.2d 511 (Iowa 2018) 42

State v. Musser, 721 N.W.2d 734 (Iowa 2006) 47

State v. Proctor, 585 N.W.2d 841 (Iowa 1998) 29

State v. Smitherman, 733 N.W.2d 341 (Iowa 2007).....41

State v. Straw, 709 N.W.2d 128 (Iowa 2006).....11, 25, 30, 38

State v. Taggart, 430 N.W.2d 423 (Iowa 1988) 34

State Statute

Iowa Code § 704.6(2) 19

State Rule

Iowa R. Prof'l Conduct 32:1.1.....41

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether the Applicant Failed to Prove Ineffective Assistance from Trial Counsel's Choice Not to Hire an Independent Forensic Pathologist.

Authorities

Strickland v. Washington, 466 U.S. 668 (1984)
State v. Hernandez, No. 05-0051, 2005 WL 3115850 (Iowa Ct. App. Nov. 23, 2005)
State v. Straw, 709 N.W.2d 128 (Iowa 2006)
Iowa Code § 704.6(2)

II. Whether the Applicant Failed to Prove Ineffective Assistance Just Because Trial Counsel Did Not Mention the Phrase "Reasonable Doubt" During Closing Arguments.

Authorities

State v. Proctor, 585 N.W.2d 841 (Iowa 1998)
State v. Straw, 709 N.W.2d 128 (Iowa 2006)

III. Whether the Applicant Failed to Prove Ineffective Assistance When the Prosecutor's Closing Argument Accurately Stated the Law and When Sufficient Evidence Proved the Applicant "Started or Continued" the Fatal Incident.

Authorities

Cuevas v. State, 415 N.W.2d 630 (Iowa 1987)
State v. Bratthauer, 354 N.W.2d 774 (Iowa 1984)
State v. Coffman, 562 N.W.2d 766 (Iowa Ct. App. 1997)
State v. Farnsworth, No. 13-0401, 2014 WL 2884732 (Iowa Ct. App. June 25, 2014)

State v. Fordyce, 940 N.W.2d 419, 425–26 (Iowa 2020)
State v. MacLaird, No. 08-1559, 2009 WL 2960408 (Iowa Ct. App. Sept. 2, 2009)
State v. Straw, 709 N.W.2d 128 (Iowa 2006)
State v. Taggart, 430 N.W.2d 423 (Iowa 1988)

IV. Whether the Applicant Failed to Prove His Miscellaneous Ineffective Assistance Complaints.

Authorities

Mickens v. Taylor, 535 U.S. 162 (2002)
Missouri v. Frye, 566 U.S. 134 (2012)
Dempsey v. State, 860 N.W.2d 860 (Iowa 2015)
Hart v. State, 448 N.W.2d 682 (Iowa Ct. App. 1989)
State v. Artzer, 609 N.W.2d 526 (Iowa 2000)
State v. Farnsworth, No. 13-0401, 2014 WL 2884732 (Iowa Ct. App. June 25, 2014)
State v. Letscher, 888 N.W.2d 880 (Iowa 2016)
State v. Marhal, 493 N.W.2d 758 (Wis. Ct. App. 1992)
State v. McKinley, 860 N.W.2d 874 (Iowa 2015)
State v. Meek, No. 16-0797, 2017 WL 706334 (Iowa Ct. App. Feb. 22, 2017)
State v. Mulatillo, 907 N.W.2d 511 (Iowa 2018)
State v. Musser, 721 N.W.2d 734 (Iowa 2006)
State v. Smitherman, 733 N.W.2d 341 (Iowa 2007)
State v. Straw, 709 N.W.2d 128 (Iowa 2006)
Iowa R. Prof'l Conduct 32:1.1

ROUTING STATEMENT

This case can be decided based on existing legal principles. Transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

Applicant James Farnsworth appeals the denial of postconviction relief concerning his 2013 conviction for second-degree murder.

Course of Proceedings

The State accepts the applicant's statement of the course of proceedings as substantially correct.

Facts

Applicant James Farnsworth slapped his girlfriend, Victoria Miller, in a Mason City bar. *State v. Farnsworth*, No. 13-0401, 2014 WL 2884732, at *1 (Iowa Ct. App. June 25, 2014). Miller had received a "smiley face" text message from ex-boyfriend Ian Decker, who was the father of her child. *Id.* Miller broke up with Farnsworth, and she and her friends told him to leave. *Id.*

The group decided to return to one friend's apartment. *Id.* When the left, they discovered that Farnsworth was waiting around

the corner from the bar. *Id.* They told him to leave. *Id.* Undeterred, Farnsworth continued following the group. *Id.* Miller's friend then kicked Farnsworth in the crotch, dropping him to the ground. *Id.* However, Farnsworth got up and ran ahead of the group to the apartment building. *Id.*

Farnsworth was not allowed inside the apartment with the group, but he continued sending numerous text messages to Miller. *Id.* She responded by telling him to leave and that "[e]veryone wants to beat the f*** out of you." *Id.* Farnsworth walked away from the door, out of sight. *Id.*

Decker was invited over to the apartment, so Miller and her friend went outside to wait for him. *Id.* When Decker arrived, Farnsworth emerged from around the corner of the building and again asked to speak with Miller, who refused. *Id.* Miller and Decker again told Farnsworth to leave, so Farnsworth got in his car and sped away. *Id.*

A few minutes later, Farnsworth "came barreling back down the street" as other guests were leaving. *Id.* Miller again told Farnsworth to leave, but Farnsworth approached Miller until a male friend stepped between them. *Id.* Farnsworth threatened, "If Ian [Decker]

tries anything, I'm going to f****** stab him." *Id.* Farnsworth kept a knife in the center console of his car, but he was not known to carry it in his pocket. *Id.* at *1 n.1.

Decker, who was standing around the corner, appeared angry upon hearing Farnsworth arguing with Miller. *Id.* at *2. Decker walked around the corner and threw the first punch at Farnsworth. *Id.* The two men continued fighting and grappled on the ground, but both got back up. *Id.* Decker was hunched over Farnsworth at one point, but Farnsworth was able to throw him off. *Id.* When Decker stood up, he lifted his shirt to reveal blood streaming down his chest. *Id.*

Farnsworth stood there briefly before getting in his car and driving away. *Id.* Decker suffered a stab wound to his chest, a stab to his thigh, and a cut on his forearm. *Id.* He bled to death on the sidewalk from the stab wound that pierced his heart. *Id.*

Police stopped Farnsworth. *Id.* He reported that Decker had punched him four or five times, so he pulled the knife from his pocket and "flung" it around. *Id.* He had some visible injuries, but he refused medical treatment. *Id.* Later, he was taken to the hospital, where a neurological exam ruled out a head injury. *Id.* He "perhaps" had a

broken nose, but he refused an x-ray and declined further treatment. *Id.*

Following a jury trial, Farnsworth was found guilty of second-degree murder. *Id.*

Additional facts relevant to Farnsworth's various postconviction claims will be discussed in the argument below.

ARGUMENT

I. Farnsworth Failed to Prove Ineffective Assistance from Trial Counsel's Choice Not to Hire an Independent Forensic Pathologist.

Preservation of Error

The State does not challenge error preservation. Farnsworth raised the expert-witness issue and received an adverse ruling in the district court. Ruling (4/24/2020) at 7; App. 38.

Standard of Review

Claims of ineffective assistance of counsel are reviewed de novo. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006).

"The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984). A defendant claiming ineffective assistance must prove both

that counsel's performance was deficient and that prejudice resulted. *Id.* at 687.

Under the first prong, the defendant must show counsel's representation fell below an objective standard of reasonableness. *Id.* at 687–88. The reviewing court must be highly deferential to counsel's performance, avoid judging in hindsight, and "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. To prove the second prong, "[t]he defendant 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.* at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*

Discussion

Hiring an independent forensic pathologist was neither necessary nor determinative in Farnsworth's self-defense claim. Retaining an independent expert would have been a reasonable strategy, but it was not the *only* reasonable strategy. Farnsworth's PCR expert proved that an independent pathologist could only offer a limited, speculative, and hindsight-driven rebuttal to a couple of the

prosecutor's closing-argument inferences. And even if an expert might have provided some limited help, Farnsworth could not overcome the totality of the evidence proving that he knowingly engaged in a violent encounter and used the victim's first punch as an excuse to respond with unreasonable deadly force. Because Farnsworth failed to prove breach of an essential duty and prejudice, the district court properly denied his ineffective assistance challenge.

A. Hiring an independent pathology expert was not the only reasonable course of action.

Reasonable competence does not require retaining an independent forensic pathologist in every murder case. Farnsworth contends that not consulting with an expert "by itself in a First Degree Murder case, with a defense based on justification, would be a breach of duty." Applicant's Proof Br. at 38–39. But there is no such hard-and-fast rule in the law or in normal practice around the state, as the district court recognized. *See* Ruling (4/24/2020) at 7; App. 38 ("…the Court is not aware of and Farnsworth did not cite any authority for the proposition that a defense attorney has a duty to retain an expert witness in every case of a certain type."). Likewise, the reasonable-competence standard does not impose extra burdens just because "the family has paid the lawyer $90,000…" (Applicant's

Proof Br. at 52)—all defendants, rich and poor, enjoy an equal entitlement to effective assistance under the constitution. Similarly, any supposed *duty* to hire an expert should not be conflated with the *availability* of public funds for an indigent defendant to hire an expert. *See* Applicant's Proof Br. at 46 (stating the test for appointment of a defense expert at state expense). Although an independent expert may be available to the defense, there is no constitutional obligation to follow that path in every murder case.

Instead of hiring an independent expert, counsel can achieve a competent defense through other means. As the district court recognized, one such method is cross examination of the State's expert. *See* Ruling at 7; App. 38. And the record showed that trial attorney Roth followed that course effectively. For example, Farnsworth now identifies the question of "Were there 3 stabbing movements or just two" as one of the two questions a defense expert could have answered. Applicant's Proof Br. at 39. But attorney Roth did not need an independent expert to make that point—while deposing county medical examiner Dr. Steven Goetz and chief state medical examiner Dr. Julia Goodin, attorney Roth secured testimony that the slash wound on Decker's forearm could have been caused by

the same strike as the stab wound to his chest. PCR Ex. 13 (Dr. Goodin depo.) 15:22–16:6, PCR Ex. 14 (Dr. Goetz depo.) 17:4–17; App. 90, 106. There was no constitutional obligation for attorney Roth to hire another expert to say the same thing.

As the PCR record demonstrates, an independent expert would have done very little to undermine the medical examiners' testimony. In support of his postconviction claim, Farnsworth hired Dr. Brad Randall to review the autopsy report and various trial records. PCR Ex. 87 (Dr. Randall report) at 1; App. 354. As to the angle of the stab wounds, Dr. Randall reported, "I have no reason to question the findings and conclusions from Dr. Goodin's report." PCR Ex. 87 at 3; App. 356. And Dr. Randall stated, "I agree with the Cerro Gordo Medical examiner" about the slash wound on the victim's arm. PCR Ex. 87 at 4; App. 357. Thus, there was no adverse opinion from the State's experts that necessitated rebuttal by a defense expert.

Similarly, Farnsworth's PCR expert could not offer any concrete opinions in the defense's favor. Regarding the downward angle, Dr. Randall stated, "It is *entirely possible* that the degree of the angle of the downward path *may have been* negligible." PCR Ex. 87 at 3; App. 356 (emphasis added). He continued that "Mr. Farnsworth *certainly*

could have been" positioned under Decker when inflicting the chest wound. PCR Ex. 87 at 4; App. 357 (emphasis added). And regarding the number of stabs, he said, "It is *quite possible* that the left arm injury *could have been* sustained as Mr. Decker tried to block the stabbing knife that ultimately entered his chest." PCR Ex. 87 at 4; App. 357 (emphasis added). These speculative opinions by the PCR expert do not support a constitutional duty for counsel to hire an independent forensic pathologist.

In fact, the PCR expert's most pointed criticism was only available through hindsight. Farnsworth takes issue with the prosecutor's closing-argument inference about the downward angle of the chest wound. *See* Applicant's Proof Br. at 42 (quoting excerpts of closing arguments). Dr. Randall's report disputed the prosecutor's inference: "The State was in error regarding its statements in Closing. It is nearly impossible to infer relative positions of a victim and a person wielding a knife by virtue of directionality of a stab wound to the chest." PCR Ex. 87 at 3; App. 356. But Dr. Randall had the benefit of reading the State's closing argument before coming up with this response. In contrast, attorney Roth—when deciding whether to hire an expert before trial—would have needed to predict an inference the

prosecutor might draw in closing arguments and then preemptively present curative expert testimony. The reasonable-competence standard does not require such clairvoyance.

Farnsworth misplaces reliance in the distinguishable and unpublished case of *State v. Hernandez*, No. 05-0051, 2005 WL 3115850 (Iowa Ct. App. Nov. 23, 2005), *cited in* Applicant's Proof Br. at 48–49. In *Hernandez*, the Court determined a defense toxicology expert was necessary to dispute the scientific conclusions drawn by the State's toxicologist. *Id.* at *3. The applicant had presented in the PCR proceedings an expert "who found numerous faults in the State's testing procedures" and opined that the State's test was "worthless." *Id.* In contrast, Farnsworth produced an expert who found little fault in and mainly agreed with the medical examiners' conclusions. *See* PCR Ex. 87 (Dr. Randall report); App. 356–57. Thus, unlike *Hernandez*, attorney Roth was not confronted with an adverse expert opinion that necessitated a competing opinion by an independent expert.

Farnsworth failed to prove a breach of essential duty. Although hiring an independent expert would have been a sound strategy, it was not the only reasonable course of action. Attorney Roth did not

face adverse opinions from the State's experts, so he had no constitutional obligation to seek a competing conclusion from an independent expert like Dr. Randall. And to the extent an independent expert could have rebutted the prosecutor's closing-argument inference, attorney Roth did not have the benefit of hindsight to know what the prosecutor would argue and preemptively counteract it. Therefore, the district court properly ruled, "The record before the Court is insufficient to support the conclusion that Roth breached an essential duty owed to Farnsworth merely because Roth chose not to seek out an expert witness." Ruling at 7; App. 38.

B. An independent expert would not have overcome all of the evidence disproving the self-defense theory.

Farnsworth's murder conviction did not hinge on the angle of the chest wound or the number of stabbing motions—it hinged on the fact that he brought a knife to a fistfight. The evidence at trial proved he continued engaging in a volatile situation, he armed himself in anticipation of violence, and he used the victim's first punch as an excuse to respond with unreasonable force. The independent pathology expert's limited conclusion did not rebut the totality of the

evidence disproving self-defense, so Farnsworth failed to demonstrate a reasonable likelihood of a different verdict.

The impact of the independent expert's opinion must be viewed in light of all the ways Farnsworth's self-defense claim could fail. The trial court instructed the jury that Farnsworth was not justified if the State proved "any one of the following elements":

> 1. The defendant started or continued the incident which resulted in injury or death.
>
> 2. An alternative course of action was available to the defendant.
>
> 3. The defendant did not believe he was in imminent danger of death or injury and the use of force was not necessary to save him.
>
> 4. The defendant did not have reasonable grounds for the belief.
>
> 5. The force used by the defendant was unreasonable.

PCR Ex. 9 (instr. 24); App. 81. Additionally, self-defense failed upon proof that Farnsworth "initially provoke[d] the use of force against [himself], with the intent to use such force as an excuse to inflict injury on the assailant." Iowa Code § 704.6(2). Even accounting for Dr. Randall's opinion in the PCR proceedings, the evidence firmly disproved self-defense under these disqualifying factors.

Dr. Randall's opinion did not change the fact that Farnsworth started or continued the fatal encounter. After he slapped girlfriend Victoria Miller at the bar, she broke up with him and everyone told him to leave. Trial Tr. 206:6–208:18, 274:2–281:13, 340:12–18.[1] Instead of leaving, Farnsworth waited outside the bar for the group, who again told him leave Miller alone, and one of her friends even kicked Farnsworth in the crotch. Trial Tr. 215:1–16, 281:25–283:10. Instead of leaving, Farnsworth ran ahead to the apartment and waited for the group, but they did not allow him inside and warned, "Everyone here wants to beat the fuck out of you." Trial Tr. 281:11–284:7, State's Trial Ex. 19 (text message). Instead of leaving, Farnsworth emerged from around the corner of the building when victim Ian Decker arrived. Trial Tr. 218:18–220:7, 291:3–292:6. Then Farnsworth drove away, but he returned and approached Miller as if he might hit her again. Trial Tr. 220:8–221:8, 293:15–294:21. Farnsworth then threatened to stab Decker. Trial Tr. 293:21–22. When the physical fight began, Farnsworth "grappled" and "traded

[1] A condensed version of the trial transcript was admitted at the postconviction hearing as petitioner's exhibit 3. The parties on appeal have stipulated to provide a full-page, searchable copy of the trial transcript. Both versions are available on EDMS.

blows" with Decker before stabbing him. Trial Tr. 225:7–24, 296:16–297:11, 347:14–18. This evidence proved that Farnsworth knew the situation was volatile and continued re-engaging with the group even though he knew it may devolve into violence. Therefore, he started or continued the mutual combat that ended with Decker's death.

Similarly, Dr. Randall's opinion did not change the fact that Farnsworth failed to follow an alternative course of action. Farnsworth could have left the bar after everyone told him to leave, but instead he waited outside to continue engaging with the group. Trial Tr. 215:1–5, 280:2–282:5. Farnsworth could have left when the group again made clear he was not wanted—including by kicking him in the crotch—but instead he ran ahead to the apartment where the group was headed. Trial Tr. 215:5–16, 282:5–283:22. Farnsworth could have left when the group would not let him inside and told him "Everyone wants to beat the fuck out of you," but instead he lingered outside and waited for Decker to arrive. Trial Tr. 215:24–219:19, 283:22–292:6. Farnsworth did drive away and could have stayed away, but instead he came "barreling back" moments later. Trial Tr. 218:18–221:8, 291:3–294:11. Farnsworth could have left when people again told him to go, but instead he remained at the scene and fought

with Decker. Trial Tr. 294:12–22, 410:22–412:22. This evidence proved Farnsworth had many opportunities to avoid the fatal confrontation without endangering himself, but he did not follow those alternative courses of action before fatally stabbing Decker.

Next, Dr. Randall's opinion did not change the fact that Farnsworth lacked a reasonable belief that deadly force was necessary. If he were fearful of Decker, then he would not have inflamed the tense situation by returning over and over despite repeatedly being told to leave. Although Decker had taken taekwondo as a child, Farnsworth had joked about it and indicated he was not afraid because "he had a gun." Trial Tr. 212:11–214:3. Farnsworth returned to the scene knowing Decker was there, and he threatened, "If Ian tries anything, I'm going to fuckin' stab him." Trial Tr. 294:21–22. While a reasonable person experiencing true fear would not have stirred the hornets' nest, the evidence proved Farnsworth willingly entered the situation in anticipation of a violent encounter.

Likewise, Dr. Randall's opinion did not change the fact that Farnsworth used unreasonable force. As the prosecutor summarized, Farnsworth "brought a knife to a fist fight." Trial Tr. 519:25–520:1. He kept a knife in the center console of his car and never carried it on

his person (Trial Tr. 295:11–296:8), but he had the knife in his pocket when he came "barreling back" to the scene for the fatal encounter. He then engaged in mutual hand-to-hand fighting by grappling and trading blows with Decker. Trial Tr. 225:7–24, 296:16–297:11, 347:5–18. He unilaterally changed the fistfight into a knife fight by stabbing Decker at least two times, causing him to bleed to death. Trial Tr. 480:22–489:4. Meanwhile, Farnsworth had only minor injuries and "perhaps" a broken nose, but he refused further treatment. Trial Tr. 471:16–472:22. This evidence proved Farnsworth responded to a nonlethal fistfight with disproportionate deadly force, even if the jury had accepted Dr. Randall's speculation about body position and the number of stabbing motions.

Finally, Dr. Randall's opinion did not change the fact that Farnsworth provoked the use of force intending to use it as an excuse to stab Decker. Farnsworth shared his plan by threatening, "If Ian tries anything, I'm going to fuckin' stab him." Trial Tr. 294:21–22. This statement and his actions proved his intent to provoke a violent response and use Decker's first punch as an excuse to unleash deadly force.

Farnsworth overstates how much Dr. Randall's testimony could have "undercut" or "refuted" the prosecutor's closing argument. He claims the prosecutor "explained that this was hard science…" Applicant's Br. at 52. But the prosecutor never used the term "hard science" or suggested that her interpretation of the wound angle was based on any scientific method or expertise. Next, Farnsworth emphasizes that the prosecutor mentioned the angle of the wound "not once, but twice." Applicant's Proof Br. at 52. But the prosecutor's inference about the wound angle comprises just a few lines among twenty pages of closing arguments. She made many convincing points, yet Dr. Randall's opinion only could have "refuted" a couple of them. The jury based its verdict on the totality of the evidence, not the few insular points a defense expert could have attacked.

Farnsworth failed to prove a reasonable probability of a different outcome. It was not enough that an expert might have convinced the jury that "the wound very well could have been inflicted when Decker was standing over Farnsworth" or that "the arm injury could have been a deflection into the chest." Applicant's Proof Br. at 51. What mattered to the jury's verdict was the evidence proving that Farnsworth continually re-engaged in a situation he knew could turn

violent, that he could have avoided the confrontation but chose to return, that he armed himself with a knife for a fistfight, and that he carried through with using deadly force after the victim's first punch. The evidence as a whole disproved Farnsworth's self-defense theory, so the lack of an expert to speculate about limited points did not alter the jury's verdict. Accordingly, the district court properly concluded that "None of the opinions expressed by Dr. Randall in his report undermines the confidence of the Court in the correctness of the guilty verdict returned by the jury." Ruling at 7; App. 38.

II. Farnsworth Failed to Prove Ineffective Assistance Just Because Trial Counsel Did Not Mention the Phrase "Reasonable Doubt" During Closing Arguments.

Preservation of Error

The State does not challenge error preservation. Farnsworth raised the burden-of-proof issue and received an adverse ruling in the district court. Ruling (4/24/2020) at 6–7; App. 37–38.

Standard of Review

Claims of ineffective assistance of counsel are reviewed de novo. *Straw*, 709 N.W.2d at 133.

Discussion

The reasonable-doubt standard was apparent even though trial counsel did not say the words "reasonable doubt" in his closing

argument. The fact that many defense attorneys fixate on reasonable doubt does not make the phrase an indispensable element of a reasonably competent closing. Farnsworth's jury knew the State's burden to prove its case beyond a reasonable doubt, so the district court correctly concluded he failed to prove ineffective assistance.

Farnsworth concedes that his ineffective assistance claim has no support in existing precedent. He "has not been able to find any case where counsel was declared ineffective for failing to mention or discuss the standard of proof…" Applicant's Proof Br. at 56. Although he finds the point "self-evident," the reasonable-competence standard does not depend on how his current attorney would craft a closing argument. There is no script for closing arguments—attorneys enjoy significant latitude when choosing what law and facts to emphasize during their summations.

The record demonstrates that trial counsel delivered a reasonably competent closing argument. Attorney Roth did emphasize that "The State has the burden of proof and the responsibility to prove all elements of the crimes charged." Trial Tr. 529:1–2. Additionally, attorney Roth argued that the State's witnesses lacked credibility because their testimony was contradictory and

uncorroborated. Trial Tr. 529:2–532:13. Then he gave a detailed summary of the facts supporting Farnsworth's self-defense claim. Trial Tr. 532:14–541:7. This closing argument effectively communicated the defense's theory of the case even though counsel did not say the words "reasonable doubt."

Although trial counsel did not utter the phrase during his closing argument, the jury was well aware of the reasonable-doubt standard. The parties used the term "reasonable doubt" approximately two dozen times during jury selection. *See generally* Trial Tr. 67:2–171:16 (word search for "reasonable doubt"). While Farnsworth complains that attorney Roth did not say "reasonable doubt" during his closing argument, the prosecutor readily shouldered the burden of proof by discussing reasonable doubt at least three times. Trial Tr. 516:17–22, 523:5–12, 542:11–18. And most fundamentally, multiple jury instructions left no question about the State's burden of proof:

- Instruction 2 explained that Farnsworth's not-guilty plea "places the burden on the State to prove guilt beyond a reasonable doubt," that when "the State must prove something, it must be by evidence beyond a reasonable doubt," and that the jury must return a not-

guilty verdict "[i]f the State does not prove the defendant guilty beyond a reasonable doubt." PCR Ex. 9 (jury instr. 2); App. 67.

- Instruction 3 explained that Farnsworth was presumed innocent and that the presumption of innocence remains "unless the evidence establishes guilt beyond a reasonable doubt." PCR Ex. 9 (jury instr. 3); App. 67.
- Instruction 13 plainly stated, "The burden is on the State to prove the defendant guilty beyond a reasonable doubt." PCR Ex. 9 (jury instr. 13); App. 73. The instruction continued with a detailed definition of the reasonable-doubt standard, including that "if…you are not firmly convinced of the defendant's guilt, then you have a reasonable doubt and you should find the defendant not guilty." *Id.*
- Instruction 14 explained, "If there is a reasonable doubt as to the degree of the crime, the defendant shall only be convicted of the degree for which there is no reasonable doubt." PCR Ex. 9 (jury instr. 14); App. 73.

The course of trial and the jury instructions adequately informed the jury of the reasonable-doubt standard even though counsel did not say those exact words during his closing argument.

Finally, Farnsworth provides no basis to find a reasonable probability of a different result. He only offers the conclusory declaration that "[t]here cannot be confidence in a verdict" when counsel failed to mention "beyond a reasonable doubt." Applicant's Proof Br. at 57. But the district court properly recognized that attorney Roth's closing argument "gave the jury much to reflect on and work through before reaching its verdict." Ruling at 7; App. 38. In fact, attorney Roth's closing argument led the jury to deliberate for almost four hours and successfully persuaded jurors to acquit Farnsworth of first-degree murder. Ruling at 6–7; App. 37–38. And as detailed above in section I(B) (pp. 18–24), the evidence convincingly disproved Farnsworth's self-defense theory.

Farnsworth was convicted because the evidence proved him guilty, not because his attorney failed to say the phrase "reasonable doubt" during closing argument. The jury instructions clearly and repeatedly stated the burden to prove guilt beyond a reasonable doubt, and the jury is presumed to have followed that law. *See, e.g.*, *State v. Proctor*, 585 N.W.2d 841, 845 (Iowa 1998) ("A jury is presumed to follow the court's instructions."). Counsel had no duty to repeat the phrase, and there is no reasonable probability of a different

result had he done so. Accordingly, this Court should reject Farnsworth's ineffective assistance challenge.

III. Farnsworth Failed to Prove Ineffective Assistance Because the Prosecutor's Closing Argument Accurately Stated the Law and Because Sufficient Evidence Proved Farnsworth "Started or Continued" the Fatal Incident.

Preservation of Error

The State does not challenge error preservation. Farnsworth raised the sufficiency issue and received an adverse ruling in the district court. Ruling (4/24/2020) at 7–8; App. 38–39.

Standard of Review

Claims of ineffective assistance of counsel are reviewed de novo. *Straw*, 709 N.W.2d at 133.

Discussion

Farnsworth's complicated challenge is defeated with a simple answer. He meanders through a discussion about jury unanimity and the legal disqualification of self-defense for a party who started or continued the fatal incident. But his argument fails because sufficient evidence did prove he started or continued the incident that ended with him fatally stabbing an unarmed man.

To start, Farnsworth mistakenly asserts that "[w]hen [trial counsel] sought a directed verdict, he did not specifically object to the

fact that there was not sufficient evidence with regard to each of the five justification factors." Applicant's Proof Br. at 63. Yet Farnsworth's current challenge does not address all five disqualifying factors—he only disputes the first factor about starting or continuing the incident. *See* Applicant's Proof Br. at 61 (arguing "there was not sufficient evidence to support Reason #1"). Farnsworth overlooks that attorney Roth's motion for judgment of acquittal *did* specifically address who started the fatal encounter:

> Further, that the State has not proven, given that every witness that testified on behalf of the State, indicated that Ian Decker initiated the action, commenced the first blows. And that every witness produced by the State indicated that Mr. Farnsworth absorbed those blows and was below Mr. Decker. That the State has not proved, as they are required to do, that the defendant was not justified….

Trial Tr. 496:19–25. The State resisted with argument about who started the incident. *See* Trial Tr. 498:7–11 ("You cannot set up the incident and then claim self-defense because one blow with a fist was thrown after you yourself had armed yourself and then pulled out a deadly weapon and stabbed someone to death."). Finally, the district court's ruling on the motion for judgment of acquittal found sufficient evidence on "the elements of self-defense." Trial Tr. 498:17:24. Thus,

trial counsel did competently challenge the sufficiency of the evidence about who started the incident.

Similarly, Farnsworth discounts the extent to which attorney Roth challenged the "started or continued" disqualifier on direct appeal. Attorney Roth's appellate brief argued at length about whether Farnsworth started the incident by slapping his girlfriend hours before what he called the "final altercation." PCR Ex. 23 (appellant's brief in 13-0401) at 5–12, 18–20; App. 140–47, 153–55. The State's brief responded that the series of events leading up to the stabbing was relevant to evaluate whether Farnsworth started or continued the incident. PCR Ex. 24 (State's brief in 13-0401) at 18–24; App. 187–93. And the Court of Appeals ruled, "Farnsworth cannot show the prosecutor improperly referenced his conduct from earlier in the evening, that is, slapping Miller at the bar. The jury must consider the complete story of the crime in deciding whether Farnsworth started or continued the incident, as required of a justification defense." *Farnsworth*, 2014 WL 2884732, at *3. Although attorney Roth framed the issue in terms of prosecutorial misconduct rather than sufficiency, appellate counsel has no obligation to assign every possible error. *See, e.g.*, *Cuevas v. State*,

415 N.W.2d 630, 633 (Iowa 1987) ("[M]ost experienced appellate lawyers or judges will attest it is a tactical blunder, often devastating to an appellant, to assign every conceivable complaint."). The fact that the Court of Appeals rejected Farnsworth's myopic view of the "started or continued" element undercuts his current effort to repackage the issue as an ineffective-assistance challenge.

Farnsworth misplaces emphasis on his accusation that "the prosecutor essentially made up the jury instruction" about unanimity of alternative elements. Applicant's Proof Br. at 60. She did not "make up" the law—Farnsworth concedes it "has been the law in Iowa for 35 years" that "where alternative theories are presented, an instruction can be allowed for the jury to be less than unanimous in picking the theory." Applicant's Proof Br. at 58 (citing *State v. Bratthauer*, 354 N.W.2d 774 (Iowa 1984). He even concedes, "In all likelihood, the statement by the Prosecutor to the jury during closing arguments regarding unanimity was a correct statement in the law." Applicant's Proof Br. at 72. Still, he complains that the lack of objection from attorney Roth meant the prosecutor's closing-argument statement "became law of the case." Applicant's Proof Br. at 64. But the case he cites recognizes law of the case for "[f]ailure to

object *to an instruction…*" *State v. Taggart*, 430 N.W.2d 423, 425 (Iowa 1988) (emphasis added). The prosecutor's statement was not the equivalent of an instruction given by the court—rather, the court expressly cautioned the jury that the parties' closing arguments were only "their respective view of the facts and the law." Trial Tr. 515:13–17. Therefore, there was no need for attorney Roth to object to the prosecutor stating her understanding of the law, which Farnsworth now agrees was a correct statement of the law.

Farnsworth fails to prove the crux of his argument. After much ado setting up "the steps in the analysis," he declares that "[t]here is prejudice since theory #1 was not supported by the evidence." Applicant's Proof Br. at 64–66. That "theory #1" refers to the self-defense disqualifier if the State proved, "The defendant started or continued the incident which resulted in injury or death." PCR Ex. 9 (jury instr. 24); App. 81. Contrary to his conclusion, sufficient evidence did support a finding that he started or continued the fatal incident.

Like he did on direct appeal, Farnsworth takes a narrow view of the incident. He contends "there is just no way that the slap can be thought of as the initiation of the conflict with Decker." Applicant's

Proof Br. at 66. But he ignores everything he did in between. As the Court of Appeals recognized on direct appeal, "The jury must consider the complete story of the crime in deciding whether Farnsworth started or continued the incident…" *Farnsworth*, 2014 WL 2884732, at *3.

Past self-defense cases illustrate how the jury must consider the complete series of events, not just the final act.

- In *State v. Fordyce*, 940 N.W.2d 419, 425–26 (Iowa 2020), the Court found the victim was the aggressor who started the incident by dumping garbage over the fence, confronting the defendant, and attempting to gain access to the defendant's truck while challenging him to fight. But the Court found sufficient evidence that the defendant continued the incident by returning to the scene after initially driving away and by reinserting himself into the argument with awareness of the victim's aggression, which led to the defendant firing the fatal shot when the victim charged toward him. *Id.* at 423–24, 426–27. In short, he "continued" the incident because he "was more interested in returning to a scene of smoldering hostilities than he was in discouraging further interaction with the chaos next door." *Id.* at 427.

- In *State v. MacLaird*, No. 08-1559, 2009 WL 2960408, at *3 (Iowa Ct. App. Sept. 2, 2009), the Court rejected the defendant's suggestion "to view the evidence as involving two separate disputes—one a verbal dispute, and the second a physical confrontation beginning when [victim] Holt threatened MacLaird with a knife." It concluded the defendant "initiated the incident by going to Holt's home while he was angry and bringing a loaded revolver with him. He was asked multiple times to leave by Holt and Cheryl, but continued to demand the return of his car keys and cell phone." *Id.*
- In *State v. Coffman*, 562 N.W.2d 766, 768–69 (Iowa Ct. App. 1997), the defendant took a gun to school and told other students he would shoot the victim if the victim "messed" with him. The victim grabbed the defendant, told him "you're dead after class," and repeatedly pushed the defendant against the wall. *Id.* at 569. Once outside, the defendant shot the victim. *Id.* The Court concluded self-defense was unavailable because "both the threat to shoot [the victim] and bringing the loaded gun to school, 'started or continued the incident.'" *Id.*

These cases show that the final act of physical violence is not viewed in isolation and that a defendant can "start or continue the incident" even if it was the victim who first resorted to physical violence.

Similar to these prior cases, the evidence proved Farnsworth started or continued the fatal incident. After he slapped his girlfriend at the bar, people "constantly" told him to leave and even kicked him in the crotch to make the point. Trial Tr. 215:1–16, 280:2–282:14, 340:12–18. He lingered outside the apartment building even after being warned that "Everyone here wants to beat the fuck out of you." Trial Tr. 283:7–284:4, State's Trial Ex. 15–22 (text messages). Although Farnsworth left for a short time after Decker arrived, he came "barreling back" to the scene even as people continued telling him to leave. Trial Tr. 220:8–221:8, 293:15–294:17, 410:22–411:20. He had armed himself with the knife he normally kept in his car. Trial Tr. 295:11–296:8, 444:12–14. He threatened, "If Ian tries anything, I'm going to fuckin' stab him." Trial Tr. 294:21–22. After the physical confrontation began, Farnsworth grappled and traded blows with Decker before stabbing him. Trial Tr. 225:7–24, 296:16–297:11, 347:14–18. Even if Farnsworth did not throw the first punch, he started or continued the incident by relentlessly pursuing his

girlfriend even though people continually told him to leave and even though he knew violence was possible. He started or continued the incident by returning to the scene and arming himself with a knife. And he started or continued the incident by threatening to stab Decker and then engaging in mutual combat.

Farnsworth failed to prove ineffective assistance. His jury-unanimity complaint falls apart because sufficient evidence supported all five self-defense disqualifiers, including that he started or continued the fatal incident. Consequently, trial counsel adequately fulfilled his duty to challenge the sufficiency of the evidence, and there is no reasonable probability that any additional challenge would have led to a different result.

IV. Farnsworth Failed to Prove His Miscellaneous Ineffective Assistance Complaints.

Preservation of Error

The State does not challenge error preservation. Farnsworth raised the miscellaneous ineffective assistance claims in a motion to enlarge, and the district court denied the motion. Motion to Enlarge (5/11/2020), Ruling (5/22/2020); App. 45, 62.

Standard of Review

Claims of ineffective assistance of counsel are reviewed de novo. *Straw*, 709 N.W.2d at 133.

Discussion

A crooked lawyer is not necessarily an ineffective lawyer. Farnsworth devotes much attention to attorney Roth's financial misdeeds, but he fails to prove any prejudicial breach of duty in his case. Therefore, the district court properly denied postconviction relief.

Farnsworth cannot prove ineffective assistance just because his attorney committed ethical violations. Attorney Roth's misappropriation scheme almost certainly would have led to disbarment and perhaps even criminal charges. But for Farnsworth to get ineffective-assistance relief, he had to prove a breach of essential duty owed to him and a reasonable likelihood of a different result in his case. The district court properly declined to equate attorney Roth's moral character with his effectiveness as an advocate. *See* Ruling (4/24/2020) at 5–6; App. 36–37 ("Essentially, Farnsworth asks the Court to conclude that given the number and extent of the ethical transgressions committed by Roth, it must presume Roth was

not competent to defend Farnsworth in his criminal case. The argument made by Farnsworth is neither logical nor legally sound, as it invites the Court to base the decision in this case on its emotional reaction to Roth's wrongdoing in other situations. It is not the role of the Court in this case to judge the character of Roth.").

Despite attorney Roth's ethical problems, the record supports that he was an effective advocate in Farnsworth's case. The county attorney explained that attorney Roth was well prepared and "did a very nice job through the case." PCR Ex. 88 (Dalen depo.) 15:23–16:25. The county attorney—with "20 some years" experience trying cases—thought attorney Roth was diligent, did a "nice job" with depositions, was "better than most" presenting to the jury, "did a very nice jury trial," and successfully obtained a reduced verdict even though "a jury could have easily done murder one on this case." PCR Ex. 88 (Dalen depo.) 36:6–37:4. Similarly, the area prosecutor described attorney Roth as "very tenacious" and prepared, explaining that "he had a lot of strategies planned in this case." PCR Ex. 89 (Krisko depo.) 14:3–8, 15:14–16:3. She added that based on her experience seeing many defense attorneys while prosecuting around the entire state, attorney Roth "didn't seem to be unfamiliar with

presenting jury trials," he "certainly" seemed comfortable in front of the jury, and "he knew the rules of evidence better than a lot of them." PCR Ex. 89 (Krisko depo.) 21:22–22:8, 49:16–50:4.

In sum, attorney Roth's unethical financial practices did not stop him from being an effective advocate in Farnsworth's case. As the two experienced prosecutors related, attorney Roth fulfilled the essential functions of a competent attorney and performed as well as or better than the average defense attorney. And although Farnsworth now lists many complaints, he failed to prove any breach of essential duty or a reasonable likelihood of a different result.

A. Farnsworth failed to prove his attorney was incompetent or was burdened by a conflict of interest.

Farnsworth misdirects his attack on attorney Roth's competence. He argues that "Roth should never have taken the case in the beginning" because he "had little experience with jury trials for serious felonies." Applicant's Proof Br. at 68. But this accusation overlooks the experienced prosecutors' reports that attorney Roth was prepared and well equipped for the trial. Even if Roth did not have much prior experience, the Rules of Professional Conduct provide that "A lawyer may accept representation where the requisite

level of competence can be achieved by reasonable preparation." Iowa R. Prof'l Conduct 32:1.1 cmt.4; *see also id.* cmt.2 ("A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar.... A lawyer can provide adequate representation in a wholly novel field through necessary study...."). And even if Farnsworth could establish a professional-conduct violation, he was not entitled to ineffective-assistance relief unless he proved a breach of essential duty and prejudice.

Next, Farnsworth did not prove any conflict of interest requiring reversal of his conviction. Under both the Iowa and United States Constitutions, a criminal defendant alleging a conflict of interest must show an "adverse effect" on counsel's performance. *State v. Smitherman*, 733 N.W.2d 341, 345–47 (Iowa 2007) (citing *Mickens v. Taylor*, 535 U.S. 162, 172 n.5 (2002)). "The guidelines supplied by the [Iowa Rule of Professional Conduct] are relevant, but are not alone dispositive." *State v. McKinley*, 860 N.W.2d 874, 881 (Iowa 2015). Consistent with this adverse-effect test, the Court has declined to disqualify an attorney when he had personally

represented a former client who was listed as a key witness against a current client. *State v. Mulatillo*, 907 N.W.2d 511, 518 (Iowa 2018).

The district court properly concluded that Farnsworth failed to demonstrate "adverse effect." He contends attorney Roth "should never have taken the case involving a serious crime in Mason City" because "[h]is firm represented the Mason City Police Department." Applicant's Proof Br. at 68. But as the district court recognized, the city was not a party in the criminal prosecution, and there was no overlap with any prior representation of the city in civil matters:

> There is nothing in the record before the Court to show that Roth or his law firm ever represented any of the police officers whom the State called as trial witnesses against Farnsworth, whether in their individual capacity or as members of the Mason City Police Department, in any other lawsuits or legal matters. Further, there is nothing in the record in this case to show that any of the police officers whom the State called as trial witnesses against Farnsworth played any role or had any involvement in the cases where Roth or his law firm served as counsel for the City of Mason City.

Ruling (4/24/2020) at 9; App. 40. Farnsworth complains there would have been a conflict "[t]o the extent that [attorney Roth] thought there was a basis for suppression." Applicant's Proof Br. at 69. But attorney Roth was not constrained by any continuing loyalty to the

city—he freely alleged the city's police officers violated Farnsworth's constitutional rights. *See Farnsworth*, 2014 WL 2884732, at *3 (rejecting attorney Roth's *Miranda* challenge). Therefore, attorney Roth's performance was not adversely affected by any conflict of interest, and Farnsworth was not entitled to any relief.

B. Farnsworth was not harmed by his attorney's efforts to secure more favorable bond conditions.

Farnsworth's bail complaint is—and always was—a moot issue. The court had originally ordered a $100,000 cash-only bond, and following a review request from attorney Roth, the court amended the bond to $200,000, of which $50,000 cash was to be posted in the defendant's name and the additional $150,000 cash could be posted by surety. PCR Ex. 76 (bond order 4/27/2012); App. 8. This change benefitted Farnsworth by reducing the amount of cash he and his family had to produce for his release on bond. PCR Ex. 88 (Dalen depo.) 27:19–30:11. But what really matters is that Farnsworth *did* post bond and *did* get released pending trial—he was not harmed.

Likewise, the cash-only condition did not harm Farnsworth. He complains that the bond-review order "required $50,000 to be posted in Farnsworth's name," and then that $50,000 was applied toward his restitution obligation after sentencing. Applicant's Proof Br. at 70.

Farnsworth points out that forfeiting bond in this manner was disapproved in *State v. Letscher*, 888 N.W.2d 880 (Iowa 2016). But *Letscher*'s opinion came three years after posting of Farnsworth's bond, and he does not explain why attorney Roth had a constitutional duty to foresee that result. Additionally, the money for Farnsworth's cash-only bond came from his father refinancing his house and others who "donated" money. PCR Tr. 24:6–25:13. Forfeiting $50,000 of other people's money benefitted Farnsworth by reducing his restitution obligation. Although his father and those other "donors" might want their money back—and although they might have a civil cause of action—the disposition of the bond money does not entitle Farnsworth to postconviction relief.

C. Farnsworth failed to prove that any unsequestered trial witnesses caused prejudice.

To begin, Farnsworth's witness-sequestration allegation relies on disputed evidence. He and his sister claimed the State's witnesses sat in the courtroom before testifying. PCR Tr. 38:18–40:1, 102:20–103:9. But the county attorney, area prosecutor, and victim-witness coordinator all testified that witnesses were sequestered during trial. PCR Ex. 88 (Dalen depo.) 30:12–31:5, PCR Ex. 89 (Krisko depo.) 32:16–33:8, PCR Tr. 109:1–115:2. Farnsworth now seizes on the area

prosecutor's mid-trial statement that Victoria Miller—the mother of the victim's child—"has every intention of sitting in after she testifies." Trial Tr. 267:4–5, *quoted in* Applicant's Proof Br. at 71. But as an area prosecutor who practices all over the State, she may not have been familiar with local practice of sequestering witnesses for the whole trial as opposed to other counties that allow witnesses to sit in the courtroom after testifying. Regardless, there was no firm proof that any of the State's witnesses sat in the courtroom before their testimony.

Even if witnesses were not sequestered, Farnsworth makes no effort to demonstrate a reasonable probability of a different outcome. There is no proof that any of the State's witnesses changed their testimony or were otherwise influenced by anything someone else said in the courtroom. Prejudice is entirely speculative. *See, e.g.*, *Hart v. State*, 448 N.W.2d 682, 684 (Iowa Ct. App. 1989) ("Speculative claims of prejudice, unsupported by the record, will not support an ineffectiveness claim.").

D. Farnsworth never would have accepted the supposed plea offer.

Initially, Farnsworth exaggerates by asserting "an offer was made." Applicant's Proof Br. at 72. The record supports that attorney

Roth engaged in plea negotiations with the county attorney—Roth wanted involuntary manslaughter, but the county attorney would not go any lower that second-degree murder. PCR Ex. 88 (Dalen depo.) 18:7–17. These negotiations suggest a stalemate, not a formal plea offer.

More fundamentally, Farnsworth was not prejudiced by any supposed failure to communicate a plea offer. The jury convicted him of second-degree murder, which is the lowest the county attorney was willing to offer. And Farnsworth candidly admitted he would not have accepted a plea agreement for second-degree murder. PCR Tr. 106:7–18. He was not prejudiced by any failure to communicate a plea offer that he never would have accepted. *See Dempsey v. State*, 860 N.W.2d 860, 869 (Iowa 2015) (stating that to demonstrate prejudice in the plea-bargaining process, the defendant must show "(1) 'a reasonable probability [he] would have accepted the earlier plea offer had [he] been afforded effective assistance of counsel'; (2) 'a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law'; and (3) 'a reasonable probability that the end result of the criminal process

would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.'" (quoting *Missouri v. Frye*, 566 U.S. 134, 147 (2012)).

E. Counsel had no duty to object to the prosecutor's correct statement about jury unanimity.

Farnsworth's next ineffective-assistance complaint is a nonstarter. He concedes that "In all likelihood, the statement by the Prosecutor to the jury during closing arguments regarding unanimity was a correct statement in the law." Applicant's Proof Br. at 72. Attorney Roth "ha[d] no duty to raise an issue or make an objection that has no merit." *State v. Musser*, 721 N.W.2d 734, 752 (Iowa 2006). Additionally, for the reasons discussed above in section III (pp. 34–37), sufficient evidence proved the "started or continued" disqualifier of self-defense. There is no reasonable likelihood that an objection would have changed the result of trial.

F. Farnsworth did not prove ineffective cross examination of the medical examiner.

Farnsworth exaggerates when arguing "Roth opened the door during his examination of Dr. Goodin, allowing the evidence that the fatal wound occurred in a downward direction." Applicant's Proof Br. at 73. Attorney Roth did not "open the door" to this evidence—Dr.

Goodin's autopsy report documented the downward direction of the stab wound, making that fact relevant and admissible. PCR Ex. 18 (Dr. Goodin report) at 4; App. 115. Farnsworth speculates—but did not prove—that the prosecutor "apparently forgot that evidence on direct examination" and "was reminded of the angle of the wounds" from attorney Roth's cross examination. Applicant's Proof Br. at 41, 50. However, there is no guarantee the prosecutor would have completely overlooked the downward-angle evidence if attorney Roth had "just stayed away from the subject." Applicant's Proof Br. at 73.

More importantly, there is no reasonable probability the downward-angle evidence changed the result of trial. Farnsworth contends, "Prejudice occurred when the prosecutor was able to emphasize the downward direction in her closing arguments." Applicant's Proof Br. at 73. But as detailed above in section I(B) (pp. 18–23), the downward angle was one of many facts that disproved the self-defense theory. Regardless of what angle the knife entered Decker's chest, the totality of the evidence proved Farnsworth continually fanned the flames of a volatile situation, armed himself in anticipation of a violent encounter, and used unreasonable deadly force during a fistfight. There was no reasonable probability that the

jury would have accepted the self-defense claim but for the downward-angle evidence.

G. Farnsworth did not prove counsel delivered in ineffective closing argument.

Farnsworth makes another complaint about attorney Roth's closing argument, contending "he could have explained to the jury about stabbing upwards when someone is bending over you." Applicant's Proof Br. at 74. But he ignores everything attorney Roth did say during closing arguments, including his attacks on witness credibility and his emphasis of facts supporting the self-defense theory. *See generally* Trial Tr. 527:16–541:13 (defense closing). As the district court recognized, attorney Roth's closing argument "gave the jury much to reflect on and work through before reaching its verdict" and successfully persuaded the jury to acquit Farnsworth of first-degree murder. Ruling (4/24/2020) at 6–7; App. 37–38. Farnsworth was convicted based on the strength of the evidence disproving self-defense, not based on any missed opportunity for attorney Roth to score one more point during closing arguments. There is no reasonable probability of a different outcome.

H. Farnsworth was not prejudiced by any of counsel's shortcomings on direct appeal.

Farnsworth identifies "quite a number of ways" attorney Roth made mistakes on direct appeal (Applicant's Proof Br. at 74), but none changed the outcome.

First, Farnsworth points out that attorney Roth "messed up the combined certificate," "then defaulted when it came time to write the brief," and "only asked for 7 days in his first extension request." Applicant's Proof Br. at 74. However, these delays in submitting the proof brief did not harm Farnsworth—his appeal continued through the adjudicatory process, including oral argument, a decision by the Court of Appeals, and denial of further review by the Supreme Court.

Second, Farnsworth notes that attorney Roth's appellate brief "did not include the required section about preservation of error" and highlights "that there were error preservation issues." Applicant's Proof Br. at 74. Despite the error-preservation deficiencies, the Court of Appeals considered the merits of each legal argument. *See Farnsworth*, 2014 WL 2884732, at *3 ("However, regardless of the error preservation issue, Farnsworth's argument regarding prosecutorial misconduct fails."), ("Moreover, even if we were to address the merits of Farnsworth's [*Miranda*] claim, it would fail.").

Regardless of error preservation, Farnsworth would have lost his appeal because it lacked legal merit.

Third, Farnsworth complains that attorney Roth "raised two claims on appeal that had not been preserved" and that "[t]he one issue preserved was close to frivolous." Applicant's Proof Br. at 74. However, Farnsworth makes no attempt identify what issues attorney Roth should have raised instead. Therefore, he fails to prove any reasonable probability of a different result on appeal.

I. Farnsworth fails to demonstrate "cumulative error."

In a final salvo, Farnsworth proposes that "[a]ll the claims of ineffective counsel cumulatively establish the necessary prejudice." Applicant's Proof Br. at 75. But his many non-meritorious claims do not add up to reversible prejudice. "Having found each of the underlying claims to have no merit individually, we reject the claim of cumulative error." *State v. Artzer*, 609 N.W.2d 526, 532 (Iowa 2000). "Or as our neighbors in Wisconsin have said: 'Larding a final catch-all plea for reversal adds nothing; [z]ero plus zero equals zero.'" *State v. Meek*, No. 16-0797, 2017 WL 706334, at *6 (Iowa Ct. App. Feb. 22, 2017) (quoting *State v. Marhal*, 493 N.W.2d 758, 766 (Wis. Ct. App. 1992)).

CONCLUSION

The Court should affirm the denial of James Farnsworth II's application for postconviction relief.

REQUEST FOR NONORAL SUBMISSION

The applicant's ineffective assistance claims are appropriate for submission without oral argument.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

KYLE HANSON
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
kyle.hanson@ag.iowa.gov

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **8,992** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: April 5, 2021

KYLE HANSON
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
kyle.hanson@ag.iowa.gov