IN THE SUPREME COURT OF IOWA

No. 20-0786

JAMES FARNSWORTH,

Appellant,

v.

THE STATE OF IOWA,

Appellee.

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

APPELLANT'S FINAL REPLY BRIEF

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CERTIFICATE OF SERVICE

On March 23, 2021, the undersigned certifies that a true copy of the foregoing instrument was served upon the Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to:

James Farnsworth #6184567
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/s/ Philip B. Mears
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Purposes of a Reply Brief

In any reply brief, it is appropriate to do three things.

(1) The brief can update the case law if there have been any new cases since the page proof brief was filed. There has been one case decided recently by the Iowa Court of Appeals, Davis v. State, 2021 WL 592226 (Iowa App., January 21, 2021) (further review application pending). That case addressed the failure of trial counsel to employ an expert. That case will be discussed with Issue I of the brief.

(2) The brief can point out the places in the State's brief where there is an agreement as to certain points, perhaps because the matter was not contested. There are quite a few factual matters that are not contested by the State.

(3) The brief can reply to specific statements in the State's brief. That is needed in this case.

STATEMENT OF THE CASE

The State accepted Farnsworth's statement about the course of proceeding "as substantially correct" (State's brief, p.8).

STATEMENT OF PROCEEDINGS

Procedural History

The State does not contest Farnsworth's description of the procedural history of the criminal case.

Farnsworth was represented at all times by David Roth.

From a procedural prospective Roth mishandled the representation from start to finish.

The State does not contest, for example, Roth's mishandling of the bond provisions in the case. The State just says that Farnsworth was not harmed by Roth's actions. See State's brief starting at page 44.

Farnsworth's initial bond, $100,000, cash only, was a reasonable bond for a First Degree Murder case. Roth managed to get that amount doubled, with the judge inserting a provision that set up the forfeiture of $50,000 after sentencing. Roth told the family the particular provision was illegal, but then allowed the forfeiture to occur without raising the matter on appeal. That provision was later declared illegal by the Iowa Supreme Court.

Roth filed no pretrial motions, other than Motions for a continuance. On appeal he raised an issue as to whether certain evidence should have been suppressed. But that issue had not been preserved for appeal. State v. Farnsworth, 2014 WL 2884732, *3 (Iowa App 2014). The Court of Appeals noted that he had not filed any pretrial Motion about that issue.

Roth gave notice of the defense of self defense. Notice filed May 24, 2012.

Roth sort of had a defense Motion in Limine. He said something at the hearing because the Judge denied his "Motion". Ruling on Motions; App. 9. Roth's "Motion" in Limine does not appear to have been filed. It is not in the Court file. Maybe he just brought something along with him to the hearing on the State's Motion in Limine.

His Motion in limine was close to frivolous. Here is what the judge said in her ruling on January 2, 2013.

> The defendant moves in limine to exclude evidence that the defendant slapped, struck or hit state witness Miller earlier in the course of events for which the defendant is charged. The State resists.
>
> The Court concludes that the earlier altercation is inextricably intertwined with the latter events, and such it is not subject to exclusion under rules of evidence. App. 9.

Roth took the depositions of the State's witnesses. That included depositions of several pathologists listed by the State. But he never consulted with a pathologist of his own. The only payment for an expert that showed up on the

billing (that he never sent the family), turned out to be payment for landscaping on one of his houses.

Roth obtained a plea offer from the State. He did not tell Farnsworth about the offer.

He did not have a second lawyer, even at trial.

He did not submit any proposed jury instructions. He argued the instructions without submitting what he wanted to be used.

He did not ensure that there was an order sequestering witnesses.

After the verdict Roth arranged with the family to handle the appeal.

The first thing he did for the appeal was to file a Combined Certificate. It recited that the appeal was from a guilty plea.

On appeal two of the three issues he raised had not been preserved for appeal.

Facts

The State makes no attempt to contest the overall evidence from the postconviction about David Roth, as a lawyer. This included his financial misdeeds with others, and with the Farnsworth family. It also includes Roth's lack of experience with serious felony cases and with appeals.

Facts about David Roth's dishonesty

It is significant that the State does not contest Roth's dishonesty, including the portion of the dishonesty that affected his representation of James Farnsworth. These are some of the facts that are not contested.

1. David Roth stole millions from both his clients and investors. This theft was over the period of time from 2005 through his suicide in 2015. This included the time that he was representing Farnsworth.

2. David Roth took $90,000 from James Farnsworth's family, putting most of it in a secret bank account which was being used for his own personal Ponzi scheme. Once the $75,000 retainer was placed in that account, it was not available to pay any expert or even obtain the services of a lawyer to assist in the representation. He managed to avoid detection by not sending any billing information to the family after the first month.

Roth had little or no experience with serious criminal jury trials or, for that matter, criminal appeals.

3. The evidence from his assistant was that David Roth had not really wanted to take a first degree murder case in the fall of 2012. He simply had proposed an extraordinarily high number, presuming that the family would not come up with it. However, when they did come up with it, he went ahead with the representation,

placing the sizable retainer into his Ponzi scheme bank account, taking advantage of the opportunity that presented itself.

4. While Roth was a busy lawyer, he had virtually no experience at the time he took the Farnsworth case of trying serious felony jury trials. He had never tried a murder case. He had one serious felony trial, a sex abuse case that had gone to trial. See Exhibit 47; App. 223.

5. Roth had very little appellate experience. Those cases he had handled showed very poor work.

ARGUMENT

I. INEFFECTIVE COUNSEL REQUIRES A NEW TRIAL SINCE TRIAL COUNSEL DID NOT CONSULT WITH OR EMPLOY AN EXPERT PATHOLOGIST

James Farnsworth caused the death of Ian Decker. That was clear from the start. The defense was self defense. It also clear from the beginning that there would be some factual disagreement as to how the fatal injury had occurred. Resolution of the fact question depended on eye witness testimony but perhaps more importantly, on testimony from the experts, the pathologists.

To some extent, the State in its brief, comes close to acknowledging that there was a breach of duty in the Farnsworth case. The State does not contest that

there were several genuine forensic issues involved in considering a self-defense claim by James Farnsworth.

The State does not contest that Roth never consulted with an expert on the forensic issues.

The State says that retaining an independent expert would have been a reasonable strategy, but it was not the only reasonable strategy. Brief page 12. The State acknowledges that it would have been sound strategy for defense counsel to hire a pathologist to look at and, presumably, have that person testify about those issues. (State's brief at p.___)

The State qualifies this position by saying that some of the points made by postconviction expert Brad Randall could have been established by effective cross-examination at the trial, without calling an expert. (State's brief at p. ____)

The reason this is almost a concession that there was a breach of the duty is that Roth was not effective in cross-examination.

With that short introduction, here are the facts surrounding this issue. These facts are not contested.

1. James Farnsworth caused the death of Ian Decker.

2. The eye witnesses to the confrontation agreed that Ian Decker was the initial aggressor in connection with the immediate confrontation between the two of

them. Decker ran at Farnsworth and hit him in the face, knocking him to the ground.

3. Farnsworth told the police, and the officer told the jury, that he was knocked down by Decker and struck upwards at Decker who was looming over him.

4. There was medical evidence that was presented about the injuries sustained by Ian Decker.

5. There was the autopsy conducted by the State Medical Examiner, Julia Goodin. There was an autopsy report. Dr. Goodin was listed as a witness for the State. She was deposed. She testified at trial. Both in her report and in her deposition she discussed the angle of the fatal chest wound. She reported that the fatal chest wound was in a "downward" direction.

6. In her deposition she was also asked about the number of wounds and whether they were related.[1] She could not say whether the chest wound was a deflection from the thrust that injured the arm. Ex. 13, p. 15, lines 1-8. App. 90.

7. A second doctor was listed as a witness and deposed. That was Dr. Steven Goetz. He had examined Ian Decker's body at the hospital in Mason City before he was sent to the state medical lab. He did not testify.

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[1] Dr. Goodin was unavailable for the postconviction hearing to either side. She died in April of 2019, having previously moved out of Iowa to be a State Medical Examiner for the State of Tennessee. https://www.legacy.com/obituaries/desmoinesregister/obituary.aspx?n=julia-goodin&pid=192406892&fhid=16678

8. In the Goetz deposition, Roth asked about the three injuries to Decker. Goetz said that one injury clearly was a defensive wound. It might even have been a deflection of the thrust of the knife that went into Decker's chest causing the death. Ex. 14, p.12; lines 5-12 and p.17, lines 4-9. App. 104-106.

9. The evidence at the postconviction hearing showed that David Roth never consulted with or hired an expert pathologist to assist with or be available as a witness in the Farnsworth case. Among other things, Roth never gave notice of any such a witness.

10. At trial, the state medical examiner, on direct examiniation, did not testify as to the angle of the chest wound. In fact, it was Roth, on cross-examination who raised the subject. The prosecutor then on redirect confirmed the downward angle evidence.

11. There was no discussion at trial with Goodin about the relationship of the injuries.

12. Prosecutor Krisko argued in closing that Farnsworth's description of the offense, that he was underneath Decker at the time, could not have happened, because of the downward angle.

13. Defense counsel Roth made no response in closing to the argument about the downward angle.

14. Farnsworth's expert, Dr. Brad Randall, submitted his uncontested report at the postconviction proceeding.

15. Dr. Randall concluded that "it is nearly impossible to infer relative positions of a victim and a person wielding a knife by virtue of directionality of the stab wound to the chest." Exhibit 87, pg. 3-4, App. 356.

16. Prosecutor Dalen was deposed in the postconviction case. He did not think the downward angle of the wound was significant. He acknowledged that if a person was bending over and a thrust came upward, the wound could be a downward angle consistent with the relative positions of the parties at the time. Ex 88, p. 23-24, lines 23-25, 1-9.

17. David Roth never asked any witness about this logical response to the 'downward" angle problem. Roth made no reference in closing arguments as to this point, either. He was silent even after the prosecutor in her closing made such a big point of the angle.

Response to particular statements in State's brief:

Statement at page 14 of State's brief

The State says that

> "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."

The State says that Roth did not need an independent expert because

> "while deposing county medical examiner Steven Goetz and chief state medical examiner Dr. Julia Gooden, 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 the chest."

Response:

Perhaps effective cross-examination can substitute for some expert testimony. That did not happen in this case.

The fact that these questions were raised in depositions showed that Roth was aware of the issues. He sort of was able to get Dr. Goetz to say there could have been a deflection. When he asked Goodin, she said she could not tell. The problem was that Goetz did not testify at trial. Goodin, when she was asked at trial, said the same thing she had said in her deposition. She did not look at that.

This left Roth with nothing on this point. Quite frankly, this particular issue would have been particularly helpful as it would have refuted the suggestion that Farnsworth had intentionally stabbed Decker in the chest. Dr. Randall's opinion was that, in fact, the chest wound could have been a deflection from the wrist.

Statement at page 12 of the State's Brief:

The State suggests that Farnsworth's postconviction expert, Dr. Randall's opinion was "limited, speculative, and hindsight driven." The State describes Dr. Randall as not offering "any concrete opinions in the defendant's favor." The State describes Randall's opinion has finding "little fault" with Goodin's conclusions.

Response:

Dr. Randall said that "Farnsworth certainly could have been positioned under Decker when inflicting the chest wound."

Dr. Randall added that it was quite possible that the left arm injury could have been sustained when Decker tried to block the knife that then entered his chest.

The State suggests that Dr. Randall's criticism of the prosecutor's closing argument was hindsight driven. The significance of the "downward angle" was apparent from the very first reading the autopsy report. Farnsworth told police Decker was standing over him. Roth had to have anticipated that the State would make the argument they did, based on the evidence the wound was "downward." The prosecutor certainly thought the angle was significant in her closing argument. She repeated that the confrontation could not have happened as Farnsworth described.

Discussion of Davis v State, 2021 WL 592226 (Iowa Ct. App. January 21, 2021)(Application for Further review pending.)

The Iowa Court of Appeals decided the Davis case on January 21, 2021. Davis' postconviction included two different claims of ineffectiveness for failing to obtain an expert at trial. The Court of Appeals rejected both claims. In doing so, the Court suggested how analysis would work in the Farnsworth case.

As an initial matter, the Court rejected the argument that defense counsel should have obtained an independent medical examiner expert. For one thing defense counsel were able to articulate a strategic reason why they did not get their own expert. In addition it does not appear that any expert appeared for the postconviction. The Court noted that Davis had not proven that any expert existed that would have offered a favorable opinion.

The Court said that trial counsel was judged "under the circumstances known to them at the time." Furthermore, Davis' claim was rejected because he could not show how hiring the expert would have changed the outcome. 2021 WL 592226 at *6.

As to the crime scene expert the Court also rejected the claim. The Court concluded that trial counsel had been effective in cross examining the State's witnesses. The Court noted that "the extent of the investigation required in each

case turns on the peculiar facts and circumstances of the case. 2021 WL 592226 at *11.

In Farnsworth, of course, Roth deposed the two doctors who were listed in the Minutes. Roth had the autopsy and knew the state medical examiner was going to say that the angle of the wound was downward. Roth also knew that Dr, Goodin did not have an opinion on whether the fatal stab wound to the chest had just been a deflection. That information came from Dr. Goetz, who was not called by the State at trial.

Roth of course had no strategic reason for not obtaining his own expert. In fact the reason there was no expert was presumably tied to his dishonesty.

The Davis reasoning supports Farnsworth.

II. TRIAL COUNSEL WAS INEFFECTIVE IN NOT MENTIONING THE STANDARD OF PROOF IN CLOSING ARGUMENT

Once again, there is no question as to what the facts were. This was a case where self-defense was raised. There was significant evidence that the victim was the aggressor, at least at the actual confrontation itself. It was a close enough case that the jury acquitted Farnsworth of First Degree murder and found him guilty of Second Degree.

Trial counsel, who was an inexperienced criminal defense lawyer in serious criminal cases, failed to mention in closing argument that the standard of proof in a

criminal case was "beyond a reasonable doubt". In fact he did not mention that standard at all.

The State says that postconviction counsel was not been able to find any case that says failure to mention beyond a reasonable doubt in closing arguments is ineffective counsel. (State's brief at p. 26)

Presumably the same thing can be said of a defense counsel that failed to mention that his client was presumed innocent. It can be difficult to find authority for self-evident propositions.

Statement in State's brief

At page 26 the State says “there is no script for closing argument.”

Response:

Farnsworth disagrees.

In a criminal trial with a genuine factual dispute, there is a script for any defense that should apply in every case. That script should include that (1) the client is presumed innocent; (2) the State bears the burden of proof; (3) the State must prove its case beyond a reasonable doubt.

State's brief at page 27:

The State points out that the expression "reasonable doubt" was mentioned approximately two dozen times during jury selection. (Page 27) Jury deliberations,

however, are a long way away from closing argument. Particularly in a case arguing self defense, a juror could be confused about the burden of proof and the standard of proof.

Moreover, it is useful to look at that word search of the transcript from jury selection. There were 23 times the term was used. Of those 23 times, it was used by David Roth two times in front of the entire jury. Trial trans. p. 142, lines 15-16. He then used it one other time in a discussion with the Court about whether it was appropriate to dismiss juror Hewett.[2] Trial trans. p. 69, line 10.

This Court should find that in a first degree murder case, relying on self defense, the script for any defense counsel's closing argument must include reference and indeed an emphasis on, the concept of proof beyond a reasonable doubt. This item is just one more factor that should be considering in deciding it there is confidence in the verdict.

III. THERE WAS INSUFFICIENT EVIDENCE THAT FARNSWORTH INITIATED OR CONTINUED THE FATAL CONFLICT.

This issue has become somewhat confused and requires this attempt to straighten it out.

[2] Roth raised on appeal a complaint that it was improper for the judge to strike juror Hewett.

The issue presented has to do with the fact that the jury were told they did not have to be unanimous in considering a particular reason why they should reject self-defense.

Farnsworth's claim is based on the 36-year precedent of State v. Bratthauer, 354 N.W.2d 774 (Iowa 1984). Bratthauer holds that sometimes a jury does not have to be unanimous when considering alternate theories. Bratthauer holds that if alternative theories are presented, and jury unanimity is allowed, there has to be legally sufficient evidence as to each alternative.

The State never addresses Bratthauer.

The four steps in the analysis are:

1. Was the jury told it did not have to be unanimous?

2. Was there an objection?

3. Was it ineffective counsel not to object to this?

4. Was there legally sufficient evidence to support the first alternative in Instruction 24, that being, "the defendant started or continued the incident, which resulted in injury or death."

Was the Jury Told They Did Not Have to be Unanimous?

First of all, as a factual matter, there was no instruction with regard to this point. However the prosecutor told the jury that it did not have to be unanimous.

There was no objection. The State, in its brief, seems to accept Farnsworth's concession that this statement about unanimity of alternatives was in fact the correct statement of law.

Did Roth Object to the Lack of Sufficient Evidence on Whether Farnsworth Started the Incident?

The State suggests that Roth did object with sufficient specificity to the sufficiency of this first factor in Instruction 24. See Brief pg. 30-31. Maybe this claim, based on Bratthauer, was preserved before the District Court. Certainly, it was not presented on direct appeal by Roth. Roth knew something was wrong. Roth resorted to characterizing the State's argument about who started the incident as prosecutorial misconduct. This was rejected.

Was there Ineffective Counsel?

The Iowa Supreme Court held in State v. Schlitter, 881 N.W.2d 380 (Iowa 2016) that there is ineffective assistance of counsel if counsel does not essentially seek a directed verdict as to each alternative that could have been relied upon by the jury. The State does not respond to this Schlitter argument.

Was there evidence that Farnsworth started the incident?

It must be understood that the State does not dispute the fact, that if the jury verdict does not have to be unanimous with regard to the different theories, there must be sufficient evidence as to each one.

Both sides have discussed the facts of the case. All agree that Farnsworth slapped his girlfriend in the bar several hours before Ian Decker was killed. Ian Decker was not at the bar. He does not appear until everyone had gone back to the apartment.

The Iowa Court of Appeals in the Farnsworth case wound up saying that it was not prosecutorial misconduct to give the jury the entire description of what had happened. State v Farnsworth, 2014 WL 2884732,*3, Iowa App. 2014). That is not the same thing as finding legally sufficient evidence that Farnsworth had started the incident back at the bar.

The State has a number of cases that they refer to, starting at page 35. In some of those cases there was a temporal difference between when an incident began and when it finished. In those cases, however, the initial incident was between the final combatants.

The Iowa Supreme Court, just a year ago, decided State v. Fordyce, 940 N.W.2d 419, 425-26 (Iowa 2020). In that case, as the State in its brief points out, the victim was the aggressor who started the incident. The Supreme Court found

sufficient evidence to support the District Court conclusion that defendant Fordyce "continued" the incident which led to the firing of the fatal shot. 940 N.W.2d at 426. The case did not discuss any jury unanimity issue.

In Farnsworth, slapping Victoria Miller cannot be the start of a confrontation with Ian Decker. He was not even at the bar. He shows up almost two hours later. At the point in time when Decker charged Farnsworth, he was the aggressor. Farnsworth at no point "continued" the incident, with Decker.

This Court should find that there is insufficient evidence to support that the first element of the jury instruction number 24. Because the jury was not unanimous on that point the verdict cannot stand.

IV. AS A CUMULATIVE MATTER, THERE WAS INEFFECTIVE COUNSEL

With regard to this claim, several statements from the State's brief deserve a response.

State's brief at page 39

The State starts its discussion of this claim by saying "a crooked lawyer is not necessarily an ineffective one."

Response:

It is again important to make clear that the State makes no effort to defend David Roth's illegal behavior. Nor do they attempt to defend his inexperience in serious criminal jury trials.

Farnsworth asserts that the extent of Roth's dishonesty and inexperience and other unethical conduct, should completely dissipate any presumption of regularity or competence that normally exists in criminal cases.

State's Brief at page 40

The State asserts that the record shows that Roth was an "effective advocate."

Response:

This comment by the State must be taken in context of unchallenged mistakes by Roth from the beginning of the case, setting a bond, to the end of the case, representing Farnsworth on appeal.

The financial mismanagement extended to Farnsworth's case. Because Roth essentially misappropriated the retainer, there were no funds to hire an expert pathologist.

At trial, Roth opened a door by his cross examination of Dr. Julia Gooden to evidence that the fatal chest wound had a "downward direction."

State's assertion about conflict of interest

The State at page 41 says there was no conflict of interest, despite the fact that Roth and his firm represented the police department in Mason City.

Response:

The State and the District Judge could not find prejudice. When it was pointed out that Roth had apparently thought there was a basis for suppression of evidence, the State said that Roth "was not constrained by any continuing loyalty."

The flaw in the State's argument, of course, is that Roth raised the Miranda question on direct appeal without ever having said anything about it at the district court level.

Moreover the conflict was real enough that at least it should have been disclosed. As a factual matter, it was not disclosed.

State's comments about the bond

The State at page 44 says that the bond issue is and always was a "moot issue." Once again, the theme of the State's argument is that it just does not matter how incompetent Roth was.

Response:

Farnsworth acknowledges that he cannot find particular prejudice for several examples of Roth's mishandling of the case. This is true for the bond issue. It is

true for the mishandling of the appeal with regard to filing the combined certificate.

When those missteps, however, are put together, they emphasize and clearly establish that Roth was inexperienced in this kind of a serious case. He was apparently not paying attention perhaps because juggling his financial misdeeds was taking up more and more of his time and attention. What is clear is that the State does not contest the fact that Roth mishandled the bond and the combined certificate and the jury instructions.

With every one of these points established, there is more and more reason for the Court to conclude that there can be no confidence in the verdict.

V. WHEN EVERYTHING IS CONSIDERED TOGETHER, FARNSWORTH HAS SHOWN THE NECESSARY PREJUDICE SUFFICIENT TO JUSTIFY A NEW TRIAL.

With respect to each and every claim presented by Farnsworth, the State responds by saying "so what." So what if the lawyer was dishonest? So what the lawyer was unprepared or did not get an expert? So what if the lawyer did not have enough experience to reasonably defend a first-degree murder case?

As to each claim the State points out that Farnsworth had a knife and Decker did not. The State refers to the disputed testimony from Victoria Miller that Farnsworth said he might stab Decker.

What is the standard?

Here is the standard for prejudice when the claim is ineffective counsel.

> **B. Prejudice from Counsel's Failure to Perform an Essential Duty, Generally.** The second prong of *Strickland* requires prejudice to result from counsel's failure to perform an essential duty. *Maxwell,* 743 N.W.2d at 195 (citing *Strickland,* 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693). "Prejudice exists where the claimant proves by 'a reasonable probability that, but for the counsel's unprofessional errors, the result of the proceeding would have been different.' " *Maxwell,* 743 N.W.2d at 196 (quoting *Bowman v. State,* 710 N.W.2d 200, 203 (Iowa 2006)). Specifically, we recognize:
> [T]he prejudice prong of the *Strickland* test does not mean a defendant must establish that counsel's deficient conduct more likely than not altered the outcome in the case. A defendant need only show that the probability of a different result is sufficient to undermine confidence in the outcome.
> *Id.* at 196 (citation and internal quotation marks omitted).
>
> State v. Clay, 824 N.W.2d 488, 496 (Iowa,2012)

> Under Iowa law, we should look to the cumulative effect of counsel's errors to determine whether the defendant satisfied the prejudice prong of the *Strickland* test. We adopted this rule in *Schrier v. State,* 347 N.W.2d 657, 668 (Iowa 1984). *See also Bowman v. State,* 710 N.W.2d 200, 207 (Iowa 2006) (holding the prosecutor's persuasive misconduct throughout the trial and the defense attorney's failure to object was prejudicial under the *Strickland* prong of prejudice); *State v. Graves,* 668 N.W.2d 860, 883 (Iowa 2003) (same).
>
> State v. Clay, 824 N.W.2d 488, 500 (Iowa,2012)

Farnsworth satisfies that standard.

Several things should be highlighted about the showing of prejudice Farnsworth must make.

First of all, Farnsworth does not have to show, by a preponderance of the evidence, that the result would have been different. He simply has to show that there is a "reasonable probability that but for all of these mistakes and actions by his lawyer" the Court cannot say that it has confidence in the verdict.

Second, all the mistakes add up. The court should look at the cumulative effect of all the mistakes, in deciding if there is confidence in the verdict.

So What is Known?

1. The evidence for self-defense was substantial. The evidence that Farnsworth did not intend to kill Decker was substantial. The uncontested evidence was that at the time of the confrontation, Decker charged Farnsworth. Farnsworth was talking to Victoria Miller from a distance of perhaps 20 feet. Derek Wentworth was right there. They were not yelling. Wentworth did not hear the comment from Victoria Miller, that is mentioned several times by the State.

2. Decker came around the corner and ran straight at Farnsworth. He hit him in the face with his fist. Farnsworth went down to the ground, perhaps with a broken nose.

3. After several other blows to his head, Farnsworth stabbed upwards with the knife. It now appears that the fatal blow could well have been a deflection, into the chest.

4. There was certainly enough doubt about the State's case that the jury came back with only Second Degree. They rejected First Degree.

5. Farnsworth's lawyer David Roth made mistake after mistake in the case. He had no experience with trying murder cases. He was also one of the more dishonest lawyers Iowa has seen in decades.

If you add up everything, you have to have a reasonable belief that the outcome could have been different.

First, Farnsworth should have had an expert who would have explained that the downward angle of the fatal injury could well have happened when Farnsworth was underneath Decker, trying to get him off of him.

Second, that expert could have explained that there were just two thrusts with a knife. The fatal injury was a deflection.

Third, competent counsel would have talked to the jury about what reasonable doubt meant.

Fourth, competent counsel could have made a directed verdict on the question of whether Farnsworth had started the incident. This would have prevented the ultimate confusion when prosecutor argued that Farnsworth could not claim self-defense because he started the incident by slapping Victoria Miller.

Fifth, competent counsel would not have opened the door to the entire evidentiary presentation about the downward angle of the fatal injury.

When all of these things are put together, the Court should conclude that it cannot have confidence in the verdict. The Court should find that James Farnsworth should get a new trial.

CONCLUSION

David Roth was an unethical, dishonest, and inexperienced lawyer. He had originally not even wanted to take the case. When the family agreed to give him $90,000, he could not pass up the opportunity. Roth put the initial retainer into a secret bank account, secret from his partners. That was the bank account that was being used to run a Ponzi scheme. The State does not dispute the breadth of David Roth's misconduct. It is significant that the misconduct and inexperience extended to the representation of James Farnsworth in a first-degree murder case.

The uncontested evidence shows that Roth mishandled Farnsworth's case from the beginning, the bond proceeding, to the end, the appeal.

While the jury rejected first-degree murder, this was not a testament to David Roth's effectiveness. It was a testament to the weakness of the State's case.

With proper representation, including having the necessary forensic expert for the defense, the jury would not have found second-degree murder.

Farnsworth must establish two things for relief. He must show there was a breach of the duty by his trial counsel. Secondly, he must show prejudice.

In this case, duty was breached in so many ways. As to prejudice, this Court cannot have confidence in the verdict that was reached by the jury.

The Court should reverse the district court and direct that James Farnsworth should get a new trial.

RESPECTFULLY SUBMITTED,

/s/ Philip B. Mears
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ATTORNEY'S CERTIFICATE OF COSTS

I, Philip B. Mears, Attorney for the Appellant, hereby certify that the cost of preparing the foregoing Appellant's Final Reply Brief was $__$3.60__.

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

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

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Signature

_3/22/2021____
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