

IN THE COURT OF APPEALS OF IOWA

No. 0-71 / 88-1664

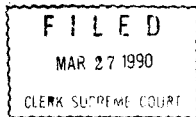
BRUCE BURDETTE FARRIS,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.



103

Appeal from the Iowa District Court for Linn County,
L. D. Lybbert, Judge.

Farris appeals the denial of postconviction relief to challenge his 1983 convictions for three counts of first-degree murder. **AFFIRMED.**

David G. Thinnes of Irvine & Robbins, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General; Bruce Kempkes, Assistant Attorney General; and Denver D. Dillard, County Attorney, for appellee.

Considered by Oxberger, C.J., and Schlegel and Sackett, JJ.

SACKETT, J.

The issue is whether appellant Bruce B. Farris has shown his trial counsel in a first-degree murder trial was ineffective. This appeal follows the trial court's denial of Farris's application for postconviction relief. The trial court, in an instructive opinion, denied postconviction relief. We affirm.

Farris was charged with first-degree murder following the death of Jackie May and her sons, Justin and Jason. Farris was tried and convicted. His conviction was affirmed on direct appeal. State v. Farris, 359 N.W.2d 190 (Iowa 1984).

Our review is de novo. See Polly v. State, 355 N.W.2d 849, 854 (Iowa 1984). Farris must prove by a preponderance of the evidence both that his attorney was incompetent and he suffered prejudice. See Cuevas v. State, 415 N.W.2d 630, 632 (Iowa 1987); State v. Newman, 326 N.W.2d 788, 795 (Iowa 1982).

After noon on November 15, 1982, police discovered the decomposing bodies of Jacalyn May and her sons. One of the officers made inquiries to obtain any information as to persons that may have been seen at the victims' apartment or have some connection with the victims. The officer was told that Farris had a relationship with Jacalyn and that they had recently had a disagreement. Officers went to where Farris was living and asked to speak to him at the

police station about the May murders. Farris voluntarily accompanied the officers to a patrol car where he was patted down, but not handcuffed. He was not informed that he was under arrest.

Farris arrived at the police station shortly after 1:00 p.m. and was placed in one of the interview rooms. Farris was not questioned or advised of his rights until about 5:30 p.m. In the meantime, detectives continued investigating the crime. Two sets of footprints were found at the May apartment. One was similar to the gym shoes Farris was wearing when asked to come to the police station. Witnesses indicated there had been an on and off relationship between Farris and Jacalyn for a period of time; some hostility had arisen recently based on May's belief that Farris had stolen from her. May had told others Farris had threatened her on occasions. A fifteen-year-old indicated she had seen Farris near the May apartment on two occasions on the night of November 15.

Prior to 5:00 p.m., Michael Rohr, Louise Franks, and Rose Glandon went to the police station and provided information pointing to Farris as a suspect in the murders. About 5:00 p.m., an officer asked Farris to give him his gym shoes and Farris complied.

Shortly before 5:30 p.m., Farris was advised of his rights and questioned about his possible involvement in the murders. He was questioned again at about 10:30 p.m.

Farris was told what Michael Rohn had told the officers. Farris then told the officers that it didn't happen the way that Rohn said and proceeded to tell them his version of the events. According to the officers, Farris then said that he and Rohn had been at Jacalyn's apartment the night of November 15; that he and Jacalyn had sexual intercourse; that they then quarreled about her accusation that he had taken her money; that he started choking her and they fell out of the bed; that Rohn came in and pulled Jacalyn off from on top of him; that he then asked Rohn to slash her throat; and that Rohn stabbed her three times.

I.

Farris first claims his trial counsel was not effective because he did not move to suppress statements made by Farris and did not move to suppress the introduction of Farris's shoes on the basis that they were fruits of a warrantless arrest without probable cause. Farris's attorney moved to suppress both on a series of grounds and those motions were not successful.

We agree with the trial court that by the time the shoes were taken and the statement made, there was sufficient cause for Farris's arrest. We note, too, that on direct appeal, Farris, 359 N.W.2d at 192, the Iowa court was unable to see how Farris could possibly have been harmed by introduction of the shoes. We affirm the trial court on this issue.

II.

Farris next contends his attorney was incompetent because he did not call Doug Wallerback to testify. Wallerback did not testify at the postconviction proceeding, but Farris contended he would have testified that the knife used in the killing was similar to one owned and carried by Rohn and that Rohn had said he never would give or loan the knife to anyone.

Rohn testified at trial he owned the knife. Farris's trial attorney testified he talked to Wallerback at length and concluded he would not be helpful to Farris's defense. We find no error on this issue.

III.

Farris next contends his trial counsel was incompetent for failing to obtain adequate time to prepare for the testimony of Michael Rohn.

Rohn had been tried and acquitted of the murders. The State then listed him in their minutes of testimony. Farris's trial counsel obtained a transcript of Rohn's testimony at his own trial. His counsel made an effort to depose and question Rohn, who successfully resisted such efforts on the fifth-amendment grounds.

During trial, Rohn appeared and indicated he would testify. Defense counsel moved for mistrial, sought to reopen voir dire of the jury, and requested additional opening statements. These requests were denied. A

continuance in the trial did offer Farris's attorney sufficient time to depose Rohn prior to his testimony.

Farris's claim is not that his attorney inadequately performed, but that his attorney was ineffective because of Rohn's surprise testimony. There is no basis for this claim.

IV.

Farris's last argument is his restitution order was not appropriate. A similar claim was rejected in State v. Van Hoff, 415 N.W.2d 647, 648 (Iowa 1987).

We affirm.

AFFIRMED.