

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to York County

Honorable R. Scott Sprouse, Circuit Court Judge

JASON R. FRANKS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001592

APPENDIX

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1 have failed, but my failure does not deserve a life sentence
2 in prison. I just bumped the guy with my truck. I wasn't
3 trying to run him down. If I wanted to run him down with a
4 vehicle, it's a very easy thing to do. It's not hard to do
5 and how are you going to miss the guy and how are you not
6 going to run him over and kill him? Why would I stop?

7 Q. So that -- so on the day that he comes down, would you
8 say that, I mean, were you in a position to be able to
9 rationally think about---

10 A. No.

11 Q. ---what you were doing?

12 A. Man, all I -- I -- no. I know I wasn't. I wasn't --
13 man, I was on a hundred fifty milligram of extended
14 Seroquel. I was so sleepy and drowsy that day as was --
15 that is the reason why I quit taking it was because of this
16 accident.

17 Q. When was the first time -- so we said we're only
18 talking about a six-month window from date of arrest to day
19 you get, you know, essentially, sentenced to behind bars
20 until you die. When was the first time in that six-month
21 span that any lawyer, any lawyer at all, any of them in the
22 courtroom or anywhere else in this county, showed you a
23 single shred of discovery about your case?

24 A. I didn't get anything until I paid for it on my own.

25 Q. Was that with Mr. Barrowclough?

1 A. Yeah. I -- well, actually, I didn't get all my
2 transcripts -- I got paperwork through them. They did give
3 me discovery. I don't know about --

4 Q. And that's what I'm asking. I'm not asking about --

5 A. Some.

6 Q. Hang on. Let me talk real quick. I'm not asking about
7 transcripts or anything. The discovery for the actual
8 trial, so incident reports, photographs, medical records,---

9 A. No. I didn't---

10 Q. ---anything else, when --

11 A. ---get that 'til the last, like, the last second.

12 Q. Who provided it to you?

13 A. B.J.

14 Q. So at no point in time did the prosecutor, the State of
15 South Carolina, the person that -- the agency that was
16 prosecuting this case, at no point in time did they provide
17 you with any discovery?

18 A. No.

19 Q. Before making an offer and before withdrawing that
20 offer?

21 A. I still ain't got any paperwork from them.

22 MR. SHELDON: I don't have anymore questions.

23 THE COURT: Cross-examination?

24 MR. NEUBAUER: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 JASON FRANKS BY MR. NEUBAUER:

2 Q. Good afternoon, Mr. Franks. So this was a car wreck,
3 essentially, is how it began. Right?

4 A. Yes, sir.

5 Q. And you said that you reported it to the police that
6 day?

7 A. I was in the process of calling Lieutenant Vince
8 Holland for the narcotics division of Fort Mill Police
9 Department when he actually called me and asked me what
10 happened. It was just perfect timing, but my call was
11 going to him, his was coming to me and we connected.

12 Q. And you were aware that you were involved in a wreck
13 and that you -- that something wrong happened? You hit
14 someone?

15 A. Yes, sir.

16 Q. And you didn't stop?

17 A. I did stop. I let it be known that I stopped, but then
18 I did drive away.

19 Q. You left the scene?

20 A. I did.

21 Q. Did you check on the individual that was injured?

22 A. Yes, sir, I did.

23 Q. Did you stay with him until the police were -- you said
24 you were calling --

25 A. No, I did not.

1 Q. -- you said you were calling the cops. You didn't stay
2 until the police were there?

3 A. No, sir. I panicked. I just came off of a ten-year
4 incarceration. I knew that I was going to be facing more
5 time and my first thing was to flight. It's fight or flight
6 and I flight.

7 Q. And you said at that time you were trying to do
8 everything a hundred percent correct. Would leaving the
9 scene of an accident that you caused be a hundred percent
10 correct?

11 A. No. It wouldn't be correct at all under any
12 circumstances, but especially when you're in the frame of
13 mind that I was in at that time and I was under a severe
14 amount of pressures and stresses.

15 Q. And you didn't have a license. Is that correct?

16 A. No, sir. I did not.

17 Q. You knew that you shouldn't be driving without a
18 license?

19 A. Yes, sir. I knew that.

20 Q. You were driving anyway?

21 A. Yes, sir.

22 Q. And you hit someone?

23 A. Yes, sir, I did.

24 Q. And you left the scene after hitting someone?

25 A. Yes, sir, I did.

- 1 Q. And you said that you were taking Seroquel, I believe?
- 2 A. Seroquel and Remeron.
- 3 Q. And you were drowsy?
- 4 A. Yes, sir, I was.
- 5 Q. And should you have been driving without a license
- 6 while drowsy?
- 7 A. No. No, sir.
- 8 Q. Do you feel --
- 9 A. No, sir, I shouldn't have.
- 10 Q. Do you feel you were a proper condition to drive a
- 11 motor vehicle?
- 12 A. No, sir, I wasn't.
- 13 Q. But you still chose to?
- 14 A. I was determined to get the gas to be able to pay bills
- 15 off 'cause I was about to lose my home.
- 16 Q. Okay. And there was a plea offer for one year,
- 17 correct, from---
- 18 A. Yes, sir.
- 19 Q. ---Mr. Springs?
- 20 A. Yes, sir.
- 21 Q. And you didn't have an attorney at that point, did you?
- 22 A. No, sir. I did not.
- 23 Q. Did you ever tell Mr. Springs that you were hiring an
- 24 attorney?
- 25 A. No. There was -- what's the point? He told me I

1 didn't need one.

2 Q. And did you ever -- you claim that Mr. Springs told you
3 that you didn't need a lawyer?

4 A. That's exactly what I was told.

5 Q. Did you ask if you could speak with a lawyer?

6 A. You have a solicitor who's over this case telling me I
7 don't need a lawyer. Why do I need to ask him anything?
8 He's telling me he's offering me a year nonviolent, that I
9 don't need a lawyer.

10 Q. Did you ask him if you could speak with a lawyer? Yes
11 or no?

12 A. No, I didn't.

13 Q. And you listed off all the mental health issues that
14 you've been dealing with and you've previously been
15 convicted. Correct?

16 A. Yes, sir.

17 Q. Was there ever a mental health evaluation prior to that
18 or during---

19 A. My first mental --

20 Q. ---that proceeding?

21 A. -- my first mental evaluation was at thirteen.

22 Q. But when you were originally tried for the homicide by
23 child abuse, was there a competency evaluation?

24 A. No, sir.

25 Q. Did you ever speak with a doctor there?

1 A. I've spoke to plenty throughout my incarceration, but
2 not in the very beginning. No.

3 Q. And did you tell Mr. Springs that you were -- that
4 you'd been dealing with mental health issues since the age
5 of thirteen?

6 A. Mr. Springs was fully aware of my situation at that
7 time. I had no time to explain any of that right there. I
8 was given a deadline and I was told that I was to act -- to
9 show up on this day and then the day came out of nowhere and
10 I wasn't ready for it.

11 Q. So you -- but you didn't tell him that you had a --
12 that you suffered from mental health stuff. Did you tell
13 him that you were under the influence when you -- under the
14 influence of prescription medication when the accident
15 occurred?

16 A. I mean, no. I didn't.

17 Q. Did you ever make any reference to any of these mental
18 health issues that you're talking about?

19 A. I was on psychotropic medications in the county that I
20 had them bring in, my family bring in for me. How do you
21 miss that?

22 Q. Did you communicate that to Mr. Springs during your
23 conversation with him?

24 A. At that point in time he had already got me
25 incarcerated. There was no communications with him

1 whatsoever.

2 Q. But so he talked to you -- or to offer you a plea.

3 Correct?

4 A. Long enough to offer that and then do what he did and
5 back out of it and here I am.

6 Q. You didn't tell him that you had mental health issues
7 that day?

8 A. No.

9 Q. You didn't tell him that you were on medication that
10 day?

11 A. The way you're communicating to me is like he and I had
12 a conversation. There was not a conversation. It was long
13 enough for him to tell me what was going on and how it was
14 going to be. That was the end of that. There was no
15 stopping to say, hey, wait a minute, I'm on psychotropic
16 medications or, hey, wait a minute. There was no time for
17 that. He laid the law down and that's the way it was and I
18 abided by everything he told me to do.

19 Q. And that one-year plea offer, was it -- did you reject
20 that offer or was it revoked?

21 A. He revoked it because I asked for a lawyer. That was
22 the whole issue.

23 Q. So you never rejected the plea offer?

24 A. I asked him for a lawyer. He told me that if I got a
25 lawyer, that this original plea bargain of one year would be

1 taken off the table and I would be re-indicted under the
2 statute of attempted murder and then he came at me with
3 twelve years within five hours after that. The whole plea,
4 revoke, take it away from me, within five hours I was locked
5 back up. This time he came at me with a twelve-year violent
6 plea.

7 Q. And during your actual trial, before sentencing,
8 Solicitor Springs explained to the judge his interaction
9 with you and the one-year plea deal. Do you remember that?

10 A. I do.

11 Q. Do you remember Mr. Springs saying he asked if you
12 wanted a lawyer and you could have the same thing and do the
13 same thing with a public defender?

14 A. Yeah. That sounds real good.

15 Q. And did you say no, I'll handle it myself.

16 A. No. I've never said that.

17 Q. And the -- further he goes on and says, time came to
18 take the deal, you came into his office with your girlfriend
19 and mother and said I'm not going to, I want a trial. Did
20 that occur?

21 A. No. That's in his words. What I -- what transpired
22 that morning is he was telling me to turn myself in. I was
23 turning myself in that day. I asked him could I buy a
24 little bit of time, because I need to put a little bit of
25 money towards my family to be able to make sure that they

1 have a place to be able to live and he told me, says, No,
2 you have to go today. I said, Well, I need to get a lawyer.
3 He said, Well, if you get a lawyer, I'll go ahead and
4 withdraw this plea bargain of assault and battery with
5 intent to kill and I'm going to re-indict you with attempted
6 murder. You understand that? I said, Well, then, that's
7 fine. That's what we'll do then. And then he did exactly
8 what -- exactly that right there and five hours later I was
9 locked up, facing twelve years.

10 Q. And during that your attorneys never raised any issue
11 with Mr. Springs' discussion about plea negotiation. Is
12 that correct?

13 A. Say that -- could you repeat that, sir?

14 Q. So at your trial, Mr. Springs put his one-year plea
15 negotiation with you on the record and the Court asked your
16 attorney, Mr. Delaney, if he disputed any of the facts or
17 wanted to elaborate on it.

18 MR. SHELDON: Judge, I -- if you could at this point, I
19 mean, I know he's reading it.

20 THE COURT: Stand when you address me.

21 MR. SHELDON: I know he's reading from a sampling of
22 the transcript. If he could just direct to the actual page
23 number of that just so I can sort of see what he's talking
24 about.

25 MR. NEUBAUER: Page 447. So page 447 of the trial

1 transcript, actually starts on page 445 and goes to 448.

2 Specifically what I'm address is 447, line 10 through line
3 24.

4 Q. Did you ever tell your attorneys at any point, either
5 before the trial or when that -- when those facts were read
6 back by Solicitor Springs that, no, that's not how it
7 happened?

8 A. I've done reiterated the same type of conversation, I
9 don't know, probably a million times and keep in mind when I
10 was involved in this, I didn't have the experience with
11 lawyers and solicitors. When I first did, my father handled
12 everything kind of behind closed doors and the plea was kind
13 of negotiated and all this without me even kind of being
14 involved. So when this came into transpire here, I don't
15 know what to tell them and what not to tell them and I
16 figured that they'll ask me questions and I answer them
17 truthfully, then they'll get whatever information it is they
18 need, but I wasn't asked by so much.

19 Q. But you never disputed what was said by Mr. Springs on
20 the record. Correct?

21 A. I mean, I didn't know what I was supposed to do. I
22 didn't know if I was supposed to say something, not supposed
23 to say something. I'm in the middle of a court hearing and
24 I'm told to keep my mouth shut, so that's just what I do.

25 Q. All right. And as far as your mental health, did you

1 ever discuss that or your mental health issues with Mr.
2 Delaney or Mr. Barrowclough?

3 A. No.

4 Q. Did you ever tell them that you were taking medication?

5 A. I didn't understand why I had to.

6 Q. You didn't understand why you needed to inform them?

7 A. Why do I need to tell them who are my lawyers that are
8 representing me, to overturn everything I've got going on in
9 my life, everything I've -- ever mistake I've ever made,
10 surely, you're not going to miss the fact that I'm on
11 psychotropic medications and my entire mental health is
12 right there in front of you and it's thicker than any one of
13 them books you got on the desk.

14 Q. Did you ever take you medicine in front of your
15 attorneys?

16 A. I've never had to. I take them in the morning and I
17 take them at night.

18 Q. Did you ever --

19 A. They're not present.

20 Q. -- did you ever talk with your attorneys about any
21 mental health treatment or psychiatric treatment that you've
22 had?

23 A. I never questioned it. It just never came up, like,
24 I've never had any conversation on that at all that I can
25 recall.

1 Q. So you never made them aware that there could be an
2 issue with your mental health. Correct?

3 A. So is it my fault that I didn't make them aware or is
4 their fault because they failed to investigate and uncover
5 said information that's part of their job?

6 Q. Well, I'm just asking did you ever give them this
7 information?

8 A. I mean, I was never asked to give the information. I
9 just answered only the questions that I was asked. Had a
10 question come up of mental health background or history or
11 psychotropic meds, I would have -- common sense, I would
12 have say, yeah, I'm on this and this is what I do and this
13 is what I take and this is my history, but I had a whole
14 hist- -- I had a whole -- two lawyers and a private
15 investigator that's on this job. They got three heads, just
16 you got little old me, one.

17 Q. So you expected them to just know that you had these
18 issues without you providing them that information? You
19 wanted them to investigate this without anything being
20 brought to their attention?

21 A. No. I -- one -- one issue that I do know factual that
22 was out there was my emergency room visit a month before
23 this issue transpired. I know everybody knew about that,
24 but why that didn't get brought into play, I don't know,
25 'cause I had to go across state lines, which meant I had to

1 inform my probation officer that I was going across state
2 lines to be able to get said mental health treatment. So --

3 Q. Did you talk with Solicitor Springs that you---

4 A. I don't --

5 Q. ---were in the ER?

6 A. I didn't talk to him about anything after that.

7 Q. Did you talk to Mr. Delaney?

8 A. They should have been aware of that, yeah. They should
9 have known about the emergency --

10 Q. Did you make him aware of that?

11 A. I mean, considering that I've sent all the paperwork
12 in, showing proof of all that, then, yeah, it should be --
13 you should have that, a copy of that as well.

14 Q. Who'd you send the paperwork into? To them?

15 A. Might have been through Mr. Sheldon to --

16 Q. And --

17 A. It's showing all my psychotropic meds in the department
18 of corrections, all my medications here, the medication
19 brought to me, who signed off on it, who ensured that I
20 received it and why I wasn't allowed the second medication,
21 which was the Seroquel, because it was expired.

22 Q. And are those documents from before or after your
23 trial?

24 A. This -- that was -- the documents would have been
25 after, but it was from what transpired before.

1 Q. But -- so you didn't give them any documentation saying
2 -- you said you had to go across state lines for treatment.

3 A. Yes, sir.

4 Q. Did you ever tell them that you were going to a
5 different state for mental health treatment?

6 A. This was before the accident even occurred.

7 Q. Okay. And so they wouldn't have been on your case at
8 that point?

9 A. Not at that point.

10 Q. So you wouldn't have filed anything with them?

11 A. Not at that point.

12 Q. And so if you didn't tell them about it and if you
13 didn't file anything with them, how are they supposed to
14 know that this happened?

15 A. Well, what exactly does their job entail again?

16 Q. To investigate the facts of the crime.

17 A. That's the key word, to investigate the facts of the
18 crime and had they investigated the facts of the crime, they
19 would have found out that I was mentally ill and mentally
20 incompetent and gave a mental health evaluation the way law
21 would have required. They didn't do that, so that's failure
22 to investigate on their behalf. So me being a layman and a
23 guy that come straight from the street, I'm supposed to put
24 all these paperwork and things together so they can do their
25 job?

1 Q. But being a layman from the street, you -- outside the
2 courtroom, outside of legal proceedings, you've talked to
3 people about mental health?

4 A. I've been in mental health since I was thirteen.

5 Q. You've talked to people about being sick in the past?

6 A. I mean, I'm in mental health.

7 Q. So --

8 A. I mean, I'm mentally ill. I've got a lot of issues.

9 Q. So as a layman, you don't need a special degree to tell
10 someone that you're suffering with mental issues?

11 A. No. I don't need to do that. I don't need a special
12 degree to do that, but it takes special things to become a
13 lawyer, though, and that's one of the requirements that they
14 failed to do. I didn't fail to do that.

15 Q. So it requires no special degree or education, yet, you
16 didn't tell them anything about these mental health issues.
17 Correct?

18 A. No.

19 Q. Okay. And there were some issues brought up about
20 discovery. When did you get a copy of your discovery? Do
21 you remember?

22 A. Towards the end when Erik and B.J. actually presented
23 it to me, gave it to me. It wasn't a whole, whole lot, but
24 it was the basis of what I needed and if I'm not mistaken,
25 it was all that was being tran- -- being used for in court

1 on trial.

2 Q. Okay. And did you have a chance to review that with
3 Mr. Barrowclough and Mr. Delaney?

4 A. I got it the day or two beforehand or whatever. Like I
5 said, it wasn't -- it was basic -- it was your basic
6 information. I didn't have no -- maybe ten sheets of paper
7 altogether, but then when everything was all said and done,
8 I had over a thousand and some odd papers come across.

9 Q. And you said there were only ten sheets. Did you
10 discuss with --

11 A. Guesstimation. It's an approximate number.

12 Q. Did you discuss those with your attorneys?

13 A. Yes, I did.

14 Q. Did you tell them that you didn't understand anything?

15 A. I let it be known as it was going on that I didn't --
16 when I didn't understand stuff and -- but all this was kind
17 of happening so fast, like, with this trial. I've never
18 been into a trial before a day in my life. The pressures in
19 here and they weren't wanting me to talk and, like, just so
20 many things were transpiring. It's -- the whole trial is
21 kind of a haze, so to speak, in my mind, but I remember bits
22 and pieces, but I don't remember everything about that.

23 Q. And as far as just general investigation, did you ever
24 give them any witnesses that you wanted them to talk to?

25 A. I had -- there was quite a few that I had that never

1 got looked into, but yeah, I did.

2 Q. Any -- did you bring up any other issues or anything
3 that you wanted them to look into?

4 A. I mean, there were -- they just -- they -- these guys
5 get paid to do what they do, so I'll just -- I'll just lean
6 on them for every bit of support and help I could, you know,
7 lean on. I didn't know what to do or what not to do. I
8 just put all my trust and faith in them. After all, these
9 are guys who do this for a living.

10 MR. NEUBAUER: I have no further questions at this
11 point.

12 THE COURT: Any redirect?

13 MR. SHELDON: Yeah. Very briefly, Judge. Thank you.
14 May it please the Court.

15 REDIRECT EXAMINATION

16 JASON FRANKS BY MR. SHELDON:

17 Q. Mr. Franks, I'm going to show you the trial transcript.

18 MR. SHELDON: And I'm looking at page 450 of the actual
19 transcript, Your Honor.

20 (Whereupon, Mr. Sheldon handed the referenced document
21 to the witness.)

22 Q. Start with line 8 there and just start reading and I'll
23 tell you when to stop.

24 A. All right. On line 8, says, The Court: Mr. Franks,
25 anything that you want to say? Defendant says, I can tell

1 you I'm trying pretty much ordered going back to the
2 penitentiary, because I knew behind the evidence that I
3 showed in this previous case that I knew that I was dead man
4 once I got back there, but I didn't feel confident E.B.
5 Springs was going to have me protected. So I took it as far
6 as I could to try to keep and the only reason I denied that
7 plea offer was October 6th of 2009 I had a son that was born
8 and caught swine flu and died in the hospital ten days later
9 (weeping) so I was trying to do the right thing by this one
10 and not have him out of wedlock. He wanted me to come to
11 court August 26th, which I did. September 10th I was going
12 to be married, so I was trying to buy time until September
13 10th and I would have took whatever plea possible, but he
14 wouldn't work with me on that. Now I have that child, so I
15 guess it was all in vain. That's all I have.

16 Q. That was page 450 of your trial transcript. That was
17 right before the judge sentenced you to life without parole.
18 You remember that?

19 A. Like it was yesterday.

20 Q. And so this -- Mr. Springs had just started his
21 colloquy with the judge about what transpired at the hearing
22 we don't have a transcript for on page 445, so four pages
23 later. The Attorney General asked you a question on cross
24 about whether or not you disputed anything that Mr. Springs
25 had said. You remember that question?

1 A. No, sir.

2 Q. That they had just asked you, that when Mr. Springs was
3 talking about what had transpired,---

4 A. Yeah; yeah.

5 Q. --whether or not in court, at your sentencing you had
6 had disputed any of that. Do you remember that?

7 A. Yes, sir.

8 Q. Wasn't that your response to the judge?

9 A. Yes, sir.

10 Q. That you just needed a little more time, through
11 September 10th. Is that right?

12 A. Yes, sir.

13 Q. That you would have taken that year had Mr. Springs
14 given you that little more time?

15 A. And I would have took the twelve. I just wanted to
16 make sure that my son was born in a home with a family and
17 he was full and provided for.

18 Q. So is it fair to say that you didn't have any response
19 to the judge at all about what Mr. Springs had said?

20 A. I didn't get any -- I didn't have no friends that day,
21 man.

22 Q. When you were asked to talk, did you get to speak?

23 A. I tried. I was choking up, crying most of the time,
24 but I tried.

25 Q. Who was ultimately going to have to do the time,

1 whether it was a year, twelve years or what?

2 A. The same person that's doing it now.

3 Q. And is that you?

4 A. That's me.

5 Q. So you were asked a series of questions: why didn't
6 you tell him, why didn't you tell him, why didn't you tell
7 him. How far did you go in school?

8 A. Seventh grade.

9 Q. Did you get a GED?

10 A. I did eventually. It took me four times, but I got it.

11 Q. When did you get it?

12 A. During my last incarceration.

13 Q. The 2000 or this current one?

14 A. The first one.

15 Q. So you had gotten your GED and had gotten out, but you
16 went to the seventh grade. Is that right?

17 A. Yes, sir.

18 Q. There's three lawyers involved that are all sitting
19 here. Whose responsibility did you believe it was to
20 investigate your case and present it to you?

21 A. My lawyers.

22 Q. Prior to getting a lawyer, whose -- who did you put
23 your trust in?

24 A. E.B. Springs.

25 Q. Why?

1 A. 'Cause he's the solicitor. He's the man pushing all of
2 it. This is his job, it's his responsibility. Surely, he's
3 not going to clam up and just throw a man in prison that
4 doesn't deserve to be there.

5 MR. SHELDON: I don't have any more redirect, Judge.
6 Thank you.

7 THE COURT: Anything further from this witness?

8 MR. NEUBAUER: No, Your Honor.

9 THE COURT: Thank you, sir. You can step down.

10 THE WITNESS: Thank you, Your Honor.

11 MR. SHELDON: If you're ready, Judge, we call Dr.
12 Maddox, Doctor Donna Schwartz Maddox.

13 (DONNA SCHWARTZ MADDOX, being first duly sworn, was
14 examined and testified as follows):

15 MR. SHELDON: Just one second, Judge. I apologize.

16 DIRECT EXAMINATION

17 DONNA SCHWARTZ MADDOX BY MR. SHELDON:

18 Q. Dr. Maddox, please state your name for the record.

19 A. Donna, middle name Schwartz, S-c-h-w-a-r-t-z, last name
20 Maddox, M-a-d-d-o-x.

21 Q. And by whom are you employed?

22 A. I'm self-employed.

23 Q. And what do you do for your occupation?

24 A. I'm a forensic psychiatrist.

25 Q. What does that mean?

1 A. I -- that means I'm a medical doctor, licensed to
2 practice in South Carolina, but my specialty is dealing with
3 legal issues and mental health issues wherever they
4 intersect, whether that be civil, family issues or criminal
5 matters.

6 Q. Okay. How long you been doing that?

7 A. Since 1994.

8 Q. Where did you go to school?

9 A. University of South Carolina School of Medicine. I
10 went to undergrad at Furman University and I graduated from
11 there in 1985 with a Bachelor of Arts degree in psychology
12 and I graduated from medical school and the University of
13 South Carolina in 1989.

14 Q. And have you been -- and so you've been doing this
15 since the early nineties. Is that right?

16 A. Yes. I got my medical license in 1989 and then I
17 completed a four-year general residency in psychiatry and
18 then I completed an additional year, a fellowship year, in
19 forensic psychiatry and finished all of that residency in
20 1994. I worked for the Department of Mental Health for
21 about three years and I worked at the University of South
22 Carolina School of Medicine for, I believe, about thirteen
23 years and then I finished up the last eight years of my
24 State career at the Department of Mental Health and I
25 retired from the State after twenty-eight years of service

1 about four years ago.

2 Q. And how many cases have you been involved in in the
3 last twenty-five, thirty, almost thirty years?

4 A. Thousands, probably 10,000.

5 Q. And how many times have you testified as an expert in
6 court?

7 A. About 850 times.

8 Q. All in South Carolina?

9 A. No.

10 Q. What other states have you been qualified in?

11 A. Arizona, Mississippi, Virginia, Georgia, Florida, North
12 Carolina, South Carolina. I think that's about it.

13 Q. And in those 850 cases that you've testified in, have
14 you ever not been qualified as an expert?

15 A. No.

16 Q. And are you still in professional good standing, have
17 all the licenses needed and licensures, things like that?

18 A. I do.

19 Q. What sort of organizations do you belong to?

20 A. Only one now. I've tried -- I retired. A few years I
21 tried to cut down on some of those activities. I'm on the
22 Board of Visitors for the University of South Carolina and
23 in that position, I represent Anderson and I'm appointed by
24 our -- the board of trustees to serve a three-year term.

25 Q. What about publications? Have you been published,

1 speak at any lectures, things like that?

2 A. Yes. I've remained very active. I've got a -- I'm a
3 Professor of Forensic Psychiatry at the Medical University
4 of South Carolina; I'm still active with that. I teach the
5 fellows in forensic psychiatry. I also teach medical
6 students. They rotate with me and do it when they are
7 interested in forensic psychiatry. I still have a position
8 at the University of South Carolina School of Medicine. I'm
9 an associate professor there. I also teach numerous
10 lectures, not only for medical students, but legal bodies as
11 well.

12 MR. SHELDON: Judge, at this time I move to qualify Dr.
13 Maddox as an expert in forensic psychiatry with a specialty
14 in mental health issues within the legal system.

15 MR. NEUBAUER: No objection, Your Honor.

16 THE COURT: So the witness would be admitted as an
17 expert in forensic psychiatry without objection.

18 MR. SHELDON: Thank you, Judge.

19 Q. Dr. Maddox, how did you first get involved in this
20 case with Mr. Franks?

21 A. You contacted me.

22 Q. And you're being paid for this. Right?

23 A. Yes.

24 Q. And you're paid by -- and you're being paid by --
25 essentially, by Indigent Defense, but by the defendant at

1 the defendant's request, is that right, Mr. Franks' request,
2 the applicant's request?

3 A. Yes.

4 Q. And have you had an opportunity to meet with Mr.
5 Franks?

6 A. I did. I went to Lee County and met with him in 2018.

7 Q. And when -- what -- so when you get involved in cases,
8 in general, in post-conviction relief cases, what types of
9 things are you looking for? Like, what are you going to do?

10 A. Well, usually in those kinds of cases, of course,
11 there's different issues raised in different PCRs, but in
12 most of them there was -- the person was mentally ill or
13 on medications at the time of their legal proceedings and
14 those things were not brought to the attention of the Court.

15 Q. And what -- have you had the opportunity, in addition
16 to meeting with Mr. Franks, to review any collateral records
17 and things like that in this case?

18 A. I did. We tried to find -- he did have treatment he
19 had reported in North Carolina prior to his charges and we
20 were not able to obtain those records, but I did have his
21 detention center records that were available in 2010 at the
22 time of his -- around the time of his offense and then I've
23 had his Department of Corrections records since then.

24 THE WITNESS: And, Your Honor, multiple medical
25 hospitalizations. He's correct. He's had severe -- he was

1 in a special program at the Department of Corrections, but
2 had severe self-mutilation for a period of time that
3 required numerous surgeries at South Regional, I have those
4 records, and also at Prisma, and I had those records as
5 well.

6 Q. Is there -- let's talk about -- did you have an
7 opportunity to review the York County Detention Center
8 records?

9 A. I did.

10 Q. And did you have the opportunity to review the records
11 from June to December of 2010?

12 A. Yes.

13 Q. And, in fact, did those records exist? Are there
14 records?

15 A. Yes.

16 Q. Is there any doubt in your mind that he was -- had
17 mental -- previous mental health history?

18 A. No.

19 Q. Did the detention center records reflect that?

20 A. Well, yes. What they actually reflected is he brought
21 it to their attention. There was -- he had filled out
22 paperwork and let them know back even in June, the short
23 time that he was in in June, and then again in September.
24 He made them aware that he was receiving psychiatric
25 medications and requested that he receive his medications.

1 Q. So he went to York County and informed York County that
2 he, in fact, had mental health issues?

3 A. Yes.

4 Q. And those records are available. Right? I mean,
5 they're available for people to get if they're needed in
6 proceedings just like this.

7 A. Yes.

8 Q. Why are those records important in understanding sort
9 of the overall scheme? Like, what -- why does mental health
10 matter when we're talking about whether or not somebody
11 should be given legal counsel or mental health counseling
12 involved in a crime?

13 A. Well, it's important for a number of reasons.
14 Sometimes you have to look at whether it diminishes
15 somebody's capacity when they commit an offense. It can
16 explain why somebody turns down a really good deal sometimes
17 when they're offered a situation. It could create
18 impulsivity, irritability. It can explain abhorrent
19 behaviors sometimes that maybe are exhibit during
20 proceedings or in court. So it has a number of things it
21 can do.

22 Q. When somebody -- and you've been in the courtroom for
23 -- and I'm certain you're familiar with the transcript and
24 all those kinds of things and you've heard the testimony.
25 When someone is confronted in a situation such as this, so

1 the confrontation, essentially, occurs in the detention
2 center with a prosecutor coming down to speak to an
3 unrepresented person. Is it important -- from a mental
4 health standpoint, why is it important that we know if
5 everything's okay at that point?

6 A. Number 1, you want to make sure the person understands
7 what's being offered. Number 2, you want to make sure they
8 have the capacity to pay attention, to understand what was
9 being offered.

10 THE WITNESS: And the best example I can give is even
11 today, Your Honor, I listened to him testify and he gets so
12 anxious.

13 A. He gave you the wrong date of birth for his son. He
14 had told me October when his son was born and died and I
15 believe he testified today August. So he's the kind of
16 person, when he gets very anxious, sometimes people that
17 have been abused or have post-traumatic stress disorder,
18 they have difficulty sometimes recalling details or maybe
19 providing accurate details at a time when they're extremely
20 anxious, it's hard to kind of access memories and
21 information, so those things would be important. It would
22 explain, you know, maybe sometimes they don't hear
23 everything. They may not understand everything.

24 Q. Is there a heightened extent -- is it possible to have
25 a heightened extent of anxiousness when incarcerated,

1 charged with a crime as opposed to just walking around
2 Walmart?

3 A. Well, absolutely and much more specifically for his
4 case, what he had been going through prior to this event.
5 He -- as he had told you, he had a son that was born. He
6 was in prison for the death of his first son. He served a
7 ten-year sentence.

8 THE WITNESS: He was convicted, Your Honor, of homicide
9 by child abuse. He'd lost a son.

10 A. And he got out and he had a new child. He rebuilt a
11 life. Their son died after three days. Mr. Franks stated
12 that their child caught swine flu from the thirteen-year-old
13 step-daughter and died very shortly afterwards and so
14 keeping in mind he had already lost one son, he lost
15 another. He was very depressed. He stated his wife and he
16 had severe marital problems after that. She couldn't go in
17 the baby's room. They'd had a room made for the baby. She
18 wasn't able to go back into the room. They were both trying
19 to work very hard and help each other, but the marriage
20 eventually didn't work out. He had developed an emotional
21 attachment to another female at this time. So he was going
22 through, not only his own mental illness, but also a lot of
23 stress around the time of these charges. So he had a lot of
24 issues going on, even in addition to the anxiety he has from
25 having the post-traumatic stress disorder.

1 Q. Would it be difficult for a non-member of the
2 psychiatric community or the psychiatric field to recognize
3 anxiousness or anxiety or heightened senses or forgetfulness
4 or things like that? I mean, is that something that would
5 need to be properly diagnosed?

6 A. Yes. It needs to be diagnosed, but it's observable.
7 Today I watched him, he's been rocking his chair the entire
8 time he was testifying. He was -- had a lot of motor
9 activity and he would get a little irritable sometimes on
10 cross and I saw that as well.

11 Q. And so you could sense things like irritability and
12 things. You don't need to be an expert for that. Right?

13 A. No.

14 Q. But when it comes to dealing with major decisions,
15 things like whether to plead guilty, whether to take
16 something to trial, things like that, is it -- is that
17 something that we leave up to lay people to determine
18 whether somebody's capable of understanding all those
19 things?

20 A. No.

21 Q. Who do we leave that up to and why?

22 A. Well, the normal process would be if you -- if the
23 attorneys become aware that somebody has a mental health
24 history, they'll refer sometimes for a psychiatric
25 evaluation, sometimes they don't, but usually you would

1 refer to an expert or at least gather records if there's a
2 history, try to complete those records and make an
3 assessment.

4 Q. Why would that be important in a case, to have that
5 assessment done or to retrieve those records and things like
6 that?

7 A. Well, I can't say in every case, I'd rather stay
8 specifically with this one,---

9 Q. Sure.

10 A. ---if it's okay. It would explain why, on the day that
11 this plea was to happen, that he was reticent about it, he
12 was -- especially knowing that he was having another baby,
13 after what he'd been through with his prior losses. He
14 already had extensive history of child abuse. His mother
15 was not even in recovery around this period of time.

16 THE WITNESS: Your Honor, she was an opiate addict and
17 even while this offense occurred, he was concerned
18 about his mother.

19 A. He had been sexually abuse by a family member. His
20 father had been very abusive and his father had died. So he
21 -- there were just so many things going on with him. He was
22 seriously ill. He had a lot of stressors.

23 Q. And, Dr. Maddox, to be clear, I mean, so you had an
24 opportunity to meet with Mr. Franks back in 2018 and during
25 that meeting is it fair to say that y'all went over an

1 extensive history of his essential mental health past and
2 the issues that he's had in his past? Is that fair to say?

3 A. Yes. Past and present.

4 THE WITNESS: One of the things that I had noted, Your
5 Honor, he had had a lot of hospitalizations and mutilation.

6 A. He stopped back in 2018. He finally stopped
7 mutilating. He would open -- he would put a ten centimeter
8 laceration in his abdomen and put pens, ink pen covers and
9 things, into his wounds and had to frequently have surgery.
10 He was in the cutters program. I worked in the Department
11 of Corrections for a number of years, so I'm aware of the
12 program. It was a program designed to help people not
13 mutilate and he was able to stop doing that. So at the time
14 I saw him, he was receiving medications. He was becoming
15 stable. He was -- he was less depressed than he was prior
16 to his offense. He was more stable and he was working on
17 getting treatment. He was doing better.

18 Q. When you're talking with him, he's providing this
19 information to you. Is that right?

20 A. Oh, yes.

21 Q. You don't walk in there with a full mental health
22 history on anyone, really? I mean, it's difficult to do.
23 Right?

24 A. Correct. He provided that history.

25 Q. Is there -- but then you -- well, as part of your job

1 and in your profession, is it important to do the best you
2 can to verify what he's saying is true---

3 A. Yes.

4 Q. ---about his history?

5 A. Yes.

6 Q. Did you attempt to do that?

7 A. Yes.

8 Q. Were you, in fact, able to obtain a lot of records?

9 A. Yes, some.

10 THE WITNESS: I would have liked more, but I think what
11 was most important is that his stories have been consistent,
12 Your Honor.

13 A. He was -- hasn't had a lot of psychiatric evaluations
14 prior that I could see, but the ones since have been
15 consistent. Dr. Houchins saw him when he was at Richland
16 Memorial Hospital. She's a psychiatrist I know, and he gave
17 her a very similar history. His diagnoses, if you look over
18 time, they've been somewhat consistent. They're usually --
19 his main diagnoses have been depression, post-traumatic
20 stress disorder and a personality disorder and I diagnosed
21 all of those as well.

22 Q. So within -- so is it fair to say that the records that
23 you were able to obtain were consistent with the story you
24 were getting?

25 A. Yes.

1 Q. And the records that you obtained were contemporaneous
2 throughout his life, essentially, not just necessarily from
3 2018. Right?

4 A. His history, at least we can say from 2010, we know
5 that.

6 Q. And so is there any reason you have to believe, based
7 in your -- based on your expertise, that there was
8 information provided to you that was untrue just to benefit
9 him in this PCR?

10 A. No. I do not feel like he was over-reporting abuse or
11 child abuse or neglect or sexual abuse to gain -- for
12 secondary gain.

13 Q. So --

14 A. Not at all. In fact, it was the opposite. He was
15 reluctant to talk about it, which is a feature you see in
16 people with post-traumatic stress disorder. He didn't want
17 to implicate his family. He didn't want to hurt his mother.
18 He was concerned about his family. So, no, these are things
19 -- it does take some skill to give this kind of history.
20 This is not -- people with PTSD don't volunteer these
21 things. When they talk about the things that have happened
22 to them, it causes them to get symptoms because they have to
23 relive it, they have to go through it and deal with it
24 again, so he became quite emotional and that's -- they're
25 difficult to get a history from usually.

1 Q. And so when -- if someone were to walk into this
2 courtroom and say, well, anybody can just say they have
3 mental health issues after the fact, is that an accurate
4 statement for this case?

5 A. No. In my opinion, not at all.

6 Q. Why not?

7 A. His history of abuse. His --

8 THE WITNESS: I think the best way to
9 answer this is I diagnosed him with a personality disorder,
10 Your Honor.

11 A. It's called borderline personality disorder. That is a
12 disorder, you have to have trauma longstanding. I get asked
13 this question a lot, what effects does trauma have on the
14 human psyche. Well, it has a lot of different effects. It
15 depends on how long the trauma, how old were you when it
16 happened, what kind of trauma is it? So, for example,
17 somebody that has one trauma, maybe you were a victim of a
18 tornado, you might have post-traumatic stress disorder from
19 tornadoes and for the rest of your life you get scared when
20 a tornado comes. You can have some people that are abused
21 over such a long period of time that it effects their
22 personality development. That's how you get a borderline
23 personality. What that means is that person is so
24 susceptible to rejection and stress that they become very
25 emotional, they become suicidal, they become reckless, very

1 similar to the behaviors that he's exhibited over time.
2 Those don't happen in a vacuum. You have to have, usually,
3 very severe abuse to have that kind of personality disorder
4 and he's got it. So that's not something that comes from
5 hearing your parents argue. He witnessed his father harm
6 his mother. He was locked in a closet for periods of time
7 and neglected. He was sexually abused and then also, when
8 he went to prison, he witnessed trauma as well and he was
9 also beaten while he was in prison by six different inmates,
10 by his report.

11 Q. Is it -- and I'll try to ask this the right way. Is it
12 fathomable to you that somebody could get a life sentence
13 without the possibility of parole in this state, given his
14 mental health history, without every any lawyer ever knowing
15 about it?

16 A. I don't know. I don't know.

17 Q. How -- I mean, what was Mr. Franks supposed to do?
18 Like, what is somebody supposed to do in this position?
19 You've heard the facts of what happened. What could he have
20 done differently?

21 A. I don't know how to -- that's really not a medical
22 opinion. I mean, people with PTSD don't volunteer their
23 symptoms. He certainly told the jail that he needed his
24 meds. He knew he needed his medications when he was in a
25 situation, in fact, when he first went to the jail, when his

1 medications weren't available, Dr. Jewel even called in
2 Vistaril, which is an anxiety medicine, for him. So, I
3 mean, when he -- he knew that he needed his meds. He knew,
4 he had insight. I don't know how he could know that's
5 pertinent to his charges. I --

6 Q. Is it important that the Court be informed of mental
7 health issues when people are in courtrooms determining
8 substantial things in their lives?

9 A. Sure.

10 Q. So what -- based on what you've seen, -- and you issued
11 a report in this case, didn't you?

12 A. Yes.

13 Q. I'm going to hand you this, see if you recognize that
14 for me.

15 (Whereupon, Mr. Sheldon handed a document to the
16 witness.)

17 Q. You recognize that?

18 A. Yes. That's my report.

19 Q. And I think that's maybe -- yeah. So it's date of
20 report with a date of addendum of April 7th of 2022. Is
21 that right?

22 A. Yes.

23 Q. But the original report was prepared July 6th, 2019?

24 A. Yes, sir.

25 Q. And there's nothing in the original report that's not

1 contained within the addendum?

2 A. No, not at all.

3 Q. Okay. Has this been changed or altered any way?

4 A. No.

5 Q. Accurate depiction of your report?

6 A. Yes.

7 MR. SHELDON: Judge, move to have that marked as
8 Applicant's Exhibit Number 1.

9 THE COURT: Any objection?

10 MR. NEUBAUER: No objection, Your Honor.

11 THE COURT: So Applicant's Exhibit Number 1 would be
12 admitted without objection.

13 MR. SHELDON: I need to hand that to you. Sorry.

14 (Whereupon, the court reporter marked the referenced
15 document as Applicant's Exhibit Number 1.)

16 MR. SHELDON: Thank you.

17 Q. Okay. And I'm going to hand that to you, the actual
18 marked exhibit. Did you have the opportunity to make any --
19 to come up with any recommendations or opinions as to this
20 case?

21 A. Yes.

22 Q. And what were those?

23 A. My opinions were that he was mentally ill and he was
24 mentally ill at the time of these events. I opined he
25 should have had a psychiatric evaluation to determine his

1 competency and, particularly, when the plea offer was turned
2 down or revoked, whatever the circumstances were about that,
3 I would have had some concerns. Thirdly, I just, again,
4 talked about the --

5 THE WITNESS: And this was more a finding, not a
6 recommendation, that people with this personality structure,
7 Your Honor, that come from being abused, they can be very
8 impulsive and emotionally labile and if you knew that going
9 into this, this is the kind of guy, had I been retained --

10 A. I can tell you what I would have done. Had I been
11 retained on the case, I would have asked the lawyer, let's
12 meet with the solicitor. We need to explain why this
13 happened, why he's turning down a deal that obviously is in
14 his best interest and I would have offered to meet with the
15 prosecution to explain about his abuse, what was happening
16 and why this date for him was so important in terms of
17 having a new child and wanting to be a good dad and make
18 sure that he did things right this time. So I think having
19 an expert at that time would have been able to maybe prevent
20 this from going to trial and then, finally, the other thing
21 I noted, the DSS records or his Charter Pine records, I
22 wanted to -- if we could have had those records, that would
23 have been nice. He was at Charter Rivers when he was a
24 child, but that hospital's closed, so some of those records
25 we couldn't get, but I think the role would have been,

1 number 1, to explain why he turned this down and, hopefully,
2 have prevented this from going to trial. He would have had
3 -- just also, just as an extra, I don't think it would have
4 mattered in this trial, but he would have had a capacity to
5 conform issue had he done this intentionally, had he been
6 irritable and try to harm someone. That would be consistent
7 with this illnesses and mental state as well.

8 Q. How would that have impacted or how could that have
9 impacted possible plea negotiations, things like that?
10 Like, how does it help to get a team together to go to the
11 prosecutor with this information? Like, what's the purpose
12 of that?

13 A. Well, it answers questions sometimes that people may
14 have or it can explain behaviors or what people think is
15 volitional, you know, trying to be resistant or not be
16 cooperative, it can explain those things.

17 Q. What other concerns do you have about the way things
18 were done back in 2010 in this case from a psychiatric
19 standpoint?

20 A. None that I can think of.

21 Q. So you're qualified in the field of forensic
22 psychiatry, but I think you indicated in particular with a
23 specialty within the mental health and legal community,
24 like, kind of where those paths cross. Is that right?

25 A. Yes. That's what all forensic psychiatrists do. We

1 all have that specialty.

2 Q. Within the legal -- so by saying forensic, it's

3

4 essentially geared towards the legal community. Is that
5 right?

6 A. That's right. Any legal entity wherever there's a
7 mental health issue would be an area we consult with.

8 Q. And based on your expertise, in your opinion, should
9 somebody that is suffering from these sorts of mental health
10 diagnoses, these real mental health diagnoses, be
11 participating in the legal -- in the legal proceedings or
12 anything else without evaluations and lawyers?

13 A. Not with the severity of his illness. He should have
14 had an evaluation. It would have been helpful, I think, for
15 all parties involved to have understood his -- the stressors
16 he was going through, his mental illnesses, how they work.
17 That would have been helpful, but keep in mind, now, there's
18 many times that mental health is consulted and were not
19 used. You know, they were presenting that he was innocent
20 and this was an accident, so I could certainly see, had I
21 consulted, they may not want me testifying in this trial
22 because my opinion would have been he had trouble conforming
23 his behavior because of the irritability, depression and
24 PTSD and anxiety and those sorts of things.

25 Q. And so perhaps that it wouldn't have been at trial a

1 sort of not guilty due to reason of insanity or mentally ill
2 or whatever it may have been, but in the steps leading up to
3 trial, is it important in general for everybody to
4 understand mental health capacity?

5 A. Absolutely.

6 Q. And is it fair to say, based on your opinion of what
7 you've been provided in this case, that that wasn't done?

8 A. I didn't see any evidence. The only psychiatric
9 evaluation I saw on him was actually after his imprisonment
10 when he was being treated and also when he went to Prisma to
11 have his surgery for the self-mutilation.

12 MR. SHELDON: Thank you. Dr. Maddox, please answer any
13 questions the Attorney General's office has.

14 THE COURT: Mr. Neubauer?

15 MR. NEUBAUER: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 DONNA SCHWARTZ MADDOX BY MR. NEUBAUER:

18 Q. Good afternoon, Dr. Maddox.

19 A. Good to see you.

20 Q. Good to see you as well. So there -- while you were
21 doing your evaluation, you had no records for Mr. Franks
22 prior to these charges. Correct?

23 A. That's correct. Just the -- and still to this day,
24 starting from 2010 on.

25 Q. And so all the information that you have is just based

1 off of his statements?

2 A. That's correct, history, and then the only other
3 history maybe that's pertinent is in the 2010 records when
4 he comes and he does give them the name -- he tells them the
5 names of the medicines. They -- he -- the girlfriend brings
6 in his medications, so there was some proof he was getting
7 the anti-psychotic medication and the anti-depressant
8 medication, so they were brought in from the community. So
9 he obviously had a prescription at some time. The records
10 show, though, that the Seroquel, which is the anti-psychotic
11 medication, it had been expired and so that was not given to
12 him in the jail. He was just -- so he came in with the
13 Remeron, which is an anti-depressant.

14 Q. Okay. And because there were no records, there was --
15 other than what he told you, there's no way to verify this
16 information?

17 A. That's correct.

18 Q. And you said that he'd been consistent with what he
19 told you and other evaluators, but again, there's no way to
20 confirm that what he's telling is, in fact, the truth?

21 A. That's correct, unless -- I think there would --
22 probably would be a way if we had his pharms, so we could
23 pull up, you know, we know that he had an active
24 prescription, but you're right. I never saw the records
25 from mental health in North Carolina where he received the

1 Remeron and the Seroquel. Now, since, I know that he's
2 getting mental health treatment in prison. He's been on
3 anti-depressants there.

4 Q. And your evaluation was in 2018. Correct?

5 A. Yes.

6 Q. So that would have been about eight years after the
7 incident?

8 A. Correct.

9 Q. At that time is there any way to know what his mental
10 health status was at the time of the incident?

11 A. Yes. We -- that's what we do. In forensic psychiatry,
12 you know, we're never there at the time of the crime,
13 hopefully, but what we do is we go back in time and we look
14 at -- you know, the first thing you do is you obtain a
15 psychiatric history, you look at somebody's cognitive
16 capacity and then we go back in time and see if they were
17 mentally ill, was their behavior -- did the crime -- was the
18 crime influenced by their mental illness or behavior. So we
19 do that, so it's okay to do that, preferably, you'd like to
20 do it much sooner in time, closer to the time of the
21 offense.

22 Q. And, again, all the background information you had, you
23 have no records or anything from him before this incident?

24 A. No.

25 Q. So all of your -- your evaluation would have been based

1 on information gained after he was arrested for this charge?

2 A. That's correct. And had this been an issue for trial,
3 I -- I don't have any reason to doubt him. His -- I know
4 from over thirty years of psychiatry, his symptoms are very
5 consistent with post-traumatic stress disorder and
6 borderline personality, but had this been an issue that was,
7 in my mind, needed more verification, I would have called
8 his mother, asked -- I could have interviewed various family
9 members, but his illness matches the history that he gives
10 me quite well.

11 Q. And as far as a lay person or his attorneys determining
12 that they think there might be some mental health issues,
13 how would someone be aware that there are possible mental
14 health issues?

15 A. That's a great question. I actually teach that. I go
16 to the public defender's conference a number of years over
17 the years and over time and I -- that's exactly what we do,
18 we talk about how do you know when to get your client
19 referred and so usually what I teach younger lawyers is you
20 have to ask screening questions. You have to -- just like
21 the jail has the screening questions, have you ever been on
22 medicines, and the jail did this, you know, have you been on
23 medicines for mental health, have you had mental health
24 treatment and then if they check the block, I usually tell
25 them get a psychiatrist if you can or have mental health see

1 them for an evaluation, because sometimes you don't know
2 what you're dealing with and lawyers can't always know that.
3 You can't know that.

4 Q. And so I believe at one point you said that you can
5 kind of also observe certain anxious and nervous behaviors
6 and that could be indicative?

7 A. For some, yeah. I think the question was was there --
8 could a lay person tell sometimes if there's something wrong
9 and for him, just his motor behavior, but yes, that's
10 correct. Sometimes -- sometimes there's outward signs. I
11 have a lot of lawyers that will call me when they notice
12 their clients don't respond to them and that's usually a
13 sign of schizophrenia, so a lot of times sometimes they can
14 observe things and make the referral, but sometimes they
15 don't know.

16 Q. Okay. And say an attorney was -- had a client and they
17 didn't see any nervous, anxious behaviors and no information
18 was provided to them by the client that they had any mental
19 health issues, is it reasonable for an attorney not to think
20 that he's competent and that he isn't suffering from any
21 mental health issues?

22 A. No. I think that's reasonable.

23 Q. So it's possible that without being provided that
24 information, an attorney wouldn't think that they might need
25 further mental health evaluations?

1 A. Yeah. That can happen and it does happen.

2 Q. Okay. And in your report I read through, I see your
3 opinions. You state that you feel he should have had a
4 psychiatric evaluation to determine his competency at this
5 time. Correct?

6 A. Yes.

7 Q. But there's no -- in this report there's no actual
8 determination on his competency, whether it's now or at that
9 time. Is that correct?

10 A. That's right. He -- I wasn't asked to do that. Had I
11 done that, I would have looked through the transcript, but
12 it sounds like he actually made statements and those sort of
13 things in court and it sounds like he was working with his
14 attorneys. I was more concerned with him refusing the offer
15 at that time. That was the red flag. Competency's fluid.
16 You can have periods of time when you're mentally ill, but
17 you're competent, but when you become anxious or backed into
18 a wall, your symptoms can prevent you sometimes from being
19 able to assist in your defense. So in my opinion, that
20 point in time where he -- where this deal goes south, that
21 should have been an appropriate time to have his competency
22 looked at.

23 Q. But, again, there's no -- there's never been anything
24 determining that he was not or is not competent. Correct?

25 A. That's correct.

1 MR. NEUBAUER: I have no further questions at this
2 point.

3 THE COURT: Any redirect?

4 MR. SHELDON: I don't think so, Judge.

5 THE COURT: Thank you, Dr. Maddox.

6 THE WITNESS: Your Honor, may I return to Anderson?

7 THE COURT: Any objection to this witness being
8 excused?

9 MR. NEUBAUER: No, Your Honor.

10 MR. SHELDON: No, Your Honor.

11 THE WITNESS: Okay. Thank you.

12 THE COURT: You are excused.

13 MR. SHELDON: Judge, we would call B.J. Barrowclough.

14 THE COURT: Before you call Mr. Barrowclough, let me --
15 counsel approach real quick.

16 (Whereupon, a bench conference was held off the record,
17 after which this matter was recessed at 3:33 P.M. and
18 reconvened at 3:47 P.M.)

19 THE COURT: Let's go back on the record. Mr. Sheldon,
20 call your next witness.

21 MR. SHELDON: Thank you, Your Honor. I had previously
22 called Mr. Barrowclough, Judge, although during the break I
23 spoke with the A.G., I've decided I'm going to go ahead and
24 rest at that point and let him call the attorneys whatever
25 order he chooses to.

1 THE COURT: Applicant rests?

2 MR. SHELDON: Yes, Your Honor.

3 THE COURT: Okay. Mr. Neubauer.

4 MR. NEUBAUER: Thank you, Your Honor. The State would
5 call E.B. Springs.

6 (E.B. Springs, being first duly sworn, was examined and
7 testified as follows):

8 DIRECT EXAMINATION

9 E.B. SPRINGS BY MR. NEUBAUER:

10 Q. Good afternoon, Mr. Springs.

11 A. Good afternoon.

12 Q. How long have you practiced law?

13 A. I am retired now. I practiced right at twenty years
14 total.

15 Q. And what percentage of that practice would have been in
16 criminal law?

17 A. All of it.

18 Q. And did you formerly work with the Sixteenth Circuit
19 Solicitor's Office?

20 A. I did.

21 Q. And is that where you ultimately retired from?

22 A. Yes. That's true.

23 Q. And were you the assistant solicitor assigned to Mr.
24 Franks' case?

25 A. Yes. Yes. I got his case related to the allegation of

1 running a man down with a car.

2 Q. And do you recall what day he was arrested on?

3 A. Let me check my notes here on my dates. Yes. He was
4 arrested June 8th of 2010.

5 Q. And do you recall the first interaction you had with
6 Mr. Franks?

7 A. I do. I'd be glad to expound if you like.

8 Q. Yes, sir. What's the first day that you met him?

9 A. I got his case, got his paperwork in June after he was
10 arrested. I evaluated the case, saw some wrinkles to it and
11 some problems, one being that he had been charged with
12 ABWIK, assault and battery with intent to kill, just days
13 after that charge had been repealed and replaced by
14 attempted murder, so I saw that that would have to be fixed
15 if, in fact, we proceeded to trial. I looked over the case.
16 I thought the facts supported attempted murder, but I did
17 see problems with the case, serious problems in my mind as
18 far as obtaining a conviction and going through the
19 paperwork, there, mid-June, I saw that when he was arrested
20 -- he was in jail -- when he was arrested he had declined
21 appointed counsel and told whoever processed him that he was
22 going to hire attorney Phil Baity. I called Phil Baity's
23 office and I was told, no, they are not going to represent
24 Mr. Franks. So I was aware of no attorney on his case.
25 After evaluating the case, I decided I was going to make a

1 very generous plea offer. I went over the jail and I met
2 him face to face, found him very pleasant, very upbeat. He
3 seemed to be quite intelligent, quite sober, very self-
4 confident person. I identified myself, told him that I had
5 gotten his case, explained the problem with the obsolete
6 charge having been charged. I said if this case ever goes
7 to trial, it would go as attempted murder and with your
8 prior homicide, if you were convicted of attempted murder,
9 you'd get life without parole. I said, I'm telling you all
10 these things. These are the things I would have told your
11 attorney. You don't have an attorney, and as I first met
12 him, I said, do you have an attorney I don't know about,
13 because I don't see one on your case and he said, no, I
14 don't have one. So I said, I'm telling you the things I
15 would tell your attorney and I see problems with the case.
16 I am fully convinced you intentionally ran this man down,
17 trying to kill him, but I see problems with the case and I'm
18 going to make you a very generous plea offer. You're also
19 charged with leaving the scene of an accident with bodily
20 injury and if you will plead guilty for one active year in
21 prison on leaving the scene of an accident with bodily
22 injury, that's the deal I would give you and that would be
23 the consequences, one year in prison. He said, I like that.
24 I like that deal. I said, Would you like me to help you get
25 a public defender? You can have the one year with a lawyer

1 or without lawyer. I'll give your lawyer all the time he
2 needs to get up on the speed on the case. You can have the
3 deal either way, with the lawyer or without a lawyer. I
4 said, Getting you appointed counsel should not be hard. You
5 may have to pay a reasonable appointed counsel fee, but it'd
6 be the best money you ever spent and he said, No, no. I'll
7 handle this myself. That's -- that's a -- that is a great
8 deal. I said, Okay. Well, if you want to do that and
9 you're telling me you are, we're going to do it the week of
10 August 10th and --

11 Q. And before we just -- sorry. Just to -- sorry to cut
12 you off. As far as that first interaction, you asked if he
13 had an attorney. You heard Mr. Franks' testimony. Correct?

14 A. I did. Yes.

15 Q. Did you ever tell him that you don't need an attorney?

16 A. I did not. In fact, I told him the opposite. I said,
17 It is always a good idea to have an attorney.

18 Q. And you relayed that you were willing to offer him a
19 one-year plea to the leaving the scene of an accident?

20 A. That is correct.

21 Q. So you were prepared to dismiss the ABWIK that he was
22 originally arrested for?

23 A. That is correct.

24 Q. And during this conver- -- discussion with him, did you
25 -- did he accept the offer that day?

1 A. Yes. He was delighted with it. He was smiling.

2 Q. And you told him that August 20 -- or, sorry, August
3 10th was the original court date for that. Correct?

4 A. Yes. I said, If you want the deal, and you can have
5 the deal with an attorney, without an attorney, but we're
6 going to do it the week of August the 10th. Do you
7 understand that? And he said, yes, and I reminded him again
8 and I said, Don't forget if we go to trial, you're going to
9 go to trial for attempted murder and you would face life
10 without parole with your prior record, if convicted and he
11 said, I understand that, too.

12 Q. And your conversation with him, was it at about this
13 conversational tone?

14 A. Yes; yes.

15 Q. Were you forceful or did you raise your voice at him in
16 any way?

17 A. No; no. I was speaking just the way I'm speaking to
18 you and he was quite pleasant, obviously intelligent. As I
19 said, he was -- seemed to be very self-confident.

20 Q. Did he appear anxious in any way to you?

21 A. No; no. Not at all.

22 Q. Any nervousness from him?

23 A. No. None -- none whatsoever.

24 Q. Did he seem to be clear-headed from your perspective?

25 A. He did.

1 Q. Did he ever indicate to you that he couldn't understand
2 anything that you were saying?

3 A. No. He said repeatedly, I understand. He seemed to be
4 quite intelligent and fully understood what I was telling
5 him.

6 Q. And this -- during this conversation, did you ever have
7 any discussion about any mental health issues that he might
8 be facing?

9 A. No. None whatsoever. I saw no -- nothing wrong with
10 his demeanor, with his mental abilities. He seemed fine and
11 he didn't bring any such thing up.

12 Q. And how many times did you meet with him before he was
13 represented by Mr. Barrowclough and Mr. Delaney?

14 A. Three times.

15 Q. At any of those times, did he raise any issues
16 regarding prior mental health treatment or that he was under
17 the influence of any medication?

18 A. Never.

19 Q. Did he appear clear to you through all those
20 conversations?

21 A. He appeared clear-headed, intelligent, very self-
22 confident. He was articulate. I had him in front -- before
23 it was all over with, I had him in front of Judge Alford
24 twice, in front of Judge McIntosh once and, of course, we
25 did the trial in front of Judge Hayes and none of those

1 judges expressed any reservations or concerns about Mr.
2 Franks' intelligence or mental abilities or competency.

3 Q. And so when would have been the next time that you met
4 with him after that initial meeting?

5 A. If I would, can I give the conclusion of the first
6 meeting at the jail?

7 Q. Yes. Yes, sir.

8 A. I got ready to leave and I told -- made the plea offer
9 to him, told him I'd get him a lawyer if he wanted one, told
10 him he could have the deal with a lawyer or without. As I
11 was getting ready to leave, he said, What about my
12 probation? And I said, You're on probation? He said, Yeah.
13 What about my probation? I said, Stop right there, because
14 I don't involve an unrelated prior probation case in my
15 cases ever, ever in any way. That's completely your
16 problem. It's not part of my case and it's never going to
17 be part of my case. You need to keep that in mind. That's
18 your problem. It has nothing to do with our deal.

19 Q. And so did he understand that---

20 A. He seemed to.

21 Q. ---from your -- did he ask you any questions about what
22 he might need to do to address that issue?

23 A. The probation? No. No. I told him very forcefully, I
24 said, Whoa. I don't get into probation. I don't mix them
25 up in my cases, never have, never will. It was -- I was

1 quite firm on that.

2 Q. And he, at that time, refused to have an attorney.

3 Correct?

4 A. He said, I'll handle it myself.

5 Q. You can't force him to take on counsel in any case, can
6 you?

7 A. No. He has a constitutional right to represent
8 himself.

9 Q. And to your understanding, he'd chosen to represent
10 himself?

11 A. He kept saying, I'll handle it myself.

12 Q. And so he didn't end up pleading on August 10th, did
13 he?

14 A. No. Our next meeting was actually July 6. July 6 was
15 his initial appearance. We had, basically, accomplished
16 what we accomplish at an initial appearance. The defendant
17 learns where the prosecutor's coming from, but he came to my
18 office. He was out of jail, he'd gotten out of jail. July
19 6 he came to the office, I brought him back into my office,
20 and went over the deal again. I said, It's one year -- one
21 year in prison for leaving the scene of an accident with
22 bodily injury. We will do it the week of August 10th and
23 we're going to actually do it Thursday the 12th of that
24 week. Do you want me to get you a public defender? I'd be
25 glad to. It's better to have a lawyer. You can have this

1 one-year deal with a lawyer or without lawyer and, once
2 again, he was adamant he would handle it himself and, once
3 again, he was articulate, he seemed bright, sober, quite
4 pleasant and he said he wanted to handle it himself, he
5 wanted the one-year deal and I said, Okay, and he declined,
6 again, any help getting an attorney. I said, Okay. What
7 we're going to do, then, I'm being very generous and you
8 know it and if you want, we're going to do it August 12th.
9 That's going to be the deadline and he said, All right, and
10 left. I'm sorry. Let me back up. Before he left, he said,
11 Could I have the discovery in my case? And I said, Yes, you
12 certainly can, and I made him a copy of the discovery and
13 put it in his hands before he left.

14 Q. And that was on June 6th that you provided him with a
15 copy of --

16 A. July 6th.

17 Q. July 6th. I apologize. And --

18 A. That was his initial appearance date.

19 Q. So he had that prior to having an attorney appointed.
20 Correct?

21 A. Yes.

22 Q. And do you recall what all would have been in the
23 discovery at that point?

24 A. Just all the paper in the file. I would have -- I
25 kept thinking right up until the time I retired in 2013, I

1 was an old dinosaur, I wanted my paper and I would have laid
2 the file on the copy machine and pushed the button.

3 Q. And so on July 6th, he did not -- or you attempted to
4 -- or you asked him if he wanted a attorney. Correct?

5 A. Yes, I did and I offered to help him get one.

6 Q. And he still chose to go pro se?

7 A. He said, I'll handle it myself.

8 Q. And you said -- you kind of briefly advised him of some
9 of the risks of representing himself?

10 A. I told him at our first meeting at the jail, I said, it
11 is always a better idea to have an attorney, always. I
12 said, you know, you may have to pay a small appointed
13 counsel fee, but it'd be the best money you ever spent.
14 You're always better off with an attorney; I told him that.
15 I would have preferred that he had an attorney. It's messy
16 working with pro se defendants, but you can't force them
17 into it.

18 Q. And did you communicate to him that you thought it
19 would be better if he had an attorney?

20 A. I said, It's always better to have an attorney.

21 Q. And so you said that at the initial meeting while he
22 was in jail and then again on July 6th, you reiterated
23 those?

24 A. No. I didn't repeat that. I just offered again to get
25 him an attorney. I said, I'll be glad to get you -- help

1 you get appointed counsel. You can have the same deal with
2 the appointed counsel and at that point it's July 6th. I
3 said, If your new attorney needs additional time to get up
4 to speed on the case, I'll be gladly -- I'll be glad to do
5 that, and he said, I will handle it myself, and was very
6 self-confident when he said it.

7 Q. And so you said he had up until August 12th to enter
8 the plea agreement. Correct?

9 A. Well, not up to. That was the -- that was the day.

10 Q. The day.

11 A. Like a doctor's appointment. If you want the deal,
12 it's August 12th.

13 Q. And he didn't end up pleading on that day. Correct?

14 A. No. Right before August 12th, I got a phone call from
15 Randy Murdaugh, a solicitor in one of the lower circuits of
16 the state. He had called our office. He had become aware
17 of Mr. Franks' charges. He had spoken with our Deputy
18 Solicitor Betty Miller and explained to her that Mr. Franks
19 had appeared as a witness in a prison murder and becoming
20 aware -- he was aware of the one-year offer. He said that
21 would put him back in the Department of Corrections and he
22 goes, I'm afraid -- evidently, the defendant was found not
23 guilty. He said, I'm afraid friends of this defendant may
24 hurt him if he's back in the general population, but the
25 Department of Corrections has special provisions for cases

1 like this, people that are in danger from gangs or whatever,
2 special units. I don't know what they're called. And I
3 would -- I would like to arrange for him to go into a
4 protective unit, and Randy Murdaugh and Betty Miller were
5 going to take care of that. There were letters to be
6 written and so forth and they needed some time to do it.
7 They said, You don't have to worry about it, we will take
8 care of it, but we need some weeks to get the protective
9 housing set up. I contacted Mr. Franks and said your plea
10 date is changed to August 25th and I explained why. I said,
11 You've been a witness in a prison murder case and to protect
12 you, there are arrangements being made to put you in a
13 special protective unit and they need some time. So August
14 12th is -- that's off. We're going to go to August 25th and
15 it's the same deal, but it's August 25th instead of August
16 12th, and Mr. Franks said he understood and that was the end
17 of that. Then we marked off time 'til August 25th came up.

18 Q. And you said the conversation that you had with
19 Solicitor Murdaugh was regarding Mr. Franks' housing if he
20 were to return to the South Carolina Department of
21 Corrections. Correct?

22 A. Yes.

23 Q. Is that the full extent of that conversation?

24 A. That was all it was about. It was not about my case,
25 the facts in my case, what should happen on my case. It was

1 just his concern that if he got back in the prison system in
2 the general population, because of his having testified in
3 that trial, he may get hurt.

4 Q. There was nothing regarding the actual plea itself
5 or offer that you were presenting to Mr. Franks?

6 A. Absolutely nothing to do with my case.

7 Q. Okay. And did you speak with Mr. Franks on August
8 25th?

9 A. August 25th came, he came to my office, came into the
10 office. Once again, he seemed to be alert, intelligent,
11 articulate, extremely self-confident and said, I want a
12 trial, I don't want the deal and I was flabbergasted,
13 frankly. I said, Why in the world would you turn down one
14 year and face even a slim possibility of going to prison for
15 life without parole, because if you're tried, you're going
16 to be tried for attempted murder and if you're convicted,
17 you're going to get life. He said, Well, my probation
18 officer, he's going to try to get as much time on my
19 probation violation for leaving the scene of an accident as
20 he can, and I said, You're going to risk life without parole
21 by turning down this offer? He says, Yeah. He was almost
22 cocky; yeah, yeah. He seemed -- he was very self-confident,
23 let's put it that way and he said, Yeah. That's right. I
24 want a trial, and I said, Well, let's go down to the
25 courtroom because everything's changed and we're going to --

1 we're going to move towards a trial and you need to get in
2 front of a judge and think about if you want appointed
3 counsel, because, frankly, you're going to need appointed
4 counsel. So we went right down to the courtroom and
5 visiting Judge McIntosh was there. We got up in front of
6 the judge and usually at appointed counsel hearing, it's
7 pretty perfunctant (sic) or it's -- it doesn't last long,
8 but we got in front of Judge McIntosh and I briefly relayed
9 to him where we were, explained the charge had to be
10 corrected and it would become attempted murder and with his
11 prior record, if he lost at trial, he was going to get life
12 without parole and I let the judge know he was -- Mr. Franks
13 had just turned down an extremely lenient plea offer and I
14 can't remember if -- I may have actually told him one year.
15 I either used words to the effect it was real lenient, real
16 generous. I might have said one year, but anyway, Judge
17 McIntosh turned to Mr. Franks and they chatted quite a bit.
18 I remember standing there and -- and everything was very
19 pleasant. Mr. Franks, as always, was articulate. He was
20 pleasant, polite, bright, sober, very upbeat, very self-
21 confident and I remember thinking this is so -- so very
22 civilized. We're all sitting here talking about this as
23 though we were three doctors discussing somebody's surgery
24 coming up. It's important and it's life-threatening, but
25 this is very civil and the judge was going, Are you sure you

1 want to do this? 'Cause Mr. Springs has let us know the
2 deal's gone after today. Are you sure --

3 MR. SHELDON: Judge, -- and, Judge, at this point I'm
4 going to object as to what the trial judge was saying. We
5 don't have a transcript from this hearing. There is a
6 complete six-page colloquy of this summary, but I don't
7 think Mr. Springs can testify what happened and without a
8 transcript, we can't say what the judge said or the
9 conversations the judge was having with Mr. Franks at that
10 time.

11 THE COURT: Mr. Neubauer?

12 MR. NEUBAUER: I feel that some of this is included
13 within the record as far as the colloquy that happened at
14 the end of his -- Mr. Franks' trial, however, he's right. I
15 can move on from this.

16 THE COURT: All right. Let's move on. Let's move on.
17 I get the gist of what happened.

18 Q. So just to kind of reiterate, Mr. Franks rejecting the
19 plea offer was put on the record in front of Judge McIntosh.
20 Correct?

21 A. Yes, indeed.

22 Q. But, ultimately, we don't have a copy of that
23 transcript. It was destroyed?

24 A. That is my understanding.

25 Q. And did Mr. Franks ever indicate that he wanted an

1 attorney prior to rejecting the plea offer?

2 A. No, never.

3 Q. Did you ever -- did you rescind this plea offer because
4 he wanted an attorney?

5 A. No. I rescinded it because he didn't keep the deal.
6 It got to be the deadline, he didn't take the deal, a very
7 generous deal, and the deal came off the table.

8 Q. And if someone's voluntarily proceeding pro se, how do
9 you interact with them?

10 A. As professionally and as pleasantly as I -- as I can.

11 Q. But you can't force them to make any decisions, you
12 can't tell them that they need an attorney, you have to
13 relay all information through them. Is that correct?

14 A. Correct. Yes.

15 Q. And so when he went in front of Judge McIntosh, he was
16 appointed counsel. Correct?

17 A. He was.

18 Q. And what's the first day that you talked to Mr. Franks'
19 public defenders?

20 A. On September 2nd, I called B.J. Barrowclough to tell
21 him the procedural background on the case, about the plea
22 bargain and then on September 13th I was contacted by Erik
23 Delaney. Erik came to me and asked me to please make
24 another offer and I said, Erik, I will. I will offer --
25 will allow him to plead to twelve, no-parole years, pleading

1 to a lesser-included offense of attempted murder and that
2 offer is good for the week of, I believe it's, November 2nd.

3 Q. And so you went from a one-year plea offer for leaving
4 the scene of an accident to a twelve-year attempted murder
5 offer. Is that correct?

6 A. It was going to be twelve years for a lesser included
7 and I think the lesser included was the statutory assault
8 and battery of a high and aggravated nature.

9 Q. And that -- I feel it's safe to say that's a pretty
10 large jump from one offer to the next. Is that correct?

11 A. A very big jump. Yeah.

12 Q. And you didn't relay the one-year leaving the scene of
13 an accident offer to Erik Delaney or B.J. Barrowclough.
14 Correct?

15 A. I didn't give them that option. They knew about it. I
16 called B.J. Barrowclough September 2nd and told him the
17 procedural history and about the one year and Mr. Franks'
18 declining it and turning it down.

19 Q. And why did you decide at that point to not give that
20 offer to Mr. Franks again now that he has an attorney?

21 A. Because the only way I kept my head above water in this
22 job for almost twenty years was saying what I mean and
23 meaning what I say and I liked to think I had a great deal
24 of credibility and if I told somebody the offer's off the
25 table August 12th, it's off the table August 12th. That's

1 the way I ran my caseload. I think I was fair, but I was
2 very firm and a deadline to me was a deadline. I made that
3 twelve-year offer with great reservation, because I didn't
4 want to lose the credibility that had made -- that was so
5 important to me.

6 Q. And so, ultimately, the plea offer was rescinded or
7 rejected because it was not -- or the one-year offer was
8 rescinded or rejected because it was not accepted in front
9 of a judge by the deadline that you established. Correct?

10 A. That is correct.

11 Q. And that's not -- this isn't the only case where you
12 had a firm deadline with a plea offer. Correct?

13 A. Goodness, no.

14 Q. And so you didn't treat Mr. Franks differently because
15 he didn't have an attorney?

16 A. No. I wish he had gotten an attorney, but no. No. I
17 gave Mr. Franks every opportunity, but he was insistent,
18 I'll handle it myself.

19 Q. And if Mr. Franks had had -- or had an attorney prior
20 to the August 25th date and he still hadn't accepted the
21 offer, would you have pulled it?

22 A. Well, the attorney -- an attorney needs some time to
23 get up to speed on a case. If he had hired an attorney
24 August 24th, I -- I had told him all along if he -- you can
25 have it with an attorney without an attorney, but we have a

1 deadline and in fairness to the attorney, of course, I would
2 have extended the deadline to give the attorney time to get
3 up to speed.

4 Q. And so, ultimately, you offer Erik Delaney the twelve
5 years, no parole for lesser included of attempted murder and
6 I think there was another charge that was thrown in there.
7 Was that offer accepted or rejected or did they take some
8 time to think about it?

9 A. It was rejected by not being taken. We were in front
10 of Judge Alford, let's see, on November 2nd, the week of the
11 deadline for the twelve years. Erik had asked for a hearing
12 before Judge Alford to sort of get a continuance in advance
13 of a possible trial. We went in front of Judge Alford and
14 Erik said, Judge Alford, I'd like you to order that the
15 trial of this case not happen before December 13th and I
16 said, I don't oppose that. That's -- that's fine. And Erik
17 then put on the record, And we have a plea offer of twelve
18 -- I don't know if he said twelve years, but we have a plea
19 offer that's on the table for the remainder of this week
20 we're in now, and I said, That is correct, and they never
21 acted upon it, so that offer was rejected.

22 Q. But -- and so the offer was rejected. Throughout this
23 case Mr. Franks was put on notice that he would or was
24 facing life without parole. Correct?

25 A. He was told that repeatedly by me.

1 Q. And do you recall when you served him with LWOP notice?

2 A. I believe it was September 22nd. Yes. Went in front
3 of Judge Alford and I gave the notice to Mr. Franks and to
4 his attorney, Erik Delaney.

5 Q. And, ultimately, this trial occurred in December.
6 Prior to December, did Mr. Franks or his attorneys ever
7 indicate that he wanted to accept the twelve-year plea
8 offer?

9 A. No.

10 Q. Did they ever come back with a counter offer of any
11 sort?

12 A. They had a meeting with my boss, Kevin Brackett, and I
13 don't know if they got into numbers with Mr. Brackett or
14 not. I -- with me, no, I don't remember them coming back
15 with a lower offer, a counter offer.

16 Q. And then at trial, you go throughout the course of the
17 trial and I believe the defense's strategy or theory was
18 that this was an accident. Do you recall any discussions
19 with Judge Hayes regarding jury charges?

20 A. Yes. Yes. We -- all the evidence was in. Judge Hayes
21 brought me and B.J. Barrowclough and Erik Delaney back in
22 chambers and we talked about a charge of accident a good
23 bit. Judge Hayes said he did not think the evidence
24 produced would support a charge of accident and it shouldn't
25 be given.

1 Q. And, ultimately, that discussion, to some degree, is
2 referenced in the trial transcript. Correct?

3 A. Yes, sir. It is.

4 Q. And that's a --

5 MR. NEUBAUER: Beg the Court's indulgence, Your Honor.

6 Q. And on trial transcript page 367 there's a brief
7 statement from Judge Hayes regarding accident. You
8 indicated that you weren't requesting a charge of accident.
9 Correct?

10 A. I was not.

11 MR. NEUBAUER: And I think that's -- that's all I have
12 at this point.

13 THE COURT: Mr. Sheldon.

14 MR. SHELDON: Please the Court.

15 CROSS-EXAMINATION

16 E.B. SPRINGS BY MR. SHELDON:

17 Q. Mr. Springs, thanks for being here this afternoon. I
18 want to talk to you, you've had the opportunity to hear all
19 the testimony so far to day. Right?

20 A. I have.

21 Q. Have you been in the courtroom through all that?

22 A. I have.

23 Q. Walking in today, I think you had mentioned something
24 about -- well, first of all, do you dispute that this Mr.
25 Franks has a history of mental health issues?

1 A. I heard the testimony and it sounds like he's been
2 treated a good bit. I -- I don't -- I don't -- you know,
3 it's like defining a woman, I just don't know that I'm
4 qualified to do that.

5 Q. Okay. So at least -- so you are in agreement that you
6 are not qualified to diagnose mental health issues or
7 anything. Is that right?

8 A. That is correct.

9 Q. But you don't disagree that being a lawyer that kind of
10 stuff comes up for us, doesn't it?

11 A. Oh, yeah. It does.

12 Q. And you have to deal with it?

13 A. Yes.

14 Q. You have to deal with it when we're talking about
15 evaluations and things like that. Right?

16 A. Yes, sir.

17 Q. And you have to deal with it just when you're dealing
18 with people. Right?

19 A. Yes.

20 Q. When you're dealing with defendant's with mental health
21 issues, if they're not represented, you have to deal with it
22 because you have interaction with them?

23 A. Yes. That's true.

24 Q. Did you review the mental health records from the
25 detention center in this case?

1 A. No.

2 Q. Do you dispute that there are mental health records
3 from the detention center in this case?

4 A. I don't recall mental health records from the detention
5 center.

6 Q. Would you have access to them if there were?

7 A. I would hope so. I'm not sure.

8 Q. Did you not -- I mean, do you want to take a look to
9 see if you had a chance to review any of the mental health
10 records in this case?

11 A. Oh. I did not review any mental health records of any
12 kind for Mr. Jason Franks.

13 Q. Not from June 17th of 2010?

14 A. No, sir.

15 Q. July 23rd, 2010? None of those records?

16 A. No. None whatsoever.

17 Q. All of which would have been, and we hope that you
18 would have had access to, in this very building where you
19 worked. Right?

20 A. Or next door, sheriff's office.

21 Q. In the same complex, though?

22 A. Yes; yes.

23 Q. Would have required zero travel by car to get from your
24 office to the sheriff's department. Right?

25 A. That is correct.

1 Q. Okay. I want to talk about some of the things you
2 mentioned. So there was some testimony about or there was a
3 question asked of Mr. Franks about whether or not at the
4 sentencing portion of the actual trial, whether he disputed
5 any of the things that you had said. Do you remember that?
6 Do you remember hearing that testimony?

7 A. From Judge Hayes?

8 Q. Yeah. Well, the testimony today. The question that
9 was asked of Mr. Franks was, Did you dispute any of the
10 colloquy that the solicitor gave to Judge Hayes.

11 A. Right; right.

12 Q. Implying that, in fact, he had not. Right?

13 A. (No response)

14 Q. So my question for you is do you think that you gave an
15 accurate depiction of what happened to Judge Hayes?

16 A. Of what --

17 Q. Well, let me try to break this down a little better.
18 I'm sorry, Mr. Springs.

19 A. I'm a little --

20 Q. And that's fine and maybe it's just a bad question and
21 God knows I've asked plenty of them. Do you agree or
22 disagree that after the conviction---

23 A. Yes.

24 Q. ---that you went to the judge prior to the sentence
25 being issued and said we got to put some stuff on the record

1 on this one?

2 A. I don't recall that.

3 Q. That --

4 A. I remember Judge Hayes saying, I think we ought to put
5 some things on the record because this case had an
6 interesting --

7 Q. Well, Judge Hayes says, It's my understanding the State
8 had offered Mr. Franks a sentence of one year on this charge
9 and on leaving the scene, it was not expected -- is not
10 accepted. Is that true? And you said, Not exactly.

11 A. Uh-huh.

12 Q. And Judge Hayes said, Okay, and you went on to give a
13 recitation of what we just talked about. Right?

14 A. Yes. That's right.

15 Q. I'm going to hand you this recitation you gave, with
16 the understanding that Mr. Franks was asked if he disagreed
17 with any of it. Show me in this -

18 MR. SHELDON: So I'm starting on page 445, Judge, just
19 for the -- for the record.

20 Q. Show me in there where you talk about that meeting on
21 July 6, where you handed him his discovery.

22 A. No. That's not in there.

23 Q. Well, I guess, then, it's probably pretty important to
24 back up and ask that fundamental question we ask every
25 witness is the depiction that you gave to Judge Hayes true

1 to the best of your ability? To the best of your knowledge
2 at the time, was what you said to Judge Hayes true?

3 A. Yes. It was a very brief summary. It's a very brief
4 summary.

5 Q. You didn't lie to the judge about any of that stuff.
6 Right? That was based on your recollection. Right?

7 A. Right.

8 Q. Including the recollection that you didn't know who the
9 trial judge you were before just two months prior?

10 A. That is correct.

11 Q. But now today that is the Judge McIntosh hearing that
12 we know of. Is that right?

13 A. 'Cause I went back and looked it up.

14 Q. But I'm -- but there's also a Judge Alford hearing, but
15 the one that you're referencing in there is Judge McIntosh.
16 Is that right?

17 A. When he was appointed counsel. Yes.

18 Q. And the Judge Alford hearing would have been a
19 continuance hearing or an LWOP notice hearing, something
20 along those lines, in November. Right?

21 A. Yes.

22 Q. And that -- but that hearing itself is also not
23 mentioned in that recitation of the facts. Right?

24 A. No, sir.

25 Q. So when asked if Mr. Franks had any disputes over what

1 was said at the trial, I believe -- and the transcript
2 doesn't appear that he had a lot, there was also significant
3 information about your encounters with him, specifically pro
4 se, that weren't mentioned at that sentencing hearing,
5 aren't there?

6 A. Correct.

7 Q. There is -- certainly we all agree, Mr. Springs, that
8 defendants are entitled to discovery. Right?

9 A. Sure. I agree.

10 Q. We don't play hide the ball in criminal court. Right?

11 A. I agree.

12 Q. And certainly now today you say that you provided him
13 that discovery on July 6. Right?

14 A. I did.

15 Q. But there is nothing in that transcript for him to
16 dispute whether or not that was provided 'cause it wasn't
17 mentioned to the judge. Right?

18 A. Well, he had the opportunity to say it wasn't there.

19 Q. But at the time that that -- at the time that that
20 hearing occurs, he's already gone through an entire trial.
21 Right?

22 A. Yes.

23 Q. He didn't have the opportunity in December to say he
24 didn't get discovery from you in July, 'cause had no idea
25 from what you were saying that you were alleging that you

1 had provided it to him?

2 A. That's a convoluted question, but I suppose, yes,
3 that's right.

4 Q. Okay. Well, let's talk about the other things that
5 aren't in this. So you did feel that it was important for
6 Judge Hayes to understand that the offer of a year had been
7 offered and turned down. Right?

8 A. (No response)

9 Q. You and probably Mr. Barrowclough or Mr. Delaney all
10 collectively agreed we need to put something on the record
11 regarding this offer. Is that right?

12 A. Well, it looked it was Judge Hayes' idea from the
13 transcript. I --

14 Q. And -- I'm sorry.

15 A. If me and Mr. Barrowclough and Mr. Delaney went to the
16 judge and asked to put that on the record, I've forgotten
17 that.

18 Q. And, Mr. Springs, certainly Judge Hayes wouldn't have
19 known that there was a one-year offer without you or Mr.
20 Delaney or Mr. Barrowclough telling him. Right? I mean,
21 don't you agree with that? I mean, there's no way the trial
22 judge would know that without it being brought to his
23 attention.

24 A. I don't know what Judge Hayes knows and doesn't know.

25 Q. Okay. So we can't even agree that a lawyer brought

1 that to the judge's attention?

2 A. I don't know.

3 Q. But you -- so I don't understand why that's not in your
4 notes. You have notes. What notes are you looking at
5 today?

6 A. I'm looking at my notes of the dates and a summary of
7 my interaction with me.

8 Q. And who generated those notes?

9 A. I did.

10 Q. And where did they come from?

11 A. From my memory.

12 Q. And was -- did you have assistance from any case
13 management system at the solicitor's office when putting
14 together your notes?

15 A. Yes.

16 Q. And so but nowhere in those notes did it say any of
17 that. Right? It didn't say anything about how this came to
18 be at the end of the trial, that five-page summary of what
19 had happened?

20 A. You kind of lost me, Mr. Sheldon.

21 Q. And this is -- I'm only talking about your statements
22 to the Court on pages 445 through 450.

23 A. Okay. Ask me the question again, please.

24 Q. Okay. So today,---

25 A. Yes.

1 Q. ---as we sit here today,---

2 A. Yes.

3 Q. ---you have a very detailed recollection of what
4 happened in Judge McIntosh's courtroom. Right?

5 A. Yes.

6 Q. You have a very detailed memory of what happened prior
7 to Mr. Frank getting a lawyer. Right?

8 A. Our meeting before -- before --

9 Q. Yeah. Your two or three. I'm going to call it three
10 meetings, one the day of Judge McIntosh hearing, the initial
11 appearance, and your first meeting at the detention center.

12 A. I have a pretty good memory of it. Yes.

13 Q. But now -- but you have no memory as to why we're
14 talking about the one-year offer at the end of trial?

15 A. I don't recall why Judge Hayes suggested we put that on
16 the record. No.

17 Q. And at the time, two months after it -- two months
18 after the hearing, not ten, fifteen years after it, ten
19 years after the hearing, you don't even remember who the
20 judge was. Right?

21 A. At that moment I didn't recall his name.

22 Q. But today you recall everything that happened at that
23 hearing. Right?

24 A. No. I'm not -- I'm not saying that. I'm telling you
25 what I can recall.

1 Q. That the judge went through it and he questioned about
2 not having a lawyer and this offer and those types of
3 things. Right?

4 A. Are you talking about Judge McIntosh?

5 Q. Yes.

6 A. I have a pretty good recollection of that. Yeah.

7 Q. But none of that makes it into the transcript in
8 December?

9 A. Well, if I'd gone through the entire colloquy of what
10 had interacted between me and Mr. Franks, it would have --
11 we would have been in front of Judge Hayes for quite a long
12 time.

13 Q. Were you -- well, and let me ask you this: were you --
14 did you order a copy of that transcript from the Judge
15 McIntosh hearing?

16 A. No, I didn't.

17 Q. Okay. So there is no transcript that exists of that
18 hearing whatsoever? At no point in time -- and that
19 wouldn't be something you would normally do. Right?

20 A. My understanding is it was destroyed.

21 Q. And I'm sorry. A prosecutor is not responsible for
22 ordering transcripts contemporaneous with when the hearings
23 happen. Right?

24 A. Correct.

25 Q. That's not something that you would have ordinarily

1 done?

2 A. That is correct.

3 Q. Okay. And we also don't have that Judge Alford
4 transcript. You haven't seen that to this day either, have
5 you?

6 A. No, sir.

7 Q. Okay. So two of the three transcripts -- there's only
8 three court hearings in this case and two of them are gone.
9 Right?

10 A. Well, I don't know if the Judge Alford -- we were in
11 front of Judge Alford a couple times. I don't know if those
12 still exist or not.

13 Q. And so -- but what -- and I'm assuming you've had the
14 opportunity to review the transcripts that you were provided
15 by the Attorney General. Is that right?

16 A. Yes.

17 Q. And at no point in time have you seen any other
18 transcripts other than the trial transcript?

19 A. That's correct.

20 Q. Okay. Now, you mentioned that -- I want to talk to you
21 about your trip down to the jail that -- the June 7th or
22 June 8th, whatever, or June 15th, whenever it was after he
23 gets brought down there.

24 A. Yes.

25 Q. Is it fair to say that he was brought down there, and I

1 think you referenced this in the transcript, that he was
2 actually there on a probation violation warrant at that time
3 that you saw him?

4 A. I think so. Yes.

5 Q. Okay. And so you would have known that he had a
6 probation violation? Something's holding him in the
7 detention center, Mr. Springs. Right?

8 A. Right, but I can't recall when I walked over there, in
9 my mind, he's being held on the new assault and battery with
10 intent to kill and leaving the scene or -- or probation. At
11 some point I learned he was being held on probation.

12 Q. And it wasn't on the ABWIK. He wasn't being held on
13 that at the time you went down there. Right?

14 A. I don't know. It could have been both. I don't -- I
15 don't know.

16 Q. Okay. But at some point soon after, by the --
17 certainly by the time we get to December, by the time you're
18 talking with Judge Hayes, you realize he's there on the
19 probation violation warrant?

20 A. That he was, yes. Yes. I had learned that.

21 Q. And I mean, I don't want -- I met with Mr. Franks. He
22 was in jail. His probation officer locked him up. He was
23 pro se. You agree saying that on the record. Right?

24 A. Sure. Of course.

25 Q. So at least by December you knew that he had been

1 locked up his probation officer?

2 A. Sure.

3 Q. And so but yet he says, Well, what about my probation
4 violation? That was the statement that you said he made to
5 you. Right?

6 A. Yes.

7 Q. And you go, Well, that ain't -- not my -- two types of
8 problems in this world, mine and yours and that ain't mine,
9 basically. Is that the response that he got?

10 A. Yes.

11 Q. But that's -- it's important, wouldn't you agree it's
12 important when somebody is facing time -- you can offer --
13 let me rephrase the question. You can offer a year all you
14 want as a prosecutor, but if they're facing fifteen years on
15 a probation violation, that matters, doesn't it? That may
16 not be your problem or something you prosecute, but that's
17 relevant, isn't it?

18 A. I -- from his point of view, yes. From my point of
19 view, I have a case and he has another case. If he had
20 another pending charge in California, I wouldn't care. I
21 have my case, that's his problem somewhere else. It was
22 unrelated and prior to the case I had with him.

23 Q. But is it unrelated to resolution and making a
24 decision? Is it actually unrelated?

25 A. Yes.

1 Q. How so?

2 A. It wasn't my -- it was totally unrelated to my case.

3 Q. How soon after he was arrested did you go down to the
4 detention center? How many days was it?

5 A. He was arrested June 8th and I went down there on June
6 22nd.

7 Q. So you're saying you went down June 22nd? That's what
8 your notes indicate?

9 A. Yes.

10 Q. Huh. Was he incarcerated on June 22nd? Okay. So
11 let's -- I mean, let's just, for the sake of this
12 questioning, let's assume it was June 22nd. So that would
13 have been two weeks after he was arrested, exactly two weeks
14 after he was arrested. Is that right?

15 A. Right.

16 Q. Did you have the benefit of knowing anything about the
17 case?

18 A. Yeah. I had received the case, I'd gone over the
19 reports. Yeah.

20 Q. So you had the advantage of going over all the
21 discovery before walking down to the jail?

22 A. Absolutely.

23 Q. You had that advantage and you went and you saw Mr.
24 Franks and Mr. Franks says -- and you say to him -- and it's
25 a cordial conversation? Right?

1 A. Yes.

2 Q. And he accepts the one-year offer. Is that right? At
3 the end of that he says, Yeah, I'm good.

4 A. Yes.

5 Q. And that's undisputed. I think he testified to that as
6 well. Right? But then you said the probation violation
7 isn't my problem. Is that right?

8 A. I said that.

9 Q. But -- so at that point, when you found out, 'cause it
10 sounds like you didn't know there was a probation violation
11 at least when you walked down there, despite the fact that
12 you later said you did and he was being held on that, that
13 you didn't know that at the time. Is that right?

14 A. That he was being held---

15 Q. Yes.

16 A. ---by probation? I don't think so.

17 Q. And so before he has the opportunity to get a lawyer,
18 two weeks after being arrested, you go down to the detention
19 center and you talk to him unrepresented and he asks you
20 about the probation violation and you say that's not my
21 problem, but -- so you think that you can enter into these
22 types of decisions on your own. I think you testified you
23 have a constitutional right to represent yourself. Right?

24 A. Yes.

25 Q. Without having the benefit of any lawyer whatsoever

1 even on the probation violation issue?

2 A. That's a totally different case.

3 Q. And so you're saying in the criminal justice system, we
4 don't have universal resolution to people's cases that are
5 going to prison? Is that the appropriate way to practice?

6 A. I -- would you -- ask me the question again, Mr.
7 Sheldon.

8 Q. You've been practicing for twenty years. You were a
9 prosecutor for most of that twenty years before retiring,
10 right,---

11 A. Yeah.

12 Q. ---if not all of it,---

13 A. Yes.

14 Q. ---you were a prosecutor. In those cases did attorneys
15 you worked with---

16 A. Yeah.

17 Q. ---in the defense field deal with probation violations
18 while also dealing with pending criminal charges?

19 A. Defense attorneys do it all the time.

20 Q. They do.

21 A. Yeah.

22 Q. Well, that can't possibly be right, because they don't
23 have anything to do with each other.

24 A. Well, I don't make the rules, Mr. Sheldon, I just
25 worked with them.

1 Q. So he is faced with a situation where he could
2 potentially face multiple, multiple years in prison for the
3 homicide by child abuse violation, the violation you agree,
4 I think, is of your charge. Right? There's no other
5 violation out there. Right?

6 A. That was my understanding.

7 Q. So he could potentially face multiple, multiple years
8 on that, had just been picked up on that probation violation
9 and, yet, the State of South Carolina, Kevin Brackett, the
10 Sixteenth Circuit Solicitor whom you worked for's position
11 is that not only does he have to make a decision without
12 knowing what he's facing on the probation violation, but
13 also that it is not your problem?

14 A. It's two -- it's two different issues, Mr. Sheldon.

15 Q. And if I need to re-ask the question, I'll be happy to.

16 A. Okay.

17 Q. But did you understand the question that was asked?

18 A. Yes.

19 Q. Then what's the answer?

20 A. His unrelated prior probation violation was not my
21 problem.

22 Q. Do you understand -- you keep saying prior probation
23 violation, but that---

24 A. Prior --

25 Q. ---isn't the

1 A. -- prior probation case.

2 Q. And I apologize. But it's not a prior probation case.

3 It is a violation that stemmed from this arrest. Right?

4 A. I think so. Yes.

5 Q. Okay. So that's not prior.

6 A. Yes.

7 Q. It's different if he had already been locked up on some
8 sort of probation violation years before, but it stems from
9 this. They run together. They may not be from the same
10 office, but those two things in the criminal justice system
11 are connected, aren't they?

12 A. One violates the other. They're not part of the same
13 case. No. They're not --

14 Q. But in order --

15 A. -- they're not connected. One triggers an issue on the
16 other.

17 Q. So there's -- so it's the State of South Carolina's
18 position, the solic- -- you're speaking for the solicitor's
19 office in -- I'm not asking your opinion.

20 A. Uh-huh.

21 Q. I'm asking in your capacity as someone who is working
22 for the State of South Carolina prosecuting criminals,---

23 A. Yes.

24 Q. ---you don't think that it is important that somebody
25 understand all components of things that could put them in

1 jail before making a decision?

2 A. Well, that's why he should have gotten a lawyer.

3 That's why I told him it's important to get a lawyer.

4 You're better off with a lawyer.

5 Q. Perhaps, but you also then in the same breath turned
6 around and said, I don't care about your probation
7 violation. It isn't our problem. You need to decide on
8 this.

9 A. That's correct. Yes.

10 Q. The offer was relayed without him knowing anything
11 about his case?

12 A. Uh-huh.

13 Q. No; no; no. Yes or no?

14 A. Anything about his case?

15 Q. Yes. And you answered "uh-huh," but she can't record a
16 "uh-huh."

17 A. Which -- which case are we talking about?

18 Q. I'm talking his attempted murder case now.

19 A. He was there, he would know a little something about
20 it.

21 Q. But it -- okay. And that may be so. Without the
22 government providing any discovery to him, not a shred of
23 it. Right?

24 A. Well, he hadn't asked for it.

25 Q. Mr. Springs, at what point in time in the two weeks

1 prior to you coming down to his jail cell should he have
2 reached out to you to ask for it? How does that work for
3 inmates that are down there in the detention center?

4 A. He could have sent a message over any time he wanted.

5 Q. Okay. So it would have been his -- so you're going
6 down, you're making this offer, you're relaying this to him
7 two weeks after with no discovery, but it was his
8 responsibility to get the discovery from you?

9 A. Yeah. Yeah.

10 Q. That's what he should have done?

11 A. Yeah. He had no attorney.

12 Q. Probably --

13 A. I mentioned the attorney.

14 Q. Probably should have filed a Rule 5 and Brady. Right?

15 A. Discovery is to be asked for.

16 Q. Absolutely. Agreed. And so you think that two weeks
17 after being incarcerated -- well, let me ask it -- let me
18 just even ask an easier question. Why didn't you bring it
19 down with you when you came down and made the offer?

20 A. I went down to tell him where I was coming from on the
21 case.

22 Q. Why did you have the opportunity to review the facts,
23 review the circumstances and make an offer and he didn't
24 have a single opportunity to look at any of that?

25 A. Well, he should have gotten an attorney. He should

1 have taken me up on my offer.

2 Q. Shouldn't you -- what offer?

3 A. To help him get an attorney. I said I'll help you get
4 an attorney.

5 Q. Again, I mean, I don't even know at this point really
6 know what I did with my transcript, but I'm going to hand it
7 back to you. Show me where in that page 445 to 450 you talk
8 about that conversation. Tell me which one we're talking
9 about. So let me turn directly here (indicating for the
10 witness).

11 MR. SHELDON: And you can follow with me. I'm on line
12 23, page 445, Judge.

13 Q. I met with him. We had a pleasant conversation. I
14 said, First of all, do you want a lawyer? He said, No.
15 I'll handle this. I said, Given the facts here, I'll let
16 you plead to leaving the scene of an accident with bodily
17 injury, which carries a year, reckless driving, active
18 sentence. Is that right?

19 A. (Nods head affirmatively)

20 Q. And then he said I want that. You're a fine fellow.
21 I'll do that. Did he say you're a fine fellow? I mean, is
22 that -- or is that paraphrasing?

23 A. That was paraphrased.

24 Q. I said, Do you want a lawyer? You can have the same
25 things and do the same thing. I can get you a public

1 defender. He said, No. I'll handle it myself. Right? So
2 that's the conversation y'all had in the jail. Right?

3 A. No. We had a much larger conversation in the jail.
4 That was a brief summary of it.

5 Q. I'm sorry. Here (handing document to the witness). If
6 you could just show me where the much longer conversation is
7 in the transcript.

8 A. No. That's a brief summary of a much longer
9 conversation that we had. That was the highlights of it.

10 Q. Why would you only give the high- -- why was it
11 important to put that in the transcript?

12 A. Judge Hayes asked that we do it.

13 Q. Why was it important to let Judge Hayes know what the
14 offer was?

15 A. (No response)

16 Q. Would a trial judge normally know what the plea offers
17 were in the case?

18 A. He may or may not. I don't know. I don't know what
19 Judge Hayes knows and doesn't know.

20 MR. NEUBAUER: Your Honor, I believe he indicated
21 previously that he does not know what Judge Hayes knew about
22 the plea discussions beforehand, but that this was
23 ultimately put on the record, appearing from the transcript,
24 at the request of Judge Hayes.

25 THE COURT: That question's been asked and answered.

1 Move on.

2 MR. SHELDON: Thank you, Judge. I'll move on.

3 Q. So then we get to -- apparently you gave him discovery
4 July 6. Is that right?

5 A. I did.

6 Q. And that was at an appearance?

7 A. His initial appearance.

8 Q. And then he's -- but at that time you said be back up
9 here August 12th or the offer's gone. Is that right?

10 A. That's his deadline. Yes.

11 Q. Okay. And you said that's because that you have to
12 have -- that your word needs to mean something and these
13 defendants on the street need to know that Mr. Springs means
14 business or they're not going to take you seriously?

15 A. Well, to move cases you have to set dates. There has
16 to be deadlines, otherwise, the whole thing moves like
17 molasses. You have to have dates. You have to have
18 deadlines.

19 Q. Sure. And so -- and the deadline in this case you
20 indicated that if he got a lawyer that that deadline would
21 then be extended. Right?

22 A. I would have. Yes.

23 Q. Just out of professional courtesy?

24 A. Of course.

25 Q. But he rejected the offer, got a lawyer and that offer

1 was, in fact, not extended at all. Right?

2 A. Correct.

3 Q. So it was really only the period from June until -- he
4 really only had about a month window to get a lawyer at that
5 point where he wasn't incarcerated between that period.

6 Right?

7 A. Yeah.

8 Q. Of when the offer's withdrawn, when it's a hard just
9 withdrawal. Right?

10 A. Yeah.

11 Q. And he actually did ask you for a lawyer. He asked you
12 for a lawyer that day in August. He came in and said, I
13 want a lawyer.

14 A. No. Actually, he did not. He said, I'm turning it
15 down. I don't want the deal. I want a trial. I said,
16 Well, you need a lawyer. You need appointed counsel. We're
17 going right to the courtroom and you can ask the judge for
18 appointed counsel, 'cause you need a lawyer. It wasn't
19 until we got in the courtroom he actually said, I would like
20 appointed counsel.

21 Q. And so you end up -- and you indicated that there's
22 this constitutional right to represent yourself. Is that
23 right?

24 A. That's what I've heard.

25 Q. Certainly you've heard of Faretta and Faretta

1 warnings and things like that. Right?

2 A. I can't remember Faretta.

3 Q. Okay; all right. Well, Mr. Springs, have you ever been
4 a part of a plea or, I should say, a motion hearing where
5 maybe the defendant's standing here, the prosecutor's sort
6 of meandering somewhere over in this area, you look at the
7 judge and you say, Judge, he wants to represent himself.
8 Have you ever been in a courtroom when that's happened?

9 A. I have heard attorneys get off a case because a
10 defendant wants to represent himself.

11 Q. And does the judge ask questions to the defendant---

12 A. Yes.

13 Q. ---about that self-representation?

14 A. Judges do that.

15 Q. And the dangers of self-representation?

16 A. Judges do that.

17 Q. And the importance of having a lawyer?

18 A. Judges do that.

19 Q. And get the defendant's -- and even appoint standby
20 counsel even when they don't want it?

21 A. Judges do that.

22 Q. And they do it because they know the dangers of self-
23 representation. Right?

24 A. Yes, sir.

25 Q. We call those warnings Faretta warnings and those are

1 things that a judge specifically must do. Right?

2 A. Yes.

3 Q. And they must do it, not only because the law requires
4 them to do it, but because it protects defendants from the
5 government. Right?

6 A. Or from themselves.

7 Q. Or from themselves, when facing accusations from the
8 government?

9 A. Yes. I would agree with that.

10 Q. And at no point in time was Mr. Franks given any
11 Faretta warnings in this case or dangers of self-
12 representation before a judge until after the offer had been
13 pulled?

14 A. Until after he rejected it and the -- and the deadline
15 day had come. Yes.

16 MR. SHELDON: I don't have any more questions, Judge.
17 Thank you.

18 THE COURT: Anything further from this witness?

19 MR. NEUBAUER: Just briefly, Your Honor.

20 REDIRECT EXAMINATION

21 E.B. SPRINGS BY MR. NEUBAUER:

22 Q. Mr. Springs, just based on your interactions with Mr.
23 Franks, was there ever anything that made you believe that
24 he lacked competency or didn't understand criminal
25 proceedings?

1 A. No, to the contrary. He seemed very bright and he
2 seemed very knowledgeable and he always seemed very self-
3 confident.

4 Q. And there was a long conversation about the recitation
5 that was put on the record before Judge Hayes. That wasn't
6 a complete recitation of every single thing that happened in
7 this case from the time Mr. Franks was arrested until he
8 arrived for a trial. Correct?

9 A. No, it was not. It's a brief summary.

10 Q. And because it was not a complete pretrial recitation,
11 does that mean that it's inaccurate or untrue?

12 A. Well, no, sir.

13 Q. And it appears that it was just limited to plea offers
14 and plea negotiations. Would that be correct to say?

15 A. The highlights. Yes.

16 Q. And you were asked regarding Mr. Franks being put in a
17 position where he had to decide this plea without an
18 attorney. Did you ask him to make decisions without an
19 attorney?

20 A. No. I asked him repeatedly if he wanted an attorney.

21 Q. And you would have allowed him to obtain an attorney.
22 Correct?

23 A. I would have preferred him to get an attorney.

24 Q. And that was conveyed to him?

25 A. No; no. I just told him I'd be glad to help him, take

1 him in front of a judge. He could go to the Clerk of Court,
2 he could hire an attorney. It was always better to have an
3 attorney. I told him that in our first meeting.

4 Q. And you told him that you weren't going to involve
5 yourself in dealing with his probation?

6 A. I told him I was going to have nothing to do with his
7 probation and it was not going to be mixed into our case at
8 all.

9 Q. And if he'd chosen to hire an attorney or have an
10 attorney appointed, they could have addressed that probation
11 issue. Correct?

12 A. Yes, but not -- I would not have allowed it to be
13 entwined into the case I had.

14 Q. Okay. And even with that outstanding probation issue,
15 with that being known, Mr. Franks told you that he did not
16 want an attorney. Correct?

17 A. That's correct. He said, I'll handle it myself.

18 Q. And you've worked with pro se -- have you worked with
19 pro se applicants before, Mr. Springs?

20 A. Yes, absolutely. Yes.

21 Q. Did you, in your practice, work with them any time
22 after Mr. Franks' case?

23 A. I can't remember.

24 Q. And do you -- in your practice, do you deal -- while
25 dealing with a pro se defendant, would you just bring a copy

1 of discovery immediately whenever you go to speak with them
2 for the first time or see them for the first time?

3 A. No. I would not.

4 Q. And when would you provide discovery in a case?

5 A. To a pro se defendant?

6 Q. Yes, sir.

7 A. Unless they ask for it, I would not.

8 Q. And if someone's represented by counsel, when would you
9 provide them with discovery?

10 A. At the -- by the initial appearance, very early on in
11 the case so they can evaluate the case so that they can
12 negotiate with me.

13 Q. And have you ever offered someone who's represented by
14 an attorney a plea before they receive discovery?

15 A. Yeah.

16 Q. Have you ever, other than Mr. Franks, offered a plea to
17 a pro se applicant before they've been provided discovery?

18 A. Yes.

19 Q. So this isn't limited just to Jason Franks' case?

20 A. No, not at all.

21 Q. And, in fact, on -- at the trial you indicate to Judge
22 Hayes twice that you asked Mr. Franks if he wanted an
23 attorney. Correct?

24 A. I asked him if he wanted help getting an attorney.

25 Yes. Yes, on at least two different occasions, in the jail

1 and at the initial appearance.

2 Q. And he said no. Correct?

3 A. He said he would handle it himself.

4 Q. And then August 25th comes; he rejects the plea offer.

5 Did he ever, before rejecting the plea offer, tell you I'd
6 like help getting an attorney?

7 A. No. No.

8 Q. What's the first time that he brings up wanting an
9 attorney?

10 A. When he's in front of Judge McIntosh.

11 Q. And that was after the plea had been rejected?

12 A. He definitively rejected the one-year plea offer, came
13 to my office. I expected us to be -- he got there and I
14 expected we were going to go right on down to the courtroom
15 and do the one-year deal and instead he said I want a trial.
16 I don't want the deal and I was dumbfounded.

17 Q. And there was a discussion about Fareta warnings and
18 the warnings of self-representation when someone's firing
19 their current attorney. Is that correct?

20 A. Yes.

21 Q. Have you seen a defendant brought in front of a judge
22 for warnings regarding self-representation when they've
23 never hired an attorney to begin with?

24 A. No, I haven't.

25 Q. So you want to -- you're charged with a crime, you're

1 placed in jail, you aren't immediately brought in front of a
2 judge and told these are the risks of proceeding without an
3 attorney?

4 A. No. That's not the procedure.

5 Q. That's only been brought up when you are relieving
6 counsel and wanting to go pro se. Correct?

7 A. Or if you've been pro se from the very beginning and
8 you're getting ready to go into a plea or a trial, the judge
9 is going to give you the warnings then.

10 Q. And, ultimately, when he was brought in front of a
11 judge for this trial, he was represented by counsel?

12 A. Yes.

13 MR. NEUBAUER: I have no further questions at this
14 point.

15 THE COURT: Anything further from this witness?

16 MR. SHELDON: Yeah, Judge, very briefly.

17 RECROSS EXAMINATION

18 E.B. SPRINGS BY MR. SHELDON:

19 Q. Mr. Springs, you were asked on redirect about the
20 Faretta warnings prior to, but at that Judge McIntosh
21 hearing, he read them. He gave him his Faretta warnings,
22 didn't he?

23 A. I believe he did. Yes.

24 Q. I mean, he appointed an attorney. He went through that
25 whole colloquy about Faretta and things like that, didn't

1 he?

2 A. Well, I don't know about that, Mr. Sheldon, because at
3 that point Mr. Franks was asking for appointed counsel and I
4 would say, no, he didn't go through all the warnings. He
5 was -- he went through are you knowingly turning down this
6 plea offer because Mr. Springs is telling it's off. It's
7 off the table and it's gone. Are you -- are you---

8 Q. And I guess my --

9 A. ---sure about that, sir.

10 Q. I think my question was unfair. I agree. So he's not
11 going through -- Judge McIntosh, at this hearing, is not
12 going through the turning down a lawyer questions, but Judge
13 McIntosh does have a long colloquy about whether or not he
14 has any idea -- that he understands what he's doing, that he
15 understands what plea offers, things like that. That
16 conversation does happen in front of Judge McIntosh that
17 day.

18 A. That happens. Yes.

19 Q. Absolutely. But at that point it is too late for Mr.
20 Franks. The fact that he's going to get benefit from
21 counsel, the fact that he has the opportunity to present any
22 mental health issues or anything like that to his counsel,
23 it's too late at that moment for him to do anything because
24 the one year is gone.

25 A. No. If he had -- if the judge, as Judge McIntosh is

1 going, Are you sure you want to do this? Are you sure this
2 is in your best interest? If Mr. Franks had said, you know
3 what, I changed my mind, I'll take it, I would have given
4 him the one year right then and there.

5 Q. But he did. He said he wanted a lawyer. He had
6 changed his mind from the earlier conversation---

7 A. No.

8 Q. ---that you had --

9 A. No.

10 Q. I'm going to ask a question first.

11 A. Okay.

12 Q. And I apologize if --

13 A. Okay. You go ahead.

14 Q. He did, in fact, say -- he did, in fact, walk out of
15 the courtroom that day with a lawyer, didn't he, or at least
16 a lawyer appointed to him?

17 A. Correct.

18 Q. Walks in with no lawyer, walks out with one.

19 A. Yes.

20 Q. Right?

21 A. Correct.

22 Q. That year never comes back?

23 A. That's correct.

24 Q. Okay. I just want to make sure we're on the same page
25 there, 'cause -- and so, Mr. Springs, my last questions is

1 this: so you indicated in redirect that you had -- you
2 wouldn't provide a defendant with discovery unless they
3 asked for it, but you would -- and that's because they're
4 not entitled to it unless they ask for it. Right? I mean,
5 is that why? Why would you withhold discovery from a
6 defendant?

7 A. Right. Right. It should be asked for.

8 Q. When did he ask for a plea offer?

9 A. He didn't.

10 Q. So why did you come down and relay that with no
11 discovery?

12 A. I came down to give him a plea offer at the case start.
13 He had no lawyer, that makes him the lawyer and the case got
14 started with a plea offer.

15 Q. So the case starts with an unwanted plea offer, but you
16 won't provide constitutional discovery unless asked for?

17 A. No. I didn't -- no.

18 MR. SHELDON: Judge, I don't have any more questions.

19 A. If they asked for it, I would have given it to him.

20 THE COURT: Thank you, Mr. Springs.

21 MR. SPRINGS: Thank you. May I be excused, Your Honor?

22 THE COURT: Any objection to this witness being
23 excused?

24 MR. NEUBAUER: No, Your Honor.

25 MR. SHELDON: No, Your Honor. Thank you.

1 THE COURT: Mr. Springs, You are excused.

2 MR. SPRINGS: Thank you, sir.

3 MR. NEUBAUER: At this point the State would call B.J.
4 Barrowclough.

5 (B.J. BARROWCLOUGH, being first duly sworn, was
6 examined and testified as follows):

7 DIRECT EXAMINATION

8 B.J. BARROWCLOUGH BY MR. NEUBAUER:

9 Q. Good afternoon, Mr. Barrowclough.

10 A. Good afternoon.

11 Q. How long have you been practicing law, sir?

12 A. Since 1995.

13 Q. And what percent of your practice has been criminal
14 law?

15 A. A hundred percent.

16 Q. Hundred percent. Have you primarily worked with the
17 Sixteenth Circuit Public Defender's Office?

18 A. I have.

19 Q. And you were appointed to represent Mr. Franks.
20 Correct?

21 A. I was. I was not the initial attorney appointed on the
22 case. At the time that the office received the appointment,
23 the way that our office assigned cases was individual
24 attorneys in our office were assigned to the caseloads of
25 individual attorneys in the solicitor's office. Mr.

1 Delaney, at that time, was assigned to the caseload of Mr.
2 Springs, so when the office received the appointment, the
3 case initially went to Mr. Delaney.

4 Q. And how did you become -- ultimately become involved in
5 this case?

6 A. With everything that transpired that y'all have just
7 been discussing about the one-year plea offer being offered
8 and then pulled back and we were appointed and then the plea
9 offer going up to twelve years and/or the life notice being
10 threatened and then ultimately served. At some point in
11 that time period, you know, Mr. Delaney was dealing with Mr.
12 Springs. I was a Deputy Public Defender at the time and Mr.
13 Delaney brought it to my attention and I think that, when it
14 came to my attention, would have been the genesis for the
15 conversation between Mr. Springs and I, where I found the
16 whole situation to be shocking and I said, Are you really
17 doing this, and he was and then I was the one -- I don't
18 believe Mr. Delaney was there. I was the one who went to
19 Mr. Brackett, the Solicitor, to bring this to his attention
20 and try to get him to involve himself to sort of rectify the
21 situation. Also, I brought it to Mr. Brackett's attention
22 some of the things that have already been testified to today
23 with regards to Mr. Franks' assistance in the murder case in
24 another county and things of that nature to try to get us
25 back to a position of Mr. Franks having, you know, either

1 the one-year plea offer or at least something close to it,
2 but ultimately Mr. Brackett decided not to involve himself
3 with what Mr. Springs was doing.

4 Q. So, ultimately, those conversations weren't fruitful
5 and the only plea offer that remained was the twelve-year
6 offer?

7 A. Right.

8 Q. And you had a lengthy discussion with Mr. Springs and
9 then Mr. Brackett regarding kind of the whole plea history
10 in this case?

11 A. Yes, I did.

12 Q. And you talked with Mr. Franks about this as well?

13 A. Subsequent to all that, yes.

14 Q. Did he ever tell you that he wanted to take the one-
15 year plea deal?

16 A. I mean, at the time that we were talking, by the time I
17 was involved in the case, yes. I mean, were desperately
18 trying to get that deal back. Yes.

19 Q. But did he ever tell you before you got on the case,
20 before Erik got on the case, that he wanted to accept the
21 one-year plea deal?

22 A. Well, I didn't really talk -- I never talked to him
23 before I got on the case.

24 Q. Okay.

25 A. And, in fact, as I said, I mean, when we were first --

1 I didn't talk to him even when we were first appointed to
2 the case, when our office was. It was after Erik brought it
3 to my attention that I involved myself in this case.

4 Q. And did Mr. Franks ever tell you how that one-year plea
5 deal got turned down or it went away?

6 A. I'm sure that we discussed it. I don't remember the
7 exact details now, the sequence of events, though, as far as
8 how he said it was -- how it went away.

9 Q. And you weren't the primary attorney on this case. Is
10 that correct? Or --

11 A. Well, yes and no and that's why it's complicated,
12 because when we got the case, it was Erik's case and Erik
13 was the main attorney for Mr. Franks. When it went into
14 trial posture and we started preparing for trial and Mr.
15 Delaney and I did it together, but I did, as a more senior
16 attorney, sort of take over. So I was sort of lead counsel
17 at trial.

18 Q. Okay. And when this case first got brought to the
19 public defender's office, do you know when discovery was
20 provided to you?

21 A. I could look in the file. I don't recall there being a
22 problem with discovery being turned over to our office in an
23 untimely way.

24 Q. So it wouldn't -- do you recall when you would have
25 discussed discovery with Mr. Franks?

1 A. I'm sure that we would have discussed it with him as we
2 were preparing for trial.

3 Q. Would it have been -- did you hear the testimony
4 earlier today regarding that?

5 A. I did and, you know, I don't have the exact date. I
6 don't think it was as last minute as he -- as he testified
7 to. I mean, we did have -- we were -- I mean, you've
8 reviewed the transcript. We did do a lot of preparation in
9 this case, you know, we did actually ask York County and
10 they did actually do for us a traffic study of that road.
11 We did hire an accident reconstructionist. You know, there
12 was a lot of work, preparation that went into this case and
13 we did, Mr. Delaney and I both, meet with Mr. Franks, you
14 know, routinely to keep him abreast of what was going on in
15 the preparation of the defense of this case.

16 Q. So there would have been ongoing discussions about
17 preparations in this case?

18 A. Trial preparation. Yes.

19 Q. So Mr. Franks wouldn't have been, I guess, put in the
20 loop or brought into the loop in the final week?

21 A. No.

22 Q. Okay. And you ultimately spoke with E.B. Springs
23 regarding plea negotiations and the twelve-year offer was
24 presented. Correct?

25 A. I want to say the twelve-year offer had been already

1 discussed by Mr. Springs and Mr. Delaney. I was talking to
2 him about how unreasonable I thought he was by, you know,
3 offering one year and then pulling it back before any
4 attorneys were involved in the case. You know, that's what
5 I was talking to him about and, you know, he testified about
6 how he thought it was a matter of credibility and, you know,
7 and he and I, you know, we had a lot of battles, but I mean,
8 he -- I can recall him saying the same thing to me back
9 then, twelve years ago. I mean, I thought it was ridiculous
10 then, I think it's ridiculous now. I mean, we're dealing
11 with human life, we're not making wishes and for him to say,
12 oh, cred- -- my personal credibility depends on enforcing
13 these deadlines. I said that's not justice, you know.
14 That's sort of the tenor of our conversations when we were
15 talking about the one year versus the twelve years.

16 Q. Okay. And ultimately the twelve-year offer's there.
17 Were you there when Mr. Franks turned that offer down?

18 A. I think I was in court. Yeah.

19 Q. Okay. And so it ultimately goes into trial posture?

20 A. Correct.

21 Q. Is that correct?

22 A. Yes.

23 Q. And just briefly before we get into that, did Franks
24 ever discuss issues with you regarding probation violation?

25 A. Not with me, no. I mean, I think, again, that would be

1 ancillary to the trial, so I think that would have been more
2 something Mr. Delaney would have handled.

3 Q. Okay. And you had -- do you know about how many
4 conversations you would have with Mr. Franks throughout the
5 course of this case?

6 A. I mean, I can't give you the exact number. I mean, at
7 least -- at least ten or twelve.

8 Q. And did he ever address with you any issues with his
9 mental health?

10 A. No.

11 Q. Did he ever tell you that he was taking any
12 prescription medications?

13 A. Not that I can recall, but I can't say for certain.

14 Q. Did he tell you that he was taking prescription
15 medication the day of the incident?

16 A. No.

17 Q. Did he ever indicate to you that he'd previously been
18 to the emergency room for medical issues or provide any
19 medical history?

20 A. Yes. I knew he did have some health problem. I knew
21 he'd been in the emergency room. I did know -- I did not
22 know -- I heard what he testified to and what was testified
23 to about his mental illness past. I did not know all that,
24 but I did know that his previous stint in prison had been
25 extremely difficult and I thought it was more along the

1 lines of a like a PTSD situation from being in prison at
2 that -- at those times.

3 Q. And did he seem nervous when you guys spoke?

4 A. I would say -- no, not nervous. I would say more
5 agitated.

6 Q. Did he seem kind of anxious or anything during these
7 conversations?

8 A. Well, certainly he was anxious, yeah, facing a life
9 without parole sentence at this trial. He was very
10 concerned about his child. I mean, yes, he was anxious
11 about a lot of things.

12 Q. And from these interactions with Mr. Franks, did you
13 ever see anything that led you to believe he was suffering
14 from mental health issues?

15 A. You know, I've been doing this job a long time. Yes.
16 I think that he certainly had, like I said, I would
17 characterize it more, from my lay person's perspective, as
18 like PTSD and anxiety. I don't know if that's mental health
19 or emotional health issues. Now, I have represented a lot
20 of people who have been found not competent. I have
21 represented a few people who have been found not criminally
22 responsible. Mr. Franks never presented himself to me as
23 someone who had the type of mental difficulties that would
24 lead to one of those two things. If I thought that, I would
25 have had him evaluated for either competency or criminal

1 responsibility. Now, of course, you have to remember by the
2 time I was really coming into this case, it was in trial
3 posture and I was really gearing up for trial.

4 Nevertheless, I did not, from my -- based on my personal
5 experience with defendants who are either not competent or
6 not criminally responsible, Mr. Franks did not appear to me
7 to suffer from a mental illness to the effect -- to the
8 extent that I thought he was either not competent or not
9 criminally responsible.

10 Q. And you have previously, with other clients, requested
11 mental competency evaluations?

12 A. Yes.

13 Q. And you chose not to in this case because of all the
14 information you gathered from speaking with Mr. Franks?

15 A. Yeah, and I mean, I wouldn't say I chose not to, it
16 just -- it never came onto my radar to do it because he
17 never presented himself in such a way to me to where I
18 thought it was warranted.

19 Q. All right. And do you remember what your theory of
20 defense was or your strategy was in this case?

21 A. Yes. The -- certainly, the automobile accident that it
22 was, the SUV and the Moped, our defense was that it was, in
23 fact, an accident, that the person who was the victim was
24 sort of taunting Mr. Franks and swerving in the road in
25 front of him and Mr. Franks was trying to get where he was

1 going to get around him and that he did bump him
2 accidentally and that's why, in fact, we hired an accident
3 reconstructionist who testified that all the damage to the
4 Moped was consistent with it being an accident, not like a
5 run down. The Moped was not damaged as if it had been run
6 down.

7 Q. And you feel accident would have fit your theory of
8 defense in this case?

9 A. Yes.

10 Q. And did you feel that the contact made between Mr.
11 Franks and the victim was unintentional?

12 A. Yes.

13 Q. And was he acting lawfully when he was driving his car
14 behind the Moped?

15 A. Well, as it turns out, you know, and some of it has
16 been testified to today about the license and stuff, perhaps
17 not, but as far as the way that he was driving his vehicle,
18 yes.

19 Q. And --

20 A. Not speeding, not swerving, not doing anything -- no
21 moving violations.

22 Q. And you feel that he was using reasonable care while
23 driving behind the Moped?

24 A. Yes.

25 Q. And do you recall during the trial testimony that came

1 out where -- on page 196, it's a statement that was given by
2 Mr. Franks to Officer Michael Sherlock, where he indicated,
3 I tried to fake him out and swerve into the left lane when
4 he swerved at the same time?

5 A. Yeah. He was -- like I said, I mean, he -- his version
6 of events that, again, I thought were backed up by the
7 accident reconstructionist was that Mr. -- the victim was
8 cutting him off and he was trying to swerve around him
9 because he could obviously accelerate away from him if he
10 could get in front so as not to be taunted by the victim.

11 Q. And prior to that he indicated the victim was -- slowed
12 down, looked back at him, smiling, like he was enjoying his
13 game of kind of stopping him from moving forward?

14 A. Right.

15 Q. And Mr. Franks said that he came up beside and asked
16 him if he wanted to fight or play games?

17 A. Right. Yeah.

18 Q. Then Mr. Franks actually said he pulled in front of
19 him, then pulled over and got out of his vehicle, preparing
20 for a confrontation. Then he got back into his car, got up
21 behind him and this is when he tried to swerve around him
22 again.

23 A. Yes.

24 Q. Would you say that that seemed like an unintentional
25 act caused by someone acting lawfully, using reasonable

1 care?

2 A. I don't think -- well, don't forget what he's charged
3 with was for when his SUV made contact with the Moped, so at
4 that point in time I do think that was unintentional. Now,
5 of course, there was bad blood between these parties. They
6 were neighbors and -- or, actually, they were not neighbors.
7 I think the victim was visiting a neighbor of Mr. Franks
8 and, you know, that he had been aggressive toward Mr. Franks
9 earlier in the day. I think that the medicals show that he
10 had -- that the victim had cocaine in his system. He --
11 there was a lot of other incidences of him, both charged and
12 uncharged, but being in violent acts and I do think to a
13 degree he was definitely provoking and taunting Mr. Franks.

14 Q. And so, ultimately, this -- you kind of proceeded with
15 the theory that this was an accident. There was a off-the-
16 record charge conference between you, the solicitor and
17 Judge Hayes. Do you recall that conference?

18 A. Well, just a little, but I will say this: you know,
19 since our conversation, you know, last week, I went back and
20 researched that and I think that -- I have two things to say
21 about that. The first place, the jury charge, the accident
22 jury charge, the only one that I could find, and I think the
23 only one that is a standard jury charge, deals with accident
24 as far as the discharge of a weapon and I believe that that
25 would explain why we did not get that charge, because

1 obviously discharge of a weapon did not actually fit this
2 situation. Having said that, the second thing I want to
3 say, though, is, you know, as a lawyer, you know, number 1,
4 I think it is just a straight shortcoming on jurisprudence
5 that we don't have a general accident charge. I was
6 thinking conceptually about what if a defendant was charged
7 with involuntary manslaughter on the theory that he
8 committed a lawful act, recklessly resulting in someone's
9 death and his defense was he's not acting recklessly, that
10 he was acting negligently or even with due care, but the
11 person died from an accident, accident, we should have an
12 accident charge and as far as it goes representing Mr.
13 Franks in this trial, what I think in hindsight I should
14 have done was I should have crafted my own charge and asked
15 Judge Hayes to charge it and maybe he would have, maybe he
16 wouldn't have, but even if he didn't, that would have
17 created a record and then maybe our Court of Appeals or
18 somebody else on a higher level could have looked at it and
19 said, Hey, we do have a shortcoming. We don't have an
20 accident charge in South Carolina dealing with a true
21 accident, but I did not do that, but as far as the charge
22 that is in the charge books, you know, whether it be Ralph
23 King Anderson or Judge Ervin's charge books, the only one I
24 could find, and I even went back and looked again last week,
25 was the one dealing with discharge of a firearm, which would

1 not have been appropriate in this case.

2 Q. So there is no general accident charge?

3 A. Not that I could find. No.

4 Q. And you could not have asked, hey, we want just general
5 accident to be charged to the jury?

6 A. I could have drafted my own charge. I've done that in
7 other trials with other judges where I could not find
8 something in South Carolina law and, you know, I researched
9 North Carolina or Georgia, one of our sister state's, find
10 something similar and submit it and most of the times it's
11 not charged. On occasion, one or twice, Judge Alford did
12 charge, but the -- but the fact of the matter is in this
13 case I didn't do it and, like I said, when we spoke last
14 week, you know, I didn't remember all that and I didn't even
15 think about the fact that I could have done this, but now in
16 hindsight, twelve years later, I wish I would have done
17 that.

18 Q. And this is, you know, with the benefit of hindsight,
19 with the ability to go back and look at things later---

20 A. Right.

21 Q. ---and consider what could have been done?

22 A. Yes.

23 Q. At the time there was no general accident charge and
24 the accident charge that you knew of dealt with the
25 discharge of firearms?

1 A. Yes, sir.

2 Q. And that would not have been appropriate for---

3 A. No.

4 Q. ---the theory that you were pursuing?

5 A. Right.

6 Q. And, ultimately, do you feel that that is what led to
7 your decision to not request accident be charged?

8 A. Right. Well, I guess because the charge that I found
9 was not applicable to the facts of this case would have been
10 why I would not have requested that charge be charged.

11 Q. And did you feel at any point that it was worth putting
12 on the record that in-chamber conversation where the
13 discussion occurred about the accidental discharge of a
14 weapon?

15 A. I really think it's a moot point because, even now
16 today, I still think that that charge would not be
17 applicable to what happened, so it doesn't -- you know, I'm
18 not saying that we were wrong. I don't even think they're
19 saying that we were wrong, necessarily, for not asking for
20 that charge. That charge is not applicable to what
21 happened. I'm saying I probably should have come up with my
22 own charge or drafted my own charge or research another
23 state and use their charge, something that would have been
24 applicable to the facts of this case, 'cause I can't believe
25 there's nothing out there in South Carolina for a regular

1 accident.

2 Q. And that -- now, you've indicated that you previously
3 have drafted your own jury charges in the past?

4 A. I have.

5 Q. Is that something you do in every case?

6 A. No. Most of the time not.

7 Q. Is that something you do in the majority of cases?

8 A. No.

9 Q. Is it -- does it happen -- would it be safe to say that
10 it rarely happens?

11 A. Yes.

12 Q. And even if you draft your own charge, is there any
13 guarantee or belief that the judge will accept that?

14 A. No. Like I said, most of -- and I mean, I don't know
15 how many times I've done it. Let's say I've done it five
16 times. I think there's only time I can remember a judge
17 actually took one of the charges I drafted myself and
18 charged it, but having said that, in a life without parole
19 case, in a area of the law where there is no law, I think
20 best practice would have been for me to do that.

21 MR. NEUBAUER: I have no further questions at this
22 point.

23 THE COURT: Mr. Sheldon.

24 MR. SHELDON: May it please the Court.

25 CROSS-EXAMINATION

1 B.J. BARROWCLOUGH BY MR. SHELDON:

2 Q. Mr. Barrowclough, in one of those five cases the judge
3 actually did charge that. Is that right?

4 A. Yes.

5 Q. And so -- and when a charge -- just for the record,
6 when a charge goes to the jury, that's the judge instructing
7 the jury what the law is in the case?

8 A. Right. Yes.

9 Q. The law that they need to consider in the case. Right?

10 A. Yes.

11 Q. How many of those -- how many times have you had a
12 conference in the back with the trial judge mentioned on the
13 record about the conference, no information about what the
14 conference was about, how many times has that create --
15 preserved an issue for appeal?

16 A. You mean if you don't put it on the record?

17 Q. If it's not on the record and it happens in chambers,
18 what do they do with it in Columbia?

19 A. They don't review it.

20 Q. Well, why not?

21 A. 'Cause they don't have enough information, I guess.

22 Q. So it doesn't -- would you agree or disagree that it
23 absolutely doesn't matter at all what you think, what the
24 prosecutor thinks or what the trial Court thinks. When it
25 comes to the defendant's rights to preserve a record, it's

1 your job and your job alone to do that?

2 A. To put it on the record.

3 Q. That's all---

4 A. Yes; yes. Right.

5 Q. ---it takes, isn't it?

6 A. You're right. Yeah.

7 Q. Judge can say one of two things, Mr. Barrowclough, I
8 agree, Mr. Barrowclough, if I'm wrong, the people in
9 Columbia can help sort it out. Right?

10 A. Correct.

11 Q. They can't help sort it out if it's in the back,
12 though, can they?

13 A. You're right.

14 Q. And there's no question that in this case that
15 conversation did, in fact, happen in chambers?

16 A. Correct.

17 Q. And did not make its way to the record?

18 A. Correct.

19 Q. Let's talk about that actual accident charge. You --
20 first of all, do you agree with the overall premise that the
21 law doesn't change unless you ask it to change. Right?

22 A. Correct. Yes.

23 Q. So it doesn't matter if we have a request to charge
24 book that's this think (indicating). Right?

25 A. Right.

1 Q. Because if there are new issues that come up within the
2 law, that needs to be addressed. Right?

3 A. Correct.

4 Q. And the beauty of the legal system is that it's
5 malleable, it does modify over time.

6 A. Change, grow. Yes.

7 Q. And so it is possible to ask the judge to request
8 something that you draft. Right?

9 A. Yes.

10 Q. And, in fact, we have multiple reasonable doubt charges
11 now, don't we?

12 A. Yes, we do.

13 Q. We have hesitate to act?

14 A. Right.

15 Q. And we have others, too. Right? Some that the --

16 A. Victor v. Nebraska. Yeah.

17 Q. So we have Victor v. Nebraska and judges will charge
18 one, charge the other or charge both?

19 A. Right. That's right.

20 Q. So the fact that there's a request to charge book and a
21 request to charge on accident that doesn't fit, doesn't mean
22 that we're prevented from doing that. Right?

23 A. Correct.

24 Q. Okay. And in this particular case, mens rea was
25 crucial. Right?

1 A. Correct.

2 Q. This wasn't a case about whether or not he was in
3 Michigan at the time of the accident. Right?

4 A. Correct.

5 Q. It wasn't a case about whether or not he was guilty of
6 some other offense at the time of the accident. Right?
7 This is a case about his -- his mental state. His mens rea
8 was the sole issue in the case,---

9 A. Correct.

10 Q. ---according to your theory anyways. Right?

11 A. Correct.

12 Q. He either acted with willful, intentional act of trying
13 to kill someone or trying to severely injure them, attempted
14 murder, trying to kill someone based on the vehicle that he
15 was in or it was a complete accident. Right?

16 A. Correct.

17 Q. And do you agree that the law is not going to punish
18 those two individuals the same?

19 A. Of course.

20 Q. Because the mental state that a defendant has is
21 crucial in determining guilt or innocence?

22 A. Yes.

23 Q. The jury is going to be charged that they must consider
24 different mental states, that they must -- there must be
25 some intentional act or willful act. Right?

1 A. Yes.

2 Q. And when you argue and you stand here, and I've seen
3 B.J. argue to the jury before, when you stand here and you
4 argue to this jury this is an accident, this is an accident,
5 this is an accident, that -- you don't disagree that's the
6 theory of your case?

7 A. I don't disagree.

8 Q. When you sit here and argue that to a jury, you need
9 the judge to back it up. Right?

10 A. It's certainly helpful.

11 Q. Because if the law that's funneled to the jury doesn't
12 match the facts that the jury has to consider, 'cause
13 they're the fact finders. Right?

14 A. Yes.

15 Q. But the law comes from here (indicating). So you need
16 the law to support the facts?

17 A. Yes.

18 Q. And there was no accident charge that supported the
19 facts?

20 A. Right.

21 Q. And, therefore, there was no option for the jury to
22 consider a different mental state than the one of attempted
23 murder?

24 A. Right. And I would point out, too, that, you know,
25 just within the last year -- attempted murder was new back

1 then, but just within the last year, you know, the courts,
2 appellate courts, Supreme Courts have come out with at least
3 four cases dealing with attempted murder being a specific
4 intent crime, you know, and so charges like you can infer
5 malice, use of a deadly weapon like a vehicle, you know,
6 that's not even an appropriate charge anymore for attempted
7 murder. You know, State versus Perry, which is from York
8 County and three other cases all dealing with being a
9 specific intent crime and we -- back then in 2010, we didn't
10 get the benefit of any of that law.

11 Q. And so -- and because of that, do you think that things
12 could have been done differently?

13 A. Yeah. Well, I said I should have -- I should have
14 drafted my own charge and submitted it.

15 Q. And you don't have a crystal ball to know what Judge
16 Hayes would have done, what Judge Sprouse would do or what
17 any appellate judge would do or not do with your little
18 request that you submitted. Is that right?

19 A. That's correct.

20 Q. But it's important that we get this right when we're
21 dealing with people that can go to prison for the rest of
22 their life?

23 A. Correct. It's important to do it in every case, but
24 especially in a case that goes from one year to a life
25 sentence. Yes.

1 Q. Absolutely. Absolutely. But it's the most important
2 -- the more time, the more important it is. Right?

3 A. Yes.

4 Q. And you indicated that you weren't involved in this
5 case leading up to everything that sort of occurred, but you
6 were in the courtroom for the testimony. Right?

7 A. Yes.

8 Q. Do you agree or disagree that Mr. Franks, at least by
9 the time that he gets to you, doesn't want that one year?

10 A. Say that again.

11 Q. Do you agree or disagree that by the time Mr. Franks
12 gets to you and Mr. Delaney, that he wants that year or
13 doesn't want it?

14 A. He wants that year.

15 Q. He wants the -- he wants the offer that was recommended
16 to him.

17 A. Right. Yeah.

18 Q. Right?

19 A. Oh, yeah. Yeah; yeah. For sure.

20 Q. And did you or Mr. Delaney try to talk him out of that?

21 A. No.

22 Q. Did you try to talk him into that?

23 A. We didn't have to talk him into it. He definitely
24 wanted it and we tried to get it back. We tried hard to get
25 it back.

1 Q. Why try to get it back? Why was that important?

2 A. Because it was a good offer.

3 Q. It was a good offer that he should have taken. Right?

4 A. Correct.

5 Q. And when he had the benefit of a lawyer, he did want to
6 take it?

7 A. Correct.

8 Q. Is there anything that suggests that prior to y'all
9 getting involved, that he was given any sort of counseling
10 about how serious the decisions he was making were?

11 A. I'm not aware of any indication of that. No.

12 Q. When you go before -- how long you been practicing?

13 A. Twenty-seven years.

14 Q. In those twenty-seven years, have you -- I'm certain
15 you've been a part of proceedings in courtrooms just like
16 this. Right?

17 A. Yes, sir.

18 Q. How important is it that -- when you hear about what's
19 going on with the Judge McIntosh proceeding, do you think
20 that it is appropriate and right in the profession that
21 you've chosen to be in, to make an offer with no discovery,
22 meet with them in your office then parade them into the
23 courtroom, turn down the offer and get him a lawyer. Is
24 that the proper way to handle a life without parole case?

25 A. I would say that that is not an appropriate way to

1 handle any case. I think that -- I don't even know how
2 someone could be expected to take, accept or turn down an
3 offer without reviewing their discovery to know what kind of
4 case the State even has against them. I think that's an
5 unacceptable practice---

6 Q. Not par for the --

7 A. ---in any type of case.

8 Q. Not par for the case here, though, isn't it?

9 A. For any -- yeah. For any type of case, that's
10 inappropriate and I also want to say because this case has,
11 as you know, as everybody knows, been a high-profile case in
12 this county for twelve years now, the optics of that, as far
13 as undermining confidence in our York County Criminal
14 Justice System, the optics are terrible.

15 Q. Why?

16 A. Because --

17 Q. It's just -- I mean, it's just a mentally ill person
18 without a lawyer getting a life sentence for no reason. Why
19 is that -- why are the optics so bad?

20 A. And, listen, Mr. Sheldon, I can't address the mental
21 illness part of it, but I'm just saying no discovery and to
22 go from a year with no lawyer to life without with a lawyer,
23 numerous of people, lawyers and non-lawyers around here,
24 have commented on that being so inappropriate. It's been a
25 black mark around here for twelve years.

1 MR. SHELDON: I don't have anymore questions, Judge.

2 Thank you.

3 THE COURT: Anything further from this witness?

4 MR. NEUBAUER: No, Your Honor.

5 THE COURT: Thank you, Mr. Barrowclough.

6 MR. BARROWCLOUGH: Thank you, Judge. Judge, may I be
7 excused?

8 THE COURT: Any objection to this witness being
9 excused?

10 MR. NEUBAUER: No objection.

11 MR. SHELDON: I would object. No. You're good.

12 THE COURT: You're excused.

13 MR. NEUBAUER: The State would call Erik Delaney.

14 (ERIK DELANEY, being first duly sworn, was examined and
15 testified as follows):

16 DIRECT EXAMINATION

17 ERIK DELANEY BY MR. NEUBAUER:

18 Q. Good afternoon, Mr. Delaney.

19 A. Good afternoon.

20 Q. Evening at this point.

21 A. Yes.

22 Q. How long have you been practicing law, sir?

23 A. I'd say about seventeen years.

24 Q. Seventeen years and all criminal?

25 A. About sixteen of those criminal.

1 Q. Sixteen of those criminal. And how long have you been
2 with the Sixteenth Circuit Public Defender's Office?

3 A. I think since around 2006.

4 Q. Around 2006. And you were appointed initially to
5 represent Mr. Franks?

6 A. That's correct.

7 Q. And do you remember how many times you met with Mr.
8 Franks about this case?

9 A. No. I would -- I think I'm safe saying I definitely
10 met with him more than B.J. did, 'cause I was in it early
11 on, so I'd say probably at least fifteen times. It was a
12 number of times, but as you could hear, you know, this case
13 moved fast, but I know we had an investigator as well, so we
14 had a number of meetings with him even though it was moving
15 fast.

16 Q. Okay. And do you remember when you would have been
17 provided discovery in this case?

18 A. I believe I got it pretty -- I believe we didn't have
19 any issues ever getting discovery. I believe we got it
20 pretty early on.

21 Q. And would you have shared that with Mr. Franks?

22 A. I would have. Yes.

23 Q. Would you have discussed everything with him?

24 A. Yes.

25 Q. And did he ever ask for his own copy of it to review?

1 A. I'm sorry. You said did he ever ask for his own copy?

2 Q. Own copy of the discovery to review on his own?

3 A. Probably. I mean, normal practice would have been he
4 would have had his own kind of working copy when we were
5 discussing things, so that would have been my normal
6 practice to get him a copy of his discovery early on.

7 Q. And you've heard the discussions regarding the plea
8 history in this case. Correct?

9 A. Sure. Yes.

10 Q. When you first came onto this case, were you made aware
11 of the one-year plea offer?

12 A. Yes.

13 Q. Did Mr. Franks ever tell you how that offer went away?

14 A. I'm sure we discussed that. I think, you know, what he
15 said in here today was consistent with what, you know, he's
16 always told me how things happened with his plea offer.

17 Q. And --

18 A. And it's consistent with Mr. -- you know, Mr. Springs
19 testifying as far as his deadlines, you know, that all made
20 -- made sense.

21 Q. It was all consistent with your---

22 A. Sure.

23 Q. ---memory of this?

24 A. Sure. Yes.

25 Q. And so you met with Mr. Franks fifteen times. Did he

1 seem to understand that conversations you guys were having?

2 A. Yeah. I believe we were able to have -- to kind of
3 have conversations about what happened, what didn't happen.
4 He as able to talk to the investigator, able to talk to B.J.
5 He was -- from what I remember, Jason was animated, you
6 know, excitable, stressed. It was all -- you know, that was
7 all understandable, given what was going on, but you know,
8 he did have -- you know, those things were, I remember, were
9 noticeable about him.

10 Q. Did any of that ever alarm you or give you any concern?

11 A. Alarm me? No. I knew, as we've heard today, you know,
12 I knew that he -- I knew some of his history, some of his
13 history, as far as what happened, some things that happened
14 to him when he was in the Department of Corrections prior,
15 I think, as was testified to earlier. You know, my lay
16 person opinion was that he had -- he was definitely going
17 through some PT- -- he had some PTSD issues, some anxiety
18 issues. That's probably what I observed with him, but as
19 far as just being able to discuss the case with him, I
20 didn't have any issues with that.

21 Q. So you were able to freely discuss the case with him
22 and he seemed to understand?

23 A. From what I remember, yes.

24 Q. Did he ever tell you about any mental health issues?

25 A. I don't recall anything specifically, but I do

1 remember, you know, having conversations with him about
2 things that he had went through in his past, so yeah, I do
3 remember some, some mental health issues. I guess I would
4 describe them as mental health issues.

5 Q. Did you ask him about any mental health issues or
6 diagnoses?

7 A. I don't -- I don't recall.

8 Q. Was there ever any discussion about him taking
9 medication at the time of, not only the incident, but while
10 you were representing him?

11 A. I vaguely -- you know, and this is just trying to
12 remember the best I can as far as him being on some
13 medication. That doesn't surprise me, him being on
14 medication at the time, you know, that didn't surprise me.

15 Q. Did any of it give you any concerns that you might need
16 a mental health evaluation?

17 A. At the time, no. You know, hindsight's always -- but,
18 you know, at the time, no. I thought competent wise --
19 competency wise we didn't have issues, but again, you know,
20 things were moving fast.

21 Q. And in other cases, have you had to request competency
22 evaluations?

23 A. Sure. Yes.

24 Q. And what normally would lead you to request a
25 competency evaluation?

1 A. If I don't feel I'm able to communicate with my client
2 or my client's have struggle -- struggling understanding
3 what's going on. It can be various reasons, but those would
4 be some of the main things, main reasons why I would ask for
5 one.

6 Q. And none of those presented themselves in this case?

7 A. That I can remember, no.

8 Q. And did he ever -- did you discuss, while talking about
9 pleas, did you discuss when he turned down the one-year plea
10 offer or when the one-year plea offer went away? Would you
11 have discussed that with Mr. Franks?

12 A. I'm sure. I'm sure we would have discussed that. I'm
13 sure he told me all about that.

14 Q. Do you remember him telling you prior to you getting on
15 the case, that wanted to take that one-year plea?

16 A. Say that again. I'm sorry.

17 Q. When you were appointed, when you were speaking with
18 him, was there ever a discussion between you and Mr. Franks
19 about him wanting to accept that plea offer on his own
20 before you were appointed?

21 A. I don't know about before, I just know once we got on,
22 he wanted it, you know. I know there was a lot of things
23 going on at the time, you know, as far as why didn't he take
24 it on that particular day, yo know. I just -- you know, I
25 wasn't involved with those conversations. I just know when

1 I got involved, he wanted the one year and we tried our best
2 to try to get that back.

3 Q. And, ultimately, you weren't able to get that back?

4 A. Sure. That's correct.

5 Q. And then you go into the trial and you guys -- your
6 theory is that this was an accident. It wasn't intentional.
7 Correct?

8 A. Correct.

9 Q. And that was kind of communicated from opening
10 statements all the way through your close, it was
11 consistent. You guys were arguing accident?

12 A. Correct.

13 Q. Do you remember the charge conference regarding
14 accident?

15 A. Bits and pieces. I mean, it -- it sounds -- yes. I do
16 remember a little bit about that.

17 Q. And would you agree that at this point there is no
18 charge for accident regarding an automobile?

19 A. I agree.

20 Q. And would it be safe to say that the only accident
21 charge that exists is the accidental discharge of a weapon?

22 A. That's my understanding. Yes.

23 Q. And so did it occur to you at that point that you could
24 have crafted your own charge and it could have been brought
25 to the judge?

1 A. Yeah. At that time, I mean, obviously we didn't do it.
2 Should we have done it? Yeah. We should have done it, but
3 we didn't at that time. And did it occur to us at that
4 time? I would say no. We didn't do it, but you know,
5 again, if we could do it over.

6 Q. And obviously in hindsight you would redo that, but
7 have you ever, in any other cases, had to craft your own
8 jury charge that you bring to a judge?

9 A. I don't think I have. I haven't. I don't think I have
10 ever done that. No.

11 Q. And how many cases do you think you've handled in your
12 seventeen years of practice?

13 A. I don't know. I'm sorry.

14 Q. Oh. Could you give an estimate or do you just have no
15 --

16 A. A lot, lots.

17 Q. And throughout all those you've never crafted your own
18 jury charge?

19 A. Best I can remember, no, I don't -- I don't think so.
20 There may have been some tweaks or some add-ons or some
21 additions or some things that we worked -- we crafted with
22 the judge, you know, but just me, you know, doing my own,
23 no, you know, and at this time, you know, I was -- back in
24 2010, I was about five years into this job, so I would say I
25 got -- as you heard, I got B.J. involved early on when I

1 knew that this case could go to a trial and the charges were
2 serious, I wanted, you know, him involved, so -- and not to
3 put it all on him, but I was taking, you know, taking his
4 lead at the time.

5 Q. And would it be safe to it's not common practice for
6 lawyers to come to a judge with their own jury charge to
7 add?

8 A. Yeah. I don't think it's common. I don't think it's,
9 obviously, unheard of, but I don't think it's common.

10 Q. Okay. And so, ultimately, this conference happens in
11 Judge Hayes' chambers, you come out and there's a discussion
12 that accident isn't going to be charged as it exists. Is
13 that correct?

14 A. That's correct.

15 Q. And at that time did you feel that you should have put
16 on the record what that conversation was in chambers?

17 A. Probably a good idea. Sure.

18 Q. And is that kind of your thought now or did that occur
19 to you at that time that we might want to put this on the
20 record?

21 A. I just think that's good practice. I mean, we didn't
22 -- we didn't do it. You know, how much of a difference that
23 would have made, you know, putting that -- just putting that
24 on the record at that time about, you know, requesting the
25 charge, I don't know, but you know, I think it obviously is

1 good practice to put certain things on the record.

2 Q. And that ultimately did not happen, so that was not --
3 that issue couldn't even be brought up at the appellate
4 level. Correct?

5 A. That's correct.

6 Q. And do you -- do you know or can you think of why you
7 would not have requested an accident charge at that time?

8 A. Well, I mean, from what we've heard and, you know, what
9 we've researched as far as it -- it just didn't -- we
10 couldn't -- it didn't exist. We couldn't get that one.
11 That's why it wasn't charged at that time. Should we have
12 written our own or at least tried to, you know? Sure.

13 MR. NEUBAUER: I have no further questions at this
14 point.

15 THE COURT: Mr. Sheldon.

16 MR. SHELDON: May it please the Court.

17 CROSS-EXAMINATION

18 ERIK DELANEY BY MR. SHELDON:

19 Q. Mr. Delaney, thank you. I want to just -- and this is
20 going to be pretty short. I just want to talk to you about
21 some of this charge stuff that we're talking about. You
22 don't disagree, do you, that at some point in time there was
23 no jury charges. Right?

24 A. I agree.

25 Q. These things are created through us.

1 A. Sure.

2 Q. So it's not like -- it doesn't matter if it's in a
3 request to charge book. There's not somebody that sat down
4 and wrote all these charges out at one time and said this is
5 what y'all are going to charge. Right?

6 A. Sure.

7 Q. It evolves over time.

8 A. That's correct.

9 Q. And it evolves over time, really, at the appellate
10 level. Right?

11 A. Sure. Yes.

12 Q. I mean, these charges are coming -- they're essentially
13 ripped from the headlines of cases.

14 A. Sure. Yes.

15 Q. Right? I mean, that's where this language comes from.
16 And so it's -- we don't know what Judge Hayes would have
17 done, we don't know what Judge Sprouse would do, presented
18 with a similar situation and we certainly don't know what
19 the appellate courts would have done with it, but do you
20 agree that we do know that when it's not preserved, we have
21 a one hundred percent chance of losing?

22 A. I agree.

23 Q. And that is form over substance. Right? I mean, all
24 you got to do is come out and say it?

25 A. Sure. I agree.

1 Q. If she takes it down, it's in the record.

2 A. I agree.

3 Q. And so when we don't do things like that, it doesn't
4 matter. It doesn't matter. We keep hearing hindsight's
5 twenty/twenty, hindsight's twenty/twenty, but you and I get
6 to go home when we're done. Right?

7 A. Correct.

8 Q. But our clients do not if we don't get it right.
9 Right?

10 A. Correct.

11 Q. And so it doesn't matter if it's hindsight, because
12 there should have been foresight here. Right?

13 A. Sure.

14 Q. You're -- you walked into a courtroom and I think, by
15 your own acknowledgment, you and Mr. Barrowclough argued to
16 the jury that it was an accident?

17 A. That's correct.

18 Q. So certainly at some point in time it would have
19 probably behooved one of y'all to actually go through and
20 try to craft a charge on accident?

21 A. Correct.

22 Q. So it's not like that just came out in testimony and
23 you're scrambling at lunch, trying to figure out what the
24 case law is. Right?

25 A. I agree. Yes.

1 Q. You've heard a lot about sort of the procedural
2 posturing of this case. When Mr. Franks -- let me --
3 there's been a lot of talk about competency and things like
4 that. Have you had clients that have been found not to be
5 competent to stand trial?

6 A. I have.

7 Q. Have you had clients that have been found to be not
8 guilty by reason of insanity?

9 A. I believe -- yes, I have.

10 Q. And that just is wear and tear of a job for seventeen
11 years in the public defender's office. Right?

12 A. Sure.

13 Q. But nobody here is raising any issues of competency.
14 Right?

15 A. (Nods head affirmatively)

16 Q. So let me ask you this: have you ever had a client
17 that has mental health issues that needs your help to
18 understand what's going on?

19 A. Sure. Yes.

20 Q. So it's not to the point where they have a sixty-five
21 IQ and are sitting here coloring in a coloring book. There
22 are people out there that you represent, right, that need
23 the help of a lawyer?

24 A. I agree. Yes.

25 Q. There are people out there that may be competent to

1 stand trial, but aren't fully there upstairs with the
2 ability to comprehend what's going on with their case all
3 the time. Right?

4 A. Sure.

5 Q. There are people out there that need the assistance of
6 attorneys and things because they just aren't all there?

7 A. Sure.

8 Q. And those individuals can greatly benefit from the help
9 of lawyer. Right?

10 A. I agree.

11 Q. And when you deny somebody that right or when you are
12 confronted in a situation -- let me just ask you this:
13 should there ever have been a meeting with a prosecutor in a
14 detention center two weeks after arrest, not providing
15 discovery, providing an offer that expires on a specific
16 date, no matter what?

17 A. In my opinion, that's unusual.

18 Q. Why would that be unusual?

19 A. Well, I think as we heard earlier, you know, somebody,
20 you know, not being given discovery, being given an offer,
21 we have charges of this nature, it just doesn't -- you know,
22 it just doesn't sit -- it just doesn't sit right.

23 Q. Do you barge into their office? Do you walk into their
24 office just willy-nilly as you want right now? Like, I
25 mean, is that what you do over at the solicitor's office?

1 Are you allowed to just go in the door, knock at any door,
2 tell them whatever you want?

3 A. No.

4 Q. I mean, and this man's incarcerated. Right?

5 A. Right.

6 Q. I mean, he doesn't have -- is there any evidence from
7 you received that he invited Mr. Springs down to the jail?

8 A. No.

9 Q. That was initiated by the prosecutor. Right?

10 A. That's my understanding. Yes.

11 Q. Are they allowed to talk to your clients like that?

12 A. Hopefully not. No.

13 Q. They'd be in a lot of trouble if they did that,
14 wouldn't they?

15 A. Right.

16 Q. And but yet two weeks later, that's exactly what
17 happens here, isn't it? Because he's not represented,
18 that's what happens, isn't it?

19 A. Right.

20 Q. And in something so serious, isn't it important that we
21 make sure that everybody understands what's going on?

22 A. Yeah. I think that's -- yeah. That's -- that should
23 be the standard. Yes.

24 Q. Was that the standard in this case?

25 A. Unfortunately, in my opinion, no.

1 MR. SHELDON: Thank you. No more questions.

2 THE COURT: Anything further from this witness?

3 MR. NEUBAUER: No, Your Honor.

4 THE COURT: Thank you, Mr. Delaney.

5 MR. DELANEY: Thank you.

6 THE COURT: You can step down.

7 MR. DELANEY: Thank you.

8 MR. NEUBAUER: The State rests at this point, Your
9 Honor.

10 THE COURT: Any reply testimony?

11 MR. SHELDON: Nothing in rebuttal or reply, Your Honor.

12 THE COURT: All right. We've reached the end of the
13 evidentiary stage. Applicant has the burden of proof, so
14 I'm going to give Mr. Sheldon the last word.

15 Mr. Neubauer, if you'd like to make a summation, the
16 Court would --

17 MR. NEUBAUER: Yes, Your Honor. Just in summary, we
18 argue that the applicant has failed to meet his burden in
19 this case. There's been no determination made whether or
20 not Mr. Franks lacked the competency to stand trial or to
21 understand what was happening in this case. Per the
22 testimony of Solicitor E.B. Springs, Mr. Barrowclough and
23 Mr. Delaney, they had no questions regarding his ability to
24 understand the information provided to him. They did not
25 discern anything that led them to believe that he required a

1 competency evaluation and I feel that it's the State's
2 position that there was nothing to warrant a -- or nothing
3 that was presented to any attorney to warrant them seeking a
4 competency evaluation.

5 Additionally, Mr. Franks was given a plea offer from
6 the State, from Solicitor Springs, where he was allowed the
7 opportunity to seek legal counsel before accepting or
8 rejecting this plea. On multiple times Mr. Franks chose to
9 proceed without the assistance of counsel and ultimately
10 rejected the plea offer or allowed that plea offer to lapse.
11 He only requested the assistance of an attorney once he
12 transitioned to a trial posture and informed Solicitor
13 Springs as much. At that point he was given counsel and was
14 given a new plea offer at his new counsel's request.

15 Ultimately, this case went to trial and Mr. Franks was
16 convicted with the assistance of counsel who had an
17 opportunity to prepare this case with him and to review
18 discovery with him.

19 And, additionally, regarding the failure to charge
20 accident, there has been testimony presented to the Court
21 that at the time no accident charge existed which would
22 apply in this case. Although both Mr. Barrowclough and Mr.
23 Delaney have said that they could have and possibly should
24 have drafted their own accident charge, this is not --
25 you're not expecting perfect representation. Ultimately,

1 that is what you would hope would happen in every single
2 case, but I don't feel that failure to go above and beyond
3 and outside of the normal course of practice and draft your
4 own charge that does not exist would be sufficient to deter-
5 -- or to call Mr. Barrowclough and Mr. Delaney's performance
6 deficient and if it's -- if their performance is not
7 deficient in that regard, it's safe to say that it would not
8 be considered ineffective assistance.

9 We can speculate at to whether or not that charge would
10 have been accepted by Judge Hayes or would have been
11 rejected. We can't know whether or not it would have
12 prejudiced him because we don't know how that decision would
13 have been made, but expecting an attorney to act perfectly
14 and do something they collectively have only done, at max,
15 five times in their practice in every single case is not --
16 I don't feel is the appropriate standard for determining an
17 attorney to be deficient.

18 THE COURT: Thank you, Mr. Neubauer. Mr. Sheldon.

19 MR. SHELDON: May it please the Court. Thank you,
20 Judge. I want to just -- I want to -- there's one point I
21 do want to make about these requests to charge. You can say
22 it's not required that you have prefect representation. I
23 agree. I mean, I do hope we all realize that, but what
24 makes -- what's deficient is for a lawyer to walk into a
25 courtroom and argue something to a jury, specifically,

1 something that requires a specific mental state or doesn't
2 require a specific mental state, and not to have any plan
3 for what you're arguing to the jury. You have to have a
4 plan and their plan is we're going to argue this is an
5 accident. They go in the back and they have a conference
6 about the law of accident. They come out of the conference,
7 we don't know what occurred, other than what they're saying
8 here, 'cause they don't put it on the record and they
9 abandoned that. They argued it all through trial. I don't
10 think I have to unturn every single stone in order to
11 represent a client and somehow if I don't, that I'm
12 deficient, but that's something you got to get right and we
13 don't have to speculate what would have happened or what
14 should have happened, 'cause that's not really what the
15 standard requires. If this Court finds that they should
16 have done that and specifically talking about the charge on
17 accident as it would relate to mental state, because that's
18 exactly what they're counter-balancing with the attempted
19 murder. I mean, whether it was general intent or specific
20 intent, 'cause I know that's changed over time, it doesn't
21 really matter. We're still talking about intent. When
22 you're talking about accident, you're talking lack thereof
23 and without that going to the jury, they're left with only
24 that one option and that's -- that's a problem. That is
25 deficient performance and the outcome should have been

1 different, but I want to talk more about the mental health
2 stuff, Judge.

3 Nobody's arguing that he's not competent. Nobody's
4 arguing that he's not guilty by reason of insanity. That's
5 not what we're arguing. The facts that have been presented
6 here today, as Mr. Barrowclough said, too, and I happen to
7 agree, the legal system should be ashamed of themselves,
8 that somebody goes from a year and four months later -- six
9 months later ends up with a life without parole sentence for
10 the exact same thing. I mean, that is just an absolute
11 disaster for the reputation of the solicitor's office, the
12 public defender's office, and every other practitioner in
13 this county, that something like this could happen on our
14 watch and it should be addressed today because, essentially,
15 what happened is you have a man who suffers from mental
16 health -- severe mental health history, diagnosed. Why
17 nobody else bothered to look at this before I got involved
18 in the case, I don't know, but it's this think (indicating)
19 and it went on and on and on and on. You -- we have to do
20 better. It has to be better than what happened. Whether
21 the Court finds that it -- that somehow Strickland negates
22 us, there's prosecutory -- whatever the Court wants to do,
23 but we have to be better than that.

24 A prosecutor took it upon himself two weeks after --
25 after he's charged, took it upon himself, after being

1 arrested on a probation violation, to walk downstairs, no
2 lawyer, no nothing, relay a one-year offer. He asked a
3 question about his probation violation and the prosecutor
4 says, I don't want to hear it. That is crazy. He has -- he
5 has to have a lawyer in that situation. He has to -- he
6 hadn't even talked to probation. He doesn't know what
7 probation's recommending, yet he's supposed to make a
8 decision on his -- on this case for a year that's also going
9 to impact his future over here, without having any
10 information in front of him whatsoever and that is simply
11 just not okay.

12 It's not okay that we don't have transcripts from that
13 Judge McIntosh hearing, which is extremely important to know
14 what was asked on the record at that hearing, what was
15 actually said, because by the time it gets to Judge Hayes,
16 despite the fact that Mr. Springs wants to change his story
17 today and remember a lot more detail and include a lot more
18 meetings in his testimony today, he didn't include any of it
19 in the only surviving transcript we have. He didn't put any
20 of that in there. He didn't put that he had provided
21 discovery. He didn't put -- he didn't find that to be
22 important. At the end of the trial, that just wasn't
23 important enough for Mr. Springs to mention, but he did talk
24 for four pages. It's not just like he said, Judge, there's
25 nothing here. He goes into it, he just didn't go into that.

1 And, ultimately, Mr. Franks gets a life sentence.

2 What happens when he gets a lawyer? Immediately wants
3 the year, immediately wants the year, does nothing more than
4 tell them please fight to get that year back, I want it. We
5 see in the transcript he says I made -- all I wanted was to
6 get married so my child wouldn't be born out of wedlock,
7 like the last one who just died. I just want 'til September
8 10th, Judge. I will take the year. That's what he said in
9 December to Judge Hayes. That's when it happened, three
10 months after being charged. Three months is when that
11 hearing is. Two months after the hearing, the offer's
12 revoked forever, two months after arrest.

13 We can't get trials now for four years from now and
14 but two months with no representation, half of which was
15 incarcerated is the amount of time he had to think about
16 that, compiled with the PTSD, compiled with everything else,
17 compiled with just losing a child six months prior, compiled
18 with being in prison for eight and a half years. I mean,
19 that's just -- that's -- the system's broken.

20 We've presented all the information. We believe that
21 this -- that this case should be overturned, should be both
22 overturned on the fact that they failed to charge -- they
23 failed to even request a charge of accident; they failed to
24 look at it, they failed to understand it, they failed to do
25 anything, but they still argued it, which you can't do. And

1 in addition to that, based on the prosecutor's conduct in
2 this case prior to getting that lawyer. We have somebody
3 serving life that asked his lawyers, which Mr. Springs
4 encouraged, you should get a lawyer, you should get a
5 lawyer, you should get -- but when he does, it's too late.
6 It's too late at that point, but all he wanted when he got a
7 lawyer was the offer that was originally intended and he
8 should have never gone down to that jail, he should have
9 never relayed an offer. He should have gotten discovery.
10 He should have gotten him the information for the public
11 defender or at least he should have gotten a public
12 defender, which he wanted, been brought up, appointed a
13 lawyer, had the lawyer look at it and say, look, you're an
14 idiot not to take this, you need to take this. It's a year
15 versus life and we know based on his conversations with his
16 lawyers, he would have taken it. Instead, he got life
17 because they couldn't come off of the fact that they had set
18 a deadline and that's why we're here, because the prosecutor
19 in this particular case set an arbitrary deadline and that
20 was his credibility on the line with his office and because
21 of that, he's serving a life sentence.

22 THE COURT: Thank you, Mr. Sheldon.

23 Counsel, I have a number of things to review. I'm
24 going to go through the transcript and the file and the
25 exhibit. Thank you for your presentation. I'm going to

1 take this under advisement and I'll have my law clerk email
2 you a decision.

3 MR. SHELDON: Thank you, Judge.

4 MR. NEUBAUER: Thank you, Your Honor.

5 (END OF REQUESTED TRANSCRIPT)

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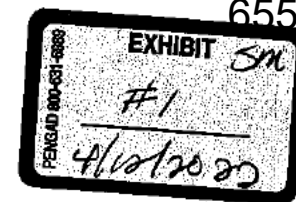
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Psychiatric Evaluation
Jason Ray Frank
Date of Birth: [REDACTED]
Date of Evaluation: 11/30/18
Place of Evaluation: Lee County
Date of Report: 7/6/19
Date of Addendum: 4/7/22

Identifying Information: Jason Frank is a 40-year-old inmate who was convicted of Attempted Murder and sentenced to Life Without Parole.

Reason for Referral: His attorney Nathan Sheldon requested an evaluation as he prepares for Post Conviction relief.

Sources of Information:

SCDC Inmate Search Detail Report

York County Detention Center records 6/17/10-10/1/10

Self Regional Hospital records 11/11/16 -11/14/16

Palmetto Health Records 6/28/17, 11/13/17-11/17/17, 11/20/17, 12/17

Pertinent Statements:

Mr. Frank reported he has served eight years of his present sentence. He reported he has been confined at Lee County for the past year. He reported he has served at Lieber, Broad River (Cutters program) and Gilliam Psychiatric Hospital. He reported he has been prescribed various antidepressants including Paroxetine and Mirtazapine which he presently takes. He stated SCDC has been on lockdown "because of seven murders." He reported he spends time in bible study. He reported he used to drink but stopped all use of substances in January 2018. He reports he likes to draw. Records from the York County Detention Center and Prisma Hospital indicates he has been prescribed Mirtazapine, Quetiapine, Sertraline Hydroxyzine, Haloperidol and Trazodone. Records indicate prior diagnoses of PTSD, Schizophrenia, substance abuse and Personality disorders.

He reported extensive self-mutilation during his confinement. "It progressed tremendously." He reported he was "cutting my guts out." He stated he was sent to the treatment program for "cutters" and stayed there four to five months. He stated the program disbanded. Records from Prisma Hospital in Columbia indicate he has been treated for serious self-inflicted lacerations and had required surgery.

Developmental History:

He reported he was in group homes and foster care as a child. He reported he was hospitalized at Charter Rivers. He stated he was in DSS custody. He reported he was treated by mental health. He stated he was prescribed Depakote and Ritalin. He reported he was treated with Seroquel also. He reported his father physically abused his mother. He reported his father beat

him with belts, paddles and his hands. He stated he was sexually abused by a maternal uncle from ages eight through nine.

School History:

He reported he attended school until ninth grade. He stated he took the GED test three times.

Psychiatric History:

He reported a prior history of inpatient and outpatient psychiatric treatment. He stated he was treated at Charter Pines. He reported he had a history of ADHD as a child and was treated with Ritalin. He was also prescribed a mood stabilizer, Valproic acid as a child.

He reported he is presently prescribed Paroxetine 40mg and Mirtazapine 15mg at night. These medications are antidepressants. He reports he often wakes up "in a sweat."

During a hospitalization at Prisma for self-mutilation, he was evaluated by psychiatric Rachel Houchins, MD on 11/13/17. He reported he had not received his antipsychotic medications for five days prior to his mutilation. He reported that the voices started bothering him. He also reported he was moved from Broad River to a mental health unit. When she reviewed his Medication Administration Record (MAR), the record indicated he missed two days of medications. His family history was recorded as his mother having depression. She diagnosed a likely personality disorder (Borderline v Antisocial), history of schizophrenia with no active symptoms, history of depression and history of PTSD, Marijuana Use Disorder and rule out Malingering. She recommended using Haldol 2mg IM as needed. The following day he reported hallucinations and stated he had not received any medications. He was noted to be irritable. He described two voices fighting, telling him to harm himself. Dr. Houchins restarted his Geodon, Tegretol and Trazodone.

Substance Use History:

He reported using marijuana in the past. He was using marijuana around the time of his charges. He stated one ounce would last him two days. He stated he had tried to quit on the streets. He had a history of failing his drug test while on supervision. He stated he was able to stop for two weeks. He stated it helped him sleep and eat.

Medical History:

He reported he was treated at Self Regional Hospital. Records from 2016 confirm he was hospitalized for a self-inflicted stab wound to the abdomen. He also received psychiatric medications including: Geodon (antipsychotic), Buspirone (anxiolytic), Tegretol (mood stabilizer) and Trazodone for sleep. He had an exploratory laparotomy. A pen cap was found within his peritoneal flap and was removed.

Prisma records indicate he was treated on 6/28/17 after lacerating his left arm with a filed down battery. A tourniquet was applied by EMS. He received seven sutures and discharged.

He was treated at Prisma again on 11/12/17 after he cut open a midline surgical incision and he cut his left arm. His abdominal wound was noted to be 10 cm by 2 cm. His medications at the

time were reported to be Haldol 5mg twice daily (antipsychotic), Tegretol 800mg night (mood stabilizer) and Geodon 180mg at night (antipsychotic). He had an exploratory laparotomy and two foreign objects were removed. He remained for four days after he developed a blood clot in his shoulder. His nasal swab was also positive for MRSA.

He was treated at Prisma again on 12/5/17 after he reopened his wound with a razor blade and placed three pends and a screw in his abdomen. The KUB showed the presence of a screw. He was not offered surgery. The wound was irrigated and closed. He also received IV antibiotics.

He reported two head injuries and admits to tension type headaches on occasion.

Social History:

He stated his first son MINOR 1 was born on [REDACTED]. He reported MINOR 1 "would cry all the time." He reported he took him to his mother who thought he might have colic. He reported he got pamphlets about colic and gave him Similac formula. He stated he had been drinking. He stated he came home and MINOR 1 continued to cry. He stated he awoke to a whimper. He stated he checked his diaper, rocked him and gave him a bottle. He stated he spit the bottle and pacifier out. He stated he fell from his arms and his arms fell to his side. He stated his wife shook him because he was not breathing. He stated law enforcement tried to say he was a shaken baby but that he had dropped his son and his son had a bruise on his head. He stated they were questioned by DSS. He stated he was not allowed to see his son at the hospital and the nurse explained his condition was suspicious. He stated he took a ten-year straight sentence plea bargain for Homicide by Child Abuse.

He reported that his second son, MINOR 2 was born on [REDACTED]. He stated his son caught the swine flu from his 13-year-old stepdaughter. He stated two or three days after his son's birth, he developed a high fever and was flown to Richland Memorial Hospital. He reported his son died on October 16. He stated he and his wife were behind on bills, and that his wife was depressed. He stated he worked for Sonic and his wife worked for Lowes. He stated they developed marital problems. He stated they were not sexually active because his wife didn't want any more children. He stated he developed an emotional relationship with another woman.

He stated he was not sleeping. He reported he was ruminating about all of the deaths he had experienced. "I was replaying in my mind my prison time." He stated he got home from prison on 12/31/08 and his grandmother died in February 2009. He stated his father had died while he was confined. He stated his brother was a substance abuser and needed intervention. He stated his sister had severe lupus. He reported he developed suicidal ideation.

Trauma History:

1. He reported he was physically abused as a child and witnessed his father abuse his mother.
2. He reported his mother was an opiate addict and would lock him in a room for extended periods of time.
2. He reported he was sexually abused by his maternal uncle from ages eight through nine.

3. He reported he was beaten badly during his prior confinement. He reported he owed money when he was at Ridgeland. He stated he had to fight each of the six people he owed for one minute. He stated both eyes were swollen shut. He stated his ear drum ruptured. He stated he did not seek medical attention.

34. He has experienced the death of his two sons.

Family History:

He reported his father died at the age of 63. He reports his brother's son may have Autism. He reported his mother suffers from substance abuse. He stated she abuses opiates and methamphetamine. "I can tell. She has slurred speech or talks fast." He stated she is not allowed to visit him because she was accused of smuggling contraband. He reports he has a brother with substance abuse issues. He stated his sister suffers from SLE(Systemic Lupus Erythematosus).

Legal History:

He was sentenced to ten years straight time for Homicide By Child Abuse in 2000.

He was convicted of Attempted Murder and sentenced to Life without Parole in 2010.

Correctional History:

Mr. Franks reported he had just finished a 10-year sentence prior to his most recent offense. He stated he had been confined at Ridgeland, Kershaw, Watkins Pre-Release. He stated he was sentenced for the death of his son.

He reports he has been to Broad River, Lieber, Kirkland and Lee County during this confinement.

He has a number of disciplinaries with the last being 5/2017 for striking another inmate. He also has disciplinaries for possession of a weapon (1/26/17), Smuggling (11/1/15), cell phone (2015, 2012, 2011) and various drug charges (2014, 2012).

Mental Status Examination

He was pleasant and cooperative. He was neat and had good hygiene. He maintained good eye contact throughout the evaluation. His speech was normal in rate and tone. His thinking was goal directed. He was not psychotic. He was not suicidal or homicidal. When asked for three wishes, he replied: "to go home, to be a good father, husband, brother, and uncle and that my Mom get off of drugs." His affect was appropriate. His judgment has been impulsive by history.

Cognitively, he was alert and oriented. He was able to reproduce a visual design without difficulty. He performed above average on a test of verbal fluency. His skin flushed after thirty seconds into this test. He was able to register three items but could not recall any after five minutes. He was able to recall one with prompting. He had some difficulty with abstractions between more complex objects.

Screening Neurological Examination

He did have two scars on his head. He reported one after he hit a coffee table with his head. He reported the second occurred in 2012 when he fell out of a second bunk.

He did have lateral nystagmus. He did not have any frontal release signs. His Hoffman's sign was negative. His Romberg sign was negative. He did not perseverate on a Luria test.

Diagnoses:

Borderline Personality Disorder

Major Depressive Disorder, recurrent

Post Traumatic Stress Disorder

Cannabis Use Disorder, In a Controlled Environment

Alcohol Use Disorder, In a Controlled Environment

Opinions:

1. Mr. Frank is mentally ill and suffered from these illnesses at the time of his offense.
2. He should have had a psychiatric evaluation to determine his competency.
3. Persons with Borderline Personality Disorder are often impulsive and use poor judgment, especially when their emotions are intense.
4. He does have some memory loss and mild cognitive impairment. The onset of these symptoms is not clear. He described being in a fight with six males and also reported falling from a top bunk during his present incarceration. Neuropsychological testing would be helpful in determining if his deficits represent a decline in his pre-morbid functioning. His intellectual capacity should also be assessed given his failing his GED three times, history of ADHD and mother's substance abuse.
5. If DSS records are found or his Charter Pines records, the undersigned reserves her right to amend opinions.

Donna S. Maddox, MD

Consulting Forensic Psychiatrist

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
Jason R. Franks,	)	Case No.: 2014-CP-46-02815
S.C.D.C. No. 276389,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court by way of an application for post-conviction relief filed by Jason R. Franks ("Applicant") on August 26, 2014, and amended on October 26, 2017. The Court convened an evidentiary hearing into the matter on April 12, 2022, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Nathan J. Sheldon, Esquire. Michael J. Neubauer, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Assistant Public Defenders Erik D. Delaney and Bryson J. Barrowclough, who represented Applicant at his trial, also testified, as did Applicant's prosecutor Eli Baxter Springs. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the York County Clerk of Court regarding the subject convictions, Applicant's appellate records, and the pleadings. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and, therefore, denies and dismisses this application with prejudice. The Court finds as follows:

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S.C. SUPREME COURT

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections. Applicant was indicted by the October 14, 2010, term of the York County Grand Jury for attempted murder (2010-GS-46-3461). Mr. Delaney and Mr. Barrowclough represented him. On December 13–15, 2010, Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable John C. Hayes, III, sentenced Applicant to confinement for life without parole.

A notice of appeal was filed on Applicant's behalf, and an appeal was perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Franks, 2013-UP-020 (S.C. Ct. App. filed January 16, 2013). Applicant then filed a petition for writ of certiorari in the South Carolina Supreme Court, but certiorari was denied on May 22, 2014. The Remittitur was issued on June 3, 2014.

Factual History

On June 7, 2010, Applicant ran over Edward Mullins while Mullins was driving on his moped. Mullins and Applicant had gotten into a verbal altercation a week or two before the incident, during which Applicant stated he was going to stab Mullins. (R. pp.159–61). The next day, Applicant went to his neighbor, Anthony Valenti's house with a club and made multiple threats against Mullins. (R. pp.40–41).

On the day of the incident, Valenti was driving behind Mullins's moped when Applicant drove in front of him in a white SUV and began chasing Mullins. (R. pp.43–51). Mullins kept driving, and eventually Applicant ran into him at high speed and then left him bleeding on the side of the road. Mullins was taken to the hospital and survived. (R. pp.159–74).

Present Application

In his original post-conviction relief application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Strickland v. Washington 466 U.S. 668, 80 L.E.2d 674

As his requested relief, Applicant seeks to have his conviction and sentence vacated and remanded pursuant to the original plea deal he was offered by the Sixteenth Circuit Solicitor's Office, or a new trial.

On October 26, 2017, through counsel, Applicant filed an amended post-conviction relief application raising the following claims:

1. Ineffective assistance of counsel for failing to ask that the law of accident be charged to the jury, and
2. Violation of Applicant's Sixth Amendment right to counsel during the plea negotiation process where the solicitor approached Applicant with a plea offer of a 1-year active prison sentence if he pled to hit-and-run involving injury, but revoked the offer when Applicant rejected it without the benefit of counsel.

At the evidentiary hearing, Applicant went forward on the claims raised in his amended application.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the

adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel’s performance was deficient. Strickland, 466 U.S. at 687; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625 (quoting Strickland,

466 U.S. at 694). "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" Harrington, 562 U.S. at 111-12 (quoting Strickland, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." Id. at 112.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696-97.

Applicant argues his defense attorneys were ineffective because they did not request a jury charge on the law of accident, even though Applicant's defense at trial was that he hit Mullins's moped by accident. Because defense counsel did not seek a jury charge on the defense of accident, Applicant argues he had to rely on the plain meaning of the word accident in arguments to the jury. At the evidentiary hearing, Mr. Barrowclough and Mr. Delaney testified that there is no standard jury charge for an automobile accident—the only accident charge they were aware of concerned the accidental discharge of a weapon, which was not implicated in Applicant's case. While both attorneys acknowledged that they could have fashioned their own accident charge, they admitted that doing so was not common practice and did not occur to them.

Constitutional Claim

There is no constitutional right to a plea bargain. See Weatherford v. Bursey, 429 U.S. 545, 561 (1977) ("It is a novel argument that constitutional rights are infringed by trying the

defendant rather than accepting his plea of guilty.”); Collins v. State, 422 S.C. 250, 261–62, 810 S.E.2d 871, 877 (2018) (holding counsel was not deficient for failing to revive a plea offer that expired before he was appointed, and the solicitor had no obligation whatsoever to revive the expired offer).

Applicant argues his right to an attorney was violated when Solicitor Springs approached him, shortly after his arrest, with a plea offer of one year non-violent for hit-and-run involving injury. At that point, Applicant was not represented. Initially, Applicant indicated he intended to accept the offer; however, on the day he was supposed to enter the plea, he came to Springs’ office and told him he wanted to reject the offer and go to trial.¹ Springs warned him that he would be facing life without parole if he lost at trial, and Applicant indicated he understood. Springs then brought him to the courtroom, and counsel was appointed for Applicant. (Trial Tr. pp.445–46). Afterward, Springs contacted the defense attorneys and offered to let Applicant plead to assault and battery of a high and aggravated nature for 12 years without parole.²

Mr. Barrowclough and Mr. Delaney both testified they tried desperately to revive the 1-year offer after being appointed, but they were unable to get it back. They acknowledged that Applicant did not want to accept the solicitor’s subsequent offer of 12 years. The transcript of the

¹ At the evidentiary hearing, Applicant testified Springs told him he did not need an attorney, and then revoked the offer after Applicant requested an attorney. Springs denied this and testified to the contrary—that he offered to help Applicant get an attorney, but Applicant insisted he would “handle it himself.” Springs stated Applicant expressly rejected the plea offer when he came to Springs’ office on August 25, the day he was to enter the plea. Springs’ testimony is consistent with the explanation of this course of events that was put on the record at Applicant’s trial. (Trial Tr. pp.444–48). Springs testified he was initially shocked that Applicant rejected the deal, but he learned that the plea would constitute a probation violation for which Applicant was facing substantial time.

² At Applicant’s trial, Springs stated that the 12-year offer would also have resolved Applicant’s unrelated charge of lewd act upon a minor. (Trial Tr. pp.446–47).

trial reveals that they also spoke to Springs and to Circuit Solicitor Kevin Brackett about getting an offer for Applicant in the 5-6 year range, but they were unsuccessful. (Trial Tr. p.447).

Findings and Conclusions

The Court finds that the Applicant has failed to meet his burden of proof. Specifically, the Court finds the following:

1. That, while the procedure followed by the solicitor handling the case is concerning, this issue is outside the scope of an application for Post-Conviction Relief. The Applicant's attorneys made a diligent effort to obtain the previous plea offer made to the Applicant while he was pro se, even to the point of going directly to the Circuit Solicitor in an attempt to persuade him to overrule his subordinate. Furthermore, this was an issue known to the presiding judge, who directed the solicitor handling the case to put facts pertaining to his interaction with the solicitor into the record.
2. The allegations that the defense attorneys should have crafted their own jury charge on the law of accident is without merit. This argument is purely speculative since there is no proposed charge nor is there any way to determine whether or not it would have been accepted by the court. The court also notes that the jury was given a charge on criminal intent and that criminal intent would have had to be proven beyond a reasonable doubt. While the word "accident" is not specifically used in the charge, the charge fits the defense's theory of the case. The defense argued that the Applicant did not intend to hit the victim and that the events were simply a motor vehicle accident.

[Conclusion and signature on following page]

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S.C. SUPREME COURT

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 4 day of October, 2022.


 R. SCOTT SPROUSE
 Presiding Judge
 Sixteenth Judicial Circuit

Waltham, South Carolina

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S.C. SUPREME COURT

WITNESSES

CSO / Scurlock

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

October 14, Term 2010

ARREST WARRANT NUMBER

181204

ACTION OF GRAND JURY

TRUE BILL

Representative of Grand Jury
Date:

10-14-10

VERDICT

guilty

Representative of Petit Jury
Date:

12/15/10

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

JASON RAY FRANKS

Indictment for

ATTEMPTED MURDER

SC Code: 16-3-29
CDR Code: 3410

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

CERTIFIED TRUE COPY

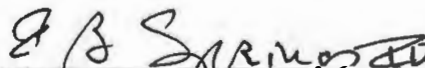
2014 AUG 28 AM 8:48

At a Court of General Sessions, convened on October 14, 2010, the Grand Jurors of York County present upon their oath:

CLERK OF COURT
YORK COUNTY, SC
ATTEMPTED MURDER

The Defendant, Jason Ray Franks, did in York County, South Carolina on or about June 7, 2010, attempt to kill and murder Edward Ray Mullins, with malice aforethought, either express or implied, when the Defendant intentionally drove a sport utility motor vehicle at the victim, Edward Ray Mullins, as the victim was travelling down a public street on a motorized vehicle known as a "moped," and the Defendant crashed the vehicle he was driving into the victim's body on the moped, and "ran down" the victim. This was in violation of Section 16-3-29 of the Code of Laws of South Carolina, (1976, 2010 as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

COUNTY OF York
STATE VS.

Jason Ray Franks

AKA:

Race: W

Sex: M

Age: 29

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

City, State: [REDACTED]

DL#: [REDACTED]

SID#: SC01316986

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant and the

TO: Attempted Murderin violation of § 16-3-29 of the S.C. Code of Laws, bearing CDR Code # 3410☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEYS:

Springer
Springer, E.B.13568
SC Bar#Defendant
DefendantAttorney for Defendant
Attorney for DefendantSC Bar#
SC Bar#WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of Life without Parole days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5%) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5

§ 44-53-450(C) (Conditional Discharge) \$350 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ 130Clerk of Court/ Deputy Clerk David HamiltonCourt Reporter: Mike Watts

SCCA/217 (06/2010)

INDICTMENT/CASE#: 20_0GS4603461

A/W#: J181204

Date of Offense: 6/7/2010

S.C. Code § : 16-3-29

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

This is Defendant 2nd
most serious conviction☐ Conditional Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Presiding Judge John H. TaylorJudge Code: 2049Sentence Date: 12-15-10