

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

JAMES A. TUCKER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-001844

APPENDIX

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT (dated September 14, 15 and 16, 2009).....	1
APPLICATION FOR POST-CONVICTION RELIEF	326
RETURN	333
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated June 10, 2016).....	338
APPLICANT’S EXHIBIT NO. 1 (SLED Forensic Services Laboratory Report).....	393
APPLICANT’S EXHIBIT NO. 2 (McCurley Private Investigations Report)	399
RESPONDENT’S EXHIBIT NO. 1 (Aiken County Sheriff’s Office Property Report)	404
ORDER OF DISMISSAL	405
INDICTMENTS	414

State of South Carolina

In the Court of General Sessions

County of Anderson

State of South Carolina ,

Plaintiff,

-vs-

James Anthony Tucker,

Defendant.

2009-GS-04-1023

2009-GS-04-1024

September 14, 15 and 16, 2009

Transcript of Record

BEFORE:

The Honorable J. Cordell Maddox, Jr., Judge

APPEARANCES:

Rame Campbell, Esquire
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Attorney for the State

Andrew Potter, Esquire
Attorney for the Defendant

Renee H. Tollison
Circuit Court Reporter

INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Dewey Little				
Campbell	99			
Potter		110		
James Marshall Tucker				
Campbell	112			
Potter		146		
Christopher Lee Pridemore				
Campbell	152		180	
Potter		160		184
Craig Holbrooks				
Campbell	186		193, 196	
Potter		190		195
John Thomas Clamp, Jr.				
Campbell	197			
Amanda Webb				
Campbell	205		220	
Potter		218		221
Robert Kim Gebing, Jr.				
Campbell	231		273, 277	
Potter		265		277

<--->

	PAGE
Batson	5
Jury Voir Dire	6
Jackson v. Denno	30
Pretrial Motion	72
Opening Statements	
Campbell	94
Potter	97
Closing Statements	
Campbell	286
Potter	297
Charge	301
Verdict and Sentencing	320
Certificate of Reporter	328

EXHIBITS

No	DESCRIPTION	ID	EV
S-1	Advise of Rights/Waiver of Rights	30	251
S-2	Redacted Statement of James Anthony Tucker	83	259
S-2A	Unredacted Statement of James Anthony Tucker	30	
S-3	Photograph	71	144
S-4	Photograph	71	144
S-5	Photograph	71	144
S-6	Photograph	71	144
S-7	Photograph	71	144
S-8	Photograph	71	144
S-9	Photograph	71	144
S-10	Photograph	71	144
S-11	Photograph	71	144
S-12	Photograph	71	144
S-13	Photograph	71	144
S-14	Photograph	71	144
S-15	Photograph	71	144
S-16	Photograph	71	144
S-17	Photograph	71	144
S-18	Photograph	71	144
S-19	Photograph	71	144
S-20	Photograph	71	144
S-21	Photograph	71	144
S-22	Photograph	71	144
S-23	Photograph	71	144
S-24	Photograph	71	144
S-25	Photograph	71	144
S-26	Photograph	71	144
S-27	Photograph	71	144
S-28	Photograph	71	236
S-29	Photograph	71	236
S-30	Photograph	71	236
S-31	Photograph	71	144
S-32	Photograph	71	144

State v. John Anthony Tucker 2009-GS-04-1023, 1024

4

No	DESCRIPTION	ID	EV
S-33	Photograph	71	144
S-34	Large Envelope containing Jeans	164	204
S-35	Evidence Sheet for Two Shirts	164	184
S-36	Plastic Bag Containing Two Shirts	181	184
D-1	Defendant's Statement with Redaction Request Blocked in	229	
C-1	Jury Questions	82	
C-2	SLED Report	222	
C-3	Jury Questions	223	
C-4	Notice of Intent to Seek LWOP	322	
C-5	Affidavit of Service to Defendant	322	
C-6	Affidavit of Service to Attorney	322	
C-7	Sentencing Sheet from '99 Armed Robbery Conviction	322	

2

3

4

5

6

7

8

9

10

11

12

13

14

15

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22

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State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jury Voir Dire

7

1 But I want you to understand that an indictment means
2 nothing at this point.

3 Ladies and gentlemen, I have a couple of other
4 questions that I'm going to ask you that are particular
5 to this case. First, I'm going to ask the lawyers to
6 stand up and introduce themselves. Then I'm going to ask
7 you if you have ever been represented in the past or are
8 you currently represented by these lawyers or do you have
9 any close business or personal relationship with any of
10 the attorneys.

11 Yes, sir?

12 MR. CAMPBELL: Thank you, Your Honor.

13 My name is Rame Campbell. I'm an Assistant
14 Solicitor here. I work for Solicitor Chrissy Adams, and
15 I prosecute here in Anderson County.

16 JURORS IN UNISON: Good morning.

17 MR. CAMPBELL: I previously was in private
18 practice with the law firm of Epps and Nelson.

19 THE COURT: Yes, sir?

20 MR. POTTER: Thank you, Judge. If it pleases
21 the Court.

22 My name is Andrew Potter. I am the attorney
23 representing Mr. James Tucker. This is Ms. Kendra
24 Gurley. She is a paralegal in my office. I previously
25 worked for the law office of Laniel Chapman and Bruce

1 Byrholdt.

2 THE COURT: All right. Ladies and gentlemen,
3 anyone on the panel currently represented by -- or in the
4 past have you been represented by any of the attorneys in
5 this case? If so, please stand?

6 Yes, sir. Give us your name and number.

7 THE JUROR: Number eighty-seven, M. C. Lomax.
8 My family lawyer is Bruce and -- Bruce and Chapman.

9 THE COURT: Mr. Byrholdt?

10 THE JUROR: Yeah.

11 THE COURT: Okay. The only connection there is
12 with the paralegal, so I -- can you render a verdict
13 based only on the evidence that you hear in this case?

14 THE JUROR: (Nodded head up and down in the
15 affirmative)

16 THE COURT: And the fact that an employee of
17 Mr. Potter used to work with Mr. Byrholdt, that won't
18 affect you in any way, will it?

19 MR. POTTER: May it please the Court.

20 THE COURT: Yes.

21 MR. POTTER: Actually, it was me.

22 THE COURT: It was you?

23 MR. POTTER: I worked for Mr. Chapman and Mr.
24 Byrholdt.

25 THE COURT: You're kidding me?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jury Voir Dire

9

1 MR. POTTER: Yes, sir.

2 THE COURT: Well, I apologize. How long ago
3 was that?

4 MR. POTTER: Judge, ninety -- excuse me --
5 2000, I think, was the last year I was with them.

6 THE COURT: Okay. The fact that your lawyer at
7 one point represented you in a domestic action, will that
8 prevent you from being fair and impartial in this case?

9 THE JUROR: Yes, sir.

10 THE COURT: You think it might?

11 THE JUROR: Yes, sir.

12 THE COURT: Okay. I'm going to excuse you from
13 this case. What was your number again?

14 THE JUROR: Eighty-seven.

15 THE COURT: Eighty-seven is excused. Of
16 course, you still got to stay here because you've got to
17 go downstairs.

18 Anyone else?

19 (No response)

20 THE COURT: Does anyone have any close business
21 or personal relationship with any of the attorneys that
22 are involved in this case?

23 Yes, ma'am?

24 THE JUROR: I don't know if this has any
25 relevance, but I teach Mr. Potter's children in Sunday

1 School.

2 THE COURT: All right. Give us your name and
3 number.

4 THE JUROR: Megan Tarbert; one forty-six.

5 THE COURT: Is that at Grace Episcopal?

6 THE JUROR: Yes, sir, it is.

7 THE COURT: Will the fact that you teach his
8 children prevent you from being fair and impartial in
9 this case?

10 THE JUROR: No, sir.

11 THE COURT: And can you render a verdict based
12 only on the evidence that you hear on this case?

13 THE JUROR: Yes, sir.

14 THE COURT: Okay. All right. Thank you.

15 When I was a lawyer if someone had stood up and said
16 that they had my children in Sunday School, I would have
17 struck them right then and there because they were bad.

18 All right. Mr. Potter, if you would, have your
19 client stand up. All right. This is Mr. James Anthony
20 Tucker; is that correct?

21 MR. POTTER: Yes, sir.

22 THE COURT: All right. Ladies and gentlemen,
23 is anyone on the panel related by blood or marriage or do
24 you have any close business or personal relationship with
25 Mr. Tucker? If so, please stand up.

State v. John Anthony Tucker. 2009-GS-04-1023, 1024
Jury Voir Dire

11

1 (No response)

2 THE COURT: All right. Thank you.

3 I'm going to read a list of potential witnesses in
4 this case. Some of these people may not testify, but
5 they are potential witnesses. After I read this list,
6 I'm going to ask you the same question. Do you have any
7 close business or personal relationship with any of the
8 following people? Rob Gebing, Rusty Ables, Chris
9 Pridemore, Jeannie Durham, Lisa Buchanan, Dewey Little,
10 James Marshall Tucker, Craig Holbrooks, Tommy Clamp, Todd
11 Caron, Amanda Webb, Todd Owens, Tom Tucker or Judy
12 Hilton. Those are potential witnesses in this case.
13 Does anyone have any close business or personal
14 relationship or are you related by blood or marriage to
15 any of those potential witnesses?

16 MR. CAMPBELL: I have three of them actually
17 here. Two of my witnesses are in the courtroom here
18 today ---

19 THE COURT: All right.

20 MR. CAMPBELL: --- as well as Detective Gebing.

21 THE COURT: If you're -- if you're -- if I just
22 read your name, how about standing up? Okay.

23 These are four of the witnesses. There are others
24 that aren't here now. Does anyone have any close
25 business or personal relationship or you're related by

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jury Voir Dire

12

1 blood or marriage to any of the fourteen names that I
2 read off?

3 Yes, sir, give us your name and number?

4 THE JUROR: Juror 116, John Pate. I used to
5 work with Dewey Little at B.A.S.F. for several years.

6 THE COURT: How long ago was that?

7 THE JUROR: 2003.

8 THE COURT: Okay. Will that fact prevent you
9 from being fair and impartial in this case?

10 THE JUROR: No.

11 THE COURT: Pardon?

12 THE JUROR: It won't.

13 THE COURT: Okay. And can you render a verdict
14 based only on the evidence that you hear in this
15 courtroom?

16 THE JUROR: Yes.

17 THE COURT: Okay. Thank you.

18 Y'all can all sit down.

19 Any other questions from the State?

20 MR. CAMPBELL: No, Your Honor.

21 THE COURT: From the Defense?

22 MR. POTTER: None from the accused, Judge.

23 THE COURT: All right. Ladies and gentlemen,
24 one other question. Have any of you or your immediate
25 family been the victim of a violent crime? If so, please

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jury Voir Dire

13

1 stand.

2 (No response)

3 THE COURT: All right. Are y'all ready to
4 select the jury?

5 MR. CAMPBELL: The State's ready, Your Honor.

6 MR. POTTER: The accused is ready, Your Honor.

7 THE COURT: All right. Madam Clerk, are you
8 ready?

9 MADAM CLERK: Yes, Your Honor.

10 THE COURT: Dad gum, it's good to have you
11 here.

12 MADAM CLERK: Thank you.

13 THE COURT: All right.

14 MR. POTTER: Judge, may it please the Court.

15 THE COURT: Yes.

16 MR. POTTER: Is it ten?

17 THE COURT: Ten and five or -- ten and five?

18 MR. POTTER: Yes, sir.

19 THE COURT: And I'm going to have two
20 alternates since -- so ...

21 Okay. Ladies and gentlemen, when the Clerk calls
22 your name -- what she's done, just so you'll understand,
23 is she's taken -- the computer has randomly drawn a group
24 of you. When she calls your name, we're going to ask you
25 to bring everything around, your pocketbooks, notebooks,

1 anything like that, walk up and stand right here and turn
2 around.

3 Each party gets certain strikes. They can strike
4 you from the jury for just about any reason except gender
5 or race or some other definable group that you might
6 belong to. So when she calls your name, just bring
7 everything you've got. If both parties -- if neither
8 party strikes you, then just have a seat over here.
9 You're one of the lucky ones. If they strike you, you go
10 back and sit down.

11 MADAM CLERK: As I call your name, if you'll
12 please come forward and present yourself to the two
13 tables.

14 Juror number 122, Larry Reeves, number 122.

15 Stand right there, Mr. Reeves. Thank you.

16 What say you for the State?

17 MR. CAMPBELL: Present Mr. Reeves.

18 MADAM CLERK: What say you for the Defendant?

19 MR. POTTER: Please swear Mr. Reeves.

20 MADAM CLERK: Mr. Reeves, if you'll go right
21 over and have a seat in the jury box.

22 Number 59, David Heller, number 59.

23 What say you for the State?

24 MR. CAMPBELL: Present Mr. Heller.

25 MADAM CLERK: What say you for the Defendant?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jury Voir Dire

15

1 MR. POTTER: Please excuse Mr. Heller.

2 MADAM CLERK: You may return to your seat.

3 Thank you, Mr. Heller.

4 Number 123, Marvin Reid, 123.

5 What say you for the State?

6 MR. CAMPBELL: Present Mr. Reid.

7 MADAM CLERK: What say you for the Defendant?

8 MR. POTTER: Please excuse Mr. Reid.

9 MADAM CLERK: You may return to your seat.

10 Thank you.

11 131, Randall Scott, number 131.

12 What say you for the State?

13 MR. CAMPBELL: Present Mr. Scott.

14 MADAM CLERK: What say you for the Defendant?

15 MR. POTTER: Please swear Mr. Scott.

16 MADAM CLERK: Mr. Scott, if you'll have a seat

17 right over in the jury box.

18 Number 106, Tabitha Murphy, 106.

19 What say you for the State?

20 MR. CAMPBELL: Present Ms. Murphy.

21 MADAM CLERK: What say you for the Defendant?

22 MR. POTTER: Please swear Ms. Murphy.

23 MADAM CLERK: If you'll have a seat, please,

24 ma'am, in the jury box.

25 Number 104, Geary D. Morrow, number 104.

1 What say you for the State?

2 MR. CAMPBELL: You're sure it's number 104?

3 MADAM CLERK: That's correct, Mr. Morrow.

4 MR. CAMPBELL: Please present Mr. Morrow.

5 MADAM CLERK: What say you for the Defendant?

6 MR. POTTER: Please excuse Mr. Morrow.

7 MADAM CLERK: You may return to your seat.

8 Thank you, sir.

9 Number 165, Crystal Whitten, 165.

10 What say you for the State?

11 MR. CAMPBELL: Present Ms. Whitten.

12 MADAM CLERK: What say you for the Defendant?

13 MR. POTTER: Please swear Ms. Whitten.

14 MADAM CLERK: If you'll have a seat in the jury
15 box, please, Ms. Whitten.

16 Number 18, Karen Brown, juror number 18.

17 What say you for the State?

18 MR. CAMPBELL: Present Ms. Brown.

19 MADAM CLERK: What say you for the Defendant?

20 MR. POTTER: Please excuse Ms. Brown.

21 MADAM CLERK: You may return to your seat.

22 Thank you.

23 Juror number 115, Mary Parks, 115.

24 What say you for the State?

25 MR. CAMPBELL: Present Ms. Parks.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jury Voir Dire

17

1 MADAM CLERK: What say you for the Defendant?

2 MR. POTTER: Please swear Ms. Parks.

3 MADAM CLERK: If you will have a seat, please,
4 Ms. Parks, in the jury box.

5 Juror number 93, Paul McJunkin, number 93.

6 What say you for the State?

7 MR. CAMPBELL: Present Mr. McJunkin, please.

8 MADAM CLERK: What say you for the Defendant?

9 MR. POTTER: Please excuse Mr. McJunkin.

10 MADAM CLERK: You may return to your seat.

11 Thank you, Mr. McJunkin.

12 144, Tommy Sullivan, number 144.

13 What say you for the State?

14 MR. CAMPBELL: Present Mr. Sullivan.

15 MADAM CLERK: What say you for the Defendant?

16 MR. POTTER: Please excuse Mr. Sullivan.

17 MADAM CLERK: Thank you, Mr. Sullivan.

18 Juror number 76, Bryan Kennedy, number 76.

19 What say you for the State?

20 MR. CAMPBELL: Present Mr. Kennedy.

21 MADAM CLERK: What say you for the Defendant?

22 MR. POTTER: Please swear Mr. Kennedy.

23 MADAM CLERK: If you'll have a seat, please,
24 sir, in the jury box.

25 Number 75, Danny Kelly, number 75.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jury Voir Dire

18

1 What say you for the State?

2 MR. CAMPBELL: Present Mr. Kelly.

3 MADAM CLERK: What say you for the Defendant?

4 MR. POTTER: Please swear Mr. Kelly.

5 MADAM CLERK: If you'll have a seat, please,
6 sir, in the jury box.

7 172, Heather Wilson, 172. What say you for the
8 State?

9 MR. CAMPBELL: Present Ms. Wilson.

10 MADAM CLERK: What say you for the Defendant?

11 MR. POTTER: Please swear Ms. Wilson.

12 MADAM CLERK: Have a seat, please, ma'am, in
13 the jury box.

14 Number 146, Megan Tarbert, number 146.

15 What say you for the State?

16 MR. CAMPBELL: Present Ms. Tarbert.

17 MADAM CLERK: What say you for the Defendant?

18 MR. POTTER: Please excuse Ms. Tarbert.

19 (Laughter)

20 THE COURT: She did know your children.

21 (Laughter)

22 MADAM CLERK: Number 102, William Moody, 102.

23 What say you for the State?

24 MR. CAMPBELL: Present Mr. Moody.

25 MADAM CLERK: What say you for the Defendant?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jury Voir Dire

19

1 MR. POTTER: Please swear Mr. Moody.

2 MADAM CLERK: Have a seat in the jury box,
3 please, sir.

4 Number 142, Tanner Stokes, 142.

5 What say you for the State?

6 MR. CAMPBELL: Present Mr. Stokes.

7 MADAM CLERK: What say you for the Defendant?

8 MR. POTTER: Please swear Mr. Stokes.

9 MADAM CLERK: If you'll have a seat, please,
10 sir, in the jury box.

11 118, Patricia Porter, number 118.

12 What say you for the State?

13 MR. CAMPBELL: Present Ms. Porter.

14 MADAM CLERK: What say you for the Defendant?

15 MR. POTTER: Please excuse Ms. Porter.

16 MADAM CLERK: Thank you, Ms. Porter.

17 Number 77, Roger King, 77.

18 What say you for the State?

19 MR. CAMPBELL: Please excuse Mr. King.

20 MADAM CLERK: Thank you, Mr. King. You may
21 return to your seat.

22 167, Corinthia Williams, number 167.

23 What say you for the State?

24 MR. CAMPBELL: Present Ms. Williams.

25 MADAM CLERK: What say you for the Defendant?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jury Voir Dire

20

1 MR. POTTER: Please swear Ms. Williams.

2 MADAM CLERK: If you'll have a seat, please,

3 ma'am, in the jury box.

4 Number 84, Roberta Leopard, number 84.

5 What say you for the State?

6 MR. CAMPBELL: Present Ms. Leopard.

7 MADAM CLERK: What say you for the Defendant?

8 MR. POTTER: Please swear Ms. Leopard.

9 MADAM CLERK: Have a seat, please, ma'am, in

10 the jury box.

11 First alternate. Juror 176, Albert Nordone.

12 What say you for the State?

13 MR. CAMPBELL: Present Mr. Nordone.

14 MADAM CLERK: What say you for the Defendant?

15 MR. POTTER: Please swear Mr. Nordone.

16 MADAM CLERK: If you'll have a seat in the jury

17 box, please, sir.

18 Number 46, Linda Ferguson, number 46.

19 What say you for the State?

20 MR. CAMPBELL: Present Ms. Ferguson.

21 MADAM CLERK: What say you for the Defendant?

22 MR. POTTER: Please excuse Ms. Ferguson.

23 MADAM CLERK: Thank you, Ms. Ferguson.

24 Juror number 79, Natalie Kirkpatrick, number 79.

25 What say you for the State?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jury Voir Dire

21

1 MR. CAMPBELL: Present Ms. Kirkpatrick.

2 MADAM CLERK: What say you for the Defendant?

3 MR. POTTER: Please swear Ms. Kirkpatrick.

4 MADAM CLERK: If you'll have a seat in the jury
5 box, Ms. Kirkpatrick.

6 THE COURT: All right. Ladies and gentlemen,
7 I'm going to send you back to the jury room for just a
8 few minutes, and then I will call you back in and I'll
9 explain how we are going to proceed. Every time you
10 leave this courtroom for the next couple of days, I'm
11 going to tell you not to discuss this case. At no point
12 during the course of this trial, should you even talk
13 about this case until you've heard all the evidence and
14 we've delivered the verdict form to you at the end of the
15 trial. And at that point I'll say, okay, you can begin
16 deliberating.

17 You can talk about anything else in the world but
18 this case. And when you come back in ...

19 Mr. Kennedy, I made you foreman of the jury. You'll
20 be the only person that has to sit in an assigned seat,
21 and that will be that first seat. And the rest of you
22 can sit where you want, and the two alternates will sit
23 right there. Okay. Go back and introduce yourselves.
24 We'll bring you back in a few minutes.

25 (WHEREUPON, the jury panel exited the courtroom at

1 approximately 12:21 p.m. and the following
2 proceedings were had outside the jury's presence.)

3 THE COURT: All right. Any objections to the
4 selection of the jury from the State?

5 MR. CAMPBELL: Nothing from the State, Your
6 Honor.

7 THE COURT: From the Defense?

8 MR. POTTER: Nothing, Your Honor.

9 THE COURT: Okay. All right. Ladies and
10 gentlemen ...

11 Do you know if they're ready downstairs?

12 MADAM CLERK: He said that he wanted them as
13 soon as we were finished up here.

14 THE COURT: Old Judge Macaulay's waiting for
15 you down there. He's not that old, but you know, he's
16 just -- he's a good guy. Every time I introduce him to
17 anybody, I tell people that he's been like a great-
18 grandfather to me, and it really ticks him off. So
19 anyway ... He has got to select a jury for his case.
20 Again, you're not going to have to go through all of the
21 questions again. They'll just basically pick a jury and
22 let the rest of you go. I would ask that you call the
23 jury information line tonight after six. It will either
24 say call tomorrow night after six or be here tomorrow at
25 ten or you're released for the week. Again, a lot of it

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jury Voir Dire

23

1 just has to do with scheduling. And it's a little bit of
2 an unusual week.

3 So I'll either see you again in a couple of days or
4 I won't see you at all. But call that jury line. And I
5 certainly do appreciate your patience. The bailiffs will
6 take you down to the third-floor courtroom.

7 (WHEREUPON, the remaining jury panel was excused to
8 the third floor.)

9 THE COURT: Okay. We're going to do a *Jackson*
10 *v. Denno* hearing?

11 MR. POTTER: If it pleases the Court? Judge,
12 my understanding is we're going to do the *Jackson v.*
13 *Denno* after lunch.

14 THE COURT: Okay.

15 MR. POTTER: If that's all right?

16 THE COURT: That's fine with me.

17 MR. POTTER: And I do have a brief motion to
18 put on the record.

19 THE COURT: Okay. Let's let the courtroom
20 clear out and then we'll do it.

21 (Pause)

22 THE COURT: And then we'll do the *Jackson v.*
23 *Denno* this afternoon and start tomorrow morning. Is that
24 what everybody ---

25 MR. CAMPBELL: What time are we going to start

1 this afternoon?

2 THE COURT: This afternoon? Two.

3 MR. CAMPBELL: Two o'clock?

4 THE COURT: Okay.

5 MR. CAMPBELL: Are you going to do the motion
6 now?

7 MR. POTTER: Yeah.

8 THE COURT: Okay. You've got a short motion,
9 you say?

10 MR. POTTER: If it pleases the Court.

11 THE COURT: Yes, sir.

12 MR. POTTER: Judge, I've spoken with my client.
13 This is a case that was originally second on the docket.
14 There was a murder case that was supposed to be going
15 forward before us. I met with my client on Wednesday of
16 last week. I was out of town for the earlier part of the
17 week and last week due to a funeral. A family member had
18 died. My client wants me to do some additional
19 investigation on his behalf. And as a result, I'd
20 respectfully ask you, Your Honor, to allow us that
21 opportunity to do some additional investigation and
22 continue the case until the next term of court.

23 THE COURT: Okay.

24 I would assume y'all object?

25 MR. CAMPBELL: Yes, sir, we object, Your Honor.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jury Voir Dire

25

1 THE COURT: All right. I'm going to deny that
2 motion since it was on the docket.

3 MR. POTTER: Thank you, Judge.

4 THE COURT: If at any point during the course
5 of the trial, you need some time, you know, if we need to
6 recess for you to try and find somebody, I'll bend with
7 you.

8 MR. POTTER: Yes, sir.

9 THE COURT: Okay. So at two o'clock, we'll do
10 the *Jackson v. Denno*. And then I'm going to bring the
11 jury back in and just tell them to be back here tomorrow
12 morning at ten a.m.

13 MR. POTTER: Yes, sir.

14 THE COURT: And then as I said, tomorrow, just
15 for your witnesses, about three or three fifteen, I need
16 to leave tomorrow. And we'll figure out Wednesday later.
17 How many witnesses do you think you're really going to
18 call? You got, what, fourteen?

19 MR. CAMPBELL: It depends on Mr. Potter. I've
20 got to talk about chain of custody. Several are just
21 chain people with the evidence.

22 THE COURT: Okay. Well, we'll get through it.
23 Let me call ...

24 You can bring them back in.

25 (WHEREUPON, the jury panel entered the courtroom at

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jury Voir Dire

26

1 approximately 12:30 p.m.)

2 THE COURT: All right. Ladies and gentlemen,
3 this afternoon we have several matters that we have to
4 take up outside your presence so that the case can move
5 forward tomorrow. I'm going to release you for the day
6 and ask that you be back in the jury room tomorrow
7 morning at ten a.m. Again, we're staying and working.
8 But there's so many pretrial issues that rather than have
9 you wait a little bit or come back at three, we're just
10 going to spend the afternoon doing that.

11 This case is obviously not going to last more than a
12 week. I suspect that you will get this case Wednesday or
13 Thursday to make your decisions.

14 I have no idea whether there's going to be any
15 publicity on this case. I suspect that there will be. I
16 am asking you and ordering you not to read the paper in
17 regard to this case. If there's anything on the
18 television or if there's anything on the radio, please
19 don't watch it or listen to it.

20 The whole point of this whole process -- which I
21 understand takes too long for some people. But the whole
22 point is everybody in the courtroom, including myself and
23 the defense lawyer and the State, we're trying to pick
24 twelve people with two alternates who everyone believes
25 will be fair, who will listen to the testimony that they

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jury Voir Dire

27

1 hear from this witness stand, who will review any
2 documents that are introduced into evidence and will make
3 their decision based upon what they hear in this
4 courtroom.

5 Obviously, you're going to know more about this case
6 than anybody else in the world. My experience with
7 publicity is -- it's no knock on any newspaper or radio
8 station or television station -- they are rarely correct.
9 Very rarely. So you're not going to gain anything from
10 watching television or listening to radio or reading
11 about it, but you could be influenced by something that's
12 said.

13 And tomorrow morning you're going to take an oath.
14 I'm not going to give you the oath today. But you're
15 going to take an oath that I consider very serious. And
16 basically you're going to promise that you'll pay close
17 attention and that you'll render a verdict based only on
18 the evidence that you hear in this courtroom. This is
19 very important.

20 This is obviously a serious case. Obviously the
21 Defendant has pled not guilty. And I'll just go ahead
22 and tell you that it's an old way of thinking about it.
23 But our Constitution provides that until found guilty,
24 there's a presumption of innocence around each Defendant.
25 And I'll tell you a little bit more about this tomorrow.

1 But I'm going to go ahead and tell you so you can be
2 thinking about it. That's not just a legal phrase.
3 That's not just a cute little law school idea. I quite
4 frankly think it's one of the portions of our
5 Constitution that sets us apart from the rest of the
6 world.

7 And in the old days prior to my beginning practicing
8 law -- but I've heard older judges use this example.
9 Their example was that the defendant has about his
10 shoulders a robe of righteousness or innocence. And he
11 walked into the courtroom this morning with that robe
12 about his shoulders. And during the course of this
13 trial, he continues to have that robe of righteousness
14 around his shoulders. And it will only be removed by you
15 at the end of the trial. When you go back to begin your
16 deliberations, he will still have that robe of innocence
17 or righteousness about his shoulders. And that robe will
18 only be removed by you if the State proves and presents
19 their case beyond a reasonable doubt.

20 Now, tomorrow morning when we start, I'll have a
21 fairly extensive charge that I'll give you, tell you
22 about the law. And I'm not going to go into that now.
23 But again, please don't do any research on the Internet.
24 Don't do anything that might prevent you from rendering a
25 verdict that's fair to the Defendant and the State.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jury Voir Dire

29

1 I will tell you that in another county just
2 recently, a juror went home and did some research on the
3 Internet. And I suspect that that juror is going to
4 spend a little time in jail. So I'm not trying to scared
5 you, but this is so important that I need to tell you
6 that there would be consequences if something like that
7 happened.

8 So thank you for your patience this morning, and we
9 will see you at ten a.m. tomorrow morning. Keep your
10 juror badges on when you're up here and around the
11 courthouse because we don't want anybody talking to you.
12 If you know lawyers and you have lawyers that are
13 friends, if they see that juror badge on, they're
14 probably not going to speak to you because they're under
15 order not to talk to you. And no one from the courthouse
16 will speak to you.

17 If at any point from this point forward, if you are
18 contacted by anyone or if you feel that you're being
19 pressured in any way, you let the bailiff know and let me
20 know. And I can promise you that I will take care of
21 that quicker than you can snap your fingers.

22 So have a great afternoon and night with all of that
23 scary stuff, and I will see you at ten a.m. tomorrow
24 morning.

25 (WHEREUPON the jury panel exited the courtroom at

1 approximately 12:36 p.m.)

2 THE COURT: Okay. Y'all want to start about
3 two o'clock?

4 MR. CAMPBELL: Yes, sir.

5 THE COURT: Okay. See you then.

6 MR. POTTER: We're up here, Judge, correct?

7 THE COURT: Yeah.

8 By the way, is he on bond?

9 MR. POTTER: No. He's ---

10 THE COURT: Okay. All right.

11 (WHEREUPON, court stood at recess for a lunch break
12 during which State's Exhibits 1 and 2 were marked
13 for identification only.)

14 THE COURT: Okay. We got a *Jackson v. Denno*;
15 is that what we need to do?

16 MR. CAMPBELL: Yes, sir. Do you want me to go
17 ahead and call my first witness?

18 THE COURT: Yes, sir.

19 MR. CAMPBELL: Your Honor, the State calls
20 Detective Rob Gebing to the stand.

21 MADAM CLERK: Come around, please, sir, to be
22 sworn. If you'll place your left hand on the Bible and
23 raise your right.

24 (WHEREUPON, the witness was duly sworn.)

25 MADAM CLERK: If you'll state your full name

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jackson v. Denno Hearing

31

1 and spell your last name for the record.

2 THE WITNESS: Robert Kim Gebing, Jr. Last name
3 is spelled G-E-B-I-N-G.

4 ROBERT KIM GEBING, JR.

5 Being first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. CAMPBELL:

8 Q. Detective Gebing, you're employed with the Anderson
9 County Sheriff's Office?

10 A. I am.

11 Q. How long have you been employed in the Detective
12 Division?

13 A. In the Detective Division, since June of 2005.

14 Q. How long have you been in law enforcement?

15 A. Eight years and change with the Anderson County
16 Sheriff's Office, five in the Army as a military police
17 officer prior to that.

18 Q. And you were in your current capacity as a detective
19 on February the 9th, 2009; is that correct?

20 A. That's correct.

21 Q. And did you have an occasion to come in -- to be
22 assigned a case of an attack and armed robbery that
23 occurred at here in Anderson?

24 A. I did.

25 Q. And as a result of that, you talked to the victim,

1 James Marshall Tucker; is that right?

2 A. That's correct.

3 Q. And did you learn of a possible suspect, a potential
4 suspect, you'd like to talk to in that case from Mr.
5 Tucker?

6 A. I did.

7 Q. And who was that?

8 A. He indicated that his son James Anthony Tucker had
9 assaulted him.

10 Q. Now, did you eventually talk to James Anthony Tucker
11 in this case?

12 A. I did.

13 Q. Is that the Defendant that was eventually charged in
14 this case?

15 A. That is the Defendant in this case, yes, sir.

16 Q. And he's currently sitting in the courtroom today?

17 A. He is.

18 Q. Is he sitting next to Mr. Potter in the checkered
19 shirt?

20 A. He's to Mr. Potter's right in the checkered shirt.

21 Q. Now, when you became involved in the case, did you
22 actually have an occasion first to talk to Mr. Anthony
23 Tucker, James Anthony Tucker?

24 A. I spoke to Mr. Tucker on the 12th of February. Well,
25 I spoke to him earlier. I spoke to him on the 10th very,

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jackson v. Denno Hearing

33

1 very briefly.

2 Q. We'll talk first about that before we get into the
3 other stuff.

4 A. Okay.

5 Q. Now, where did you talk to him on the 10th?

6 A. At the hospital, at the Anderson Area Medical
7 Center, located at 800 North Fant Street in Anderson,
8 South Carolina.

9 Q. And when you went there, where was he?

10 A. He was being treated in the emergency room section.

11 Q. And what was he being treated for?

12 MR. POTTER: Judge, are we talking about James
13 Anthony Tucker or James Marshall Tucker?

14 MR. CAMPBELL: Anthony Tucker.

15 MR. POTTER: Okay. James Anthony Tucker was at
16 AnMed?

17 MR. CAMPBELL: Right.

18 THE WITNESS: Correct.

19 MR. POTTER: Okay.

20 MR. CAMPBELL: First he made a statement.

21 MR. POTTER: I understand.

22 MR. CAMPBELL: And then we are going to get to
23 the written.

24 MR. POTTER: I got it. I got it.

25 Q. And what was he being treated there for at the

1 hospital?

2 A. He was being treated for some sort of -- he
3 apparently had ingested an unknown quantity of an over-
4 the-counter cold-type medication and was being treated
5 for a possible overdose of that.

6 Q. And at this point was he your primary suspect in
7 this case?

8 A. At this point, yes.

9 Q. And did you have an occasion to speak to him?

10 A. Very, very briefly. He was not in any condition to
11 really speak.

12 Q. And what, if anything, did you tell him? Did you
13 first identify yourself as being law enforcement?

14 A. I did. I introduced myself. I asked him what was
15 wrong with him, you know, what's going on.

16 Q. And what was his response?

17 A. He said he wanted to kill himself.

18 Q. And did you ask him why he wanted to do that?

19 A. I asked him why. He said because his dad accused
20 him of something he didn't do. He didn't know why his
21 dad was saying these things about him.

22 Q. And after that were you able to make any other --
23 have any further conversations with him at that point in
24 time?

25 A. I tried. But apparently from the effects of the

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jackson v. Denno Hearing

35

1 medication, he would, I mean, within minutes doze back to
2 sleep. You would have to holler his name or to try to
3 wake him up. He would come to briefly to get him to
4 acknowledge, Mr. Tucker, can you hear me? He would nod
5 his head yes or whatever and then go back to sleep. It
6 was a battle like that for a couple of minutes just
7 trying to keep him awake.

8 Q. And as a result you discontinued your conversation
9 with him?

10 A. I did. I didn't see where it would bear fruit to
11 try to continue.

12 Q. Now, did you speak to him anytime after the 10th?

13 A. I spoke to him on February 12th, 2009.

14 Q. And where was that?

15 A. At the Anderson County Detention Center located at
16 1009 County Home Road in Anderson, South Carolina.

17 Q. Now, was he in the detention center based upon a
18 warrant that you took out involving this case?

19 A. No. He was in the detention center on a probation
20 violation warrant signed by his probation agent.

21 Q. And you went and spoke to him on February 12th which
22 would have been three days after the attack occurred?

23 A. Correct.

24 Q. And where did you meet or see Mr. James Anthony
25 Tucker?

1 A. I had him brought to Corporal West's office slash
2 supply room. It's a secluded office back toward the
3 operations or towards the control room back away from the
4 rest of the jail.

5 Q. And how was he dressed when he came -- when he was
6 brought there?

7 A. He was in a jumpsuit.

8 Q. Was he in shackles?

9 A. No.

10 Q. And did you have anybody else there with you?

11 A. Detective Owens had accompanied me during this
12 interview.

13 Q. And when you conducted this interview, did you close
14 the door?

15 A. Yes.

16 Q. Was the guard, any of the guards from the detention
17 center, inside the room also present, or were they
18 outside of the room?

19 A. No. They drop them off and leave them. And when
20 I'm done, I bring them back to operations. There was no
21 guard even outside the door.

22 Q. Now, you have basically thirteen years of experience
23 approximately in law enforcement. I'm assuming you have
24 dealt with people under the influence of alcohol or
25 drugs; is that correct?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jackson v. Denno Hearing

37

1 A. Yes.

2 Q. Is that a fair statement?

3 A. That's a fair statement.

4 Q. And did he appear to be under the influence of any

5 type of narcotic, whether it be over-the-counter,

6 prescription medication or any type of drugs or alcohol?

7 A. No. He seemed completely coherent and clear headed.

8 Q. And was he able to hold a conversation with you?

9 A. He was.

10 Q. And did you -- were you the person who was doing all

11 the speaking to him, or Detective Owens, was he also

12 asking questions?

13 A. I did the vast bulk of the speaking. Detective

14 Owens would ask a question as he saw necessary, maybe

15 something I was overlooking. But I did I'd say ninety-

16 five percent of the speaking this day.

17 Q. And in regards to this, you were wanting to find out

18 what, if anything, he had to say regarding the attack on

19 his father; is that correct?

20 A. That's correct.

21 Q. Now, since he was in custody, did you first read him

22 his *Miranda* rights?

23 A. I did.

24 Q. And how did you do that? Was it orally or did you

25 do it in writing?

1 A. In writing. We have a standard form that we use at
2 the Sheriff's office.

3 Q. I'm going to show you what has been marked as
4 State's Exhibit 1 for identification. If you could
5 please identify that, sir?

6 A. This is one of the Anderson County Sheriff's Office
7 Advisory of Rights standardized form that we commonly
8 use.

9 Q. And was that the form that you showed him without,
10 of course -- without the writing on February the 12th?

11 A. This is an exact copy of the form.

12 Q. And you have the originals in your file; is that
13 correct?

14 A. I do.

15 Q. Now, when you went down there -- you first went
16 through the location, A.C.D.C. -- that's Anderson County
17 Detention Center; is that correct?

18 A. That's correct.

19 Q. And the date being February 12th, '09, and the time
20 14:21, 2:21 p.m.?

21 A. That's correct.

22 Q. Now, did you first try to ascertain whether or not
23 he could read or write or understand your conversation
24 with him?

25 A. Yes, I do.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jackson v. Denno Hearing

39

1 Q. And what did you ask him in this case?

2 A. I'll start with the form. And of course, at the top
3 right, I'll put their name because a lot of the times
4 people's signature is somewhat illegible. So I'll always
5 put their name just so that way later on I can go back
6 and reference whose it actually is. And then I'll ask
7 them what is the highest grade they completed in school.

8 Q. And in this case, what did he say?

9 A. He indicated he had finished the eleventh grade.

10 Q. And that's what you wrote on there, F.I.N., finished
11 the eleventh grade?

12 A. That's correct.

13 Q. Now, at this point, did he have an attorney present
14 during this time?

15 A. He did not.

16 Q. And after that, I see there's a paragraph with five
17 bullet points in that. This is the *Miranda* part of the
18 Advice of Rights form; is that correct?

19 A. That's correct.

20 Q. And did you read this to him?

21 A. The first -- I read the first line. And I'll turn
22 the sheet upside down and I'll read the first line to
23 them. I'll advise them, before you're asked any
24 questions, you must understand your rights. At that time
25 I'll make two tick marks in the margin to the left of the

1 first two, and I will ask the defendant to read those out
2 loud. And then I will subsequently ask them to put their
3 initials on those two marks. And I'll tell them that
4 helps me gauge the level at which they're capable of
5 reading and writing.

6 Q. And in this case he read it; is that correct?

7 A. That's correct.

8 Q. And he read them to you and then he initialed them
9 J.T., being James Tucker?

10 A. That's correct.

11 Q. And when you -- did you feel confident that based
12 upon your observations of him that he could read and
13 write and understand what y'all were talking about?

14 A. I felt confident he could read the form and indicate
15 with either initials or a signature.

16 Q. And after that did you finish the -- read him the
17 remaining three Advice of Rights?

18 A. The remaining three, I will still -- I'll have the
19 form upside down to me, but I will read it and follow
20 along -- ask them to follow along. I'll read it and
21 trace the words with a pen to keep them on to where I'm
22 reading. But I will actually physically read those out
23 loud as they follow along.

24 Q. And after he did it, you time stamped -- you put the
25 date down and the time, 14:22?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jackson v. Denno Hearing

41

1 A. Yes.

2 Q. And is that his signature underneath?

3 A. That is his signature to the -- on the signature
4 line at the mid right under the date and time line.

5 Q. And then did you go through the Waiver of Rights?

6 A. Yes.

7 Q. And you read this statement to him as it is printed
8 on this form?

9 A. Again, I read that word-for-word. I read it upside
10 down to myself and again follow along with my pen, so
11 that way they can kind of keep up with what I'm reading.

12 Q. I see there's a line under the word coercion.

13 A. Yes.

14 Q. What was that done for?

15 A. When I get to the word coercion, I'll ask every
16 defendant, do you understand the word coercion.

17 Regardless of whether they tell me yes or no, I'll kind
18 of give them a crude explanation of, by coercion, I'm not
19 offering anything, I'm not threatening you with anything,
20 I'm not bribing you with anything. And if you tell me
21 you don't wish to speak to me, you know, no hard
22 feelings, I'll leave. But I do that every time I get to
23 the word coercion. I'll ask them, do you understand this
24 word, coercion. And then wait for a response and then go
25 into my explanation of it.

1 Q. Did he understand -- did you feel confident that he
2 understood what you were saying about -- meaning about
3 the word coercion?

4 A. Yes, I felt confident that he understood.

5 Q. And did you feel that he understood his waiver of
6 rights?

7 A. Yes.

8 Q. And as a result he signed it and you also signed it;
9 is that right?

10 A. That's correct.

11 Q. That's his signature there?

12 A. (No verbal response)

13 Q. Now, at any point did he ask for an attorney at any
14 point up until this point?

15 A. No, he did not.

16 Q. And did you make any promises or threats to get him
17 to give you a statement of what occurred on the night of
18 February the 9th, 2009?

19 A. No, I did not.

20 Q. And I see -- you said Detective Owens was present,
21 but he did not sign this form; is that right?

22 A. He did not.

23 Q. And was any promises made by him or threats or
24 coercions to get him to give a statement to you?

25 A. No, none.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jackson v. Denno Hearing

43

1 Q. Now, where you were in the jail -- I noticed you did
2 take a written statement. He did talk to you; is that
3 correct?

4 A. He did.

5 Q. And in your opinion, this was freely and voluntarily
6 given to you?

7 A. Yes.

8 Q. And I see it's typed. Is there a place -- does that
9 office have somewhere where you could type?

10 A. The office has a full desktop computer with a
11 printer in that office, and it's partially for this
12 purpose. The office was set up quite awhile ago for the
13 purpose for us conducting interviews and being able to
14 type out our statements. It's just neater.

15 Q. And did you ask him to tell you what happened that
16 night?

17 A. I did.

18 Q. And did you -- I mean did he? I'm sorry.

19 A. Initially he denied it. But eventually, yes, during
20 questioning he did make admissions to this act.

21 Q. Now, when he made admission to it, was it because of
22 your pressuring him, or did he just come out and finally
23 say, I just want to tell you the truth?

24 A. It was -- as I kept on presenting, you know, what I
25 felt to be evidence, he eventually -- it wasn't

1 pressuring. I mean, I wasn't coercing him. I wasn't
2 yelling at him, cussing, screaming, threatening with
3 anything. I would present him with something, and he
4 would make a counter statement.

5 Q. And eventually he gave you a statement regarding the
6 events of February 9th, 2009, as he recalled them; is that
7 correct?

8 A. He did.

9 Q. And then you memorialized these in this statement?
10 You typed it out as he was giving it to you?

11 A. Yes. Those are his words as he would speak them to
12 me either as he just spoke them or as he was answering
13 questions. But those are actually his words.

14 Q. And these aren't your words retyping or reorganizing
15 them to flow better on this piece of paper?

16 A. No. That was just -- if I had asked him, hey, what
17 happened next, he would answer. I would type his answer.
18 Okay. Now what? He would answer, I would type. He
19 would answer, I would type.

20 Q. So you didn't embellish in any shape, way or form on
21 this statement?

22 A. No, sir.

23 Q. And after you finished this statement, did you give
24 him an opportunity to review it?

25 A. I did.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jackson v. Denno Hearing

45

1 Q. And did he read this statement?

2 A. Yes.

3 Q. Or did you read it out loud to him?

4 A. No. He physically is giving the statement, asked to
5 read this, asked is there anything you want to add,
6 change or delete.

7 Q. And did he?

8 A. He did not ask to add, change or delete anything.

9 Q. And I see that you have J.T. at the front of it and
10 J.T. at the end of the statement where it says, end of
11 statement?

12 A. That's a start and a stop point, and I have them do
13 that so that nobody can go in afterwards and try to type
14 in anything additional.

15 Q. And then at the bottom -- I'm going to let you take
16 a look at -- this is marked as State's Exhibit 2.
17 There's a line that looks like a signature. It says,
18 received copy.

19 A. Yes.

20 Q. Is that his signature?

21 A. That is his signature.

22 Q. And you left a copy with him; is that right?

23 A. I did.

24 Q. Now ...

25 MR. CAMPBELL: Your Honor, at this time I'm

1 going to move State's Exhibits 1 and 2 into evidence.

2 THE COURT: Any objection?

3 MR. POTTER: No, Your Honor.

4 THE COURT: Without objection.

5 (WHEREUPON, State's Exhibits 1 and 2 were admitted
6 into evidence for the purposes of the *Jackson v.*
7 *Denno* hearing.)

8 Q. Now, Detective Gebing, at any point after he signed
9 this or up until this point when he signed this, at any
10 point did he ask you to stop and request an attorney or
11 wish to have a lawyer present?

12 A. No, he never did.

13 Q. At any point did he refuse to answer any questions
14 that you were asking him regarding the events of February
15 9th, 2009?

16 A. No, he never refused.

17 Q. Now, Detective Gebing, can you please read for the
18 record exactly what you wrote down as his statement on
19 February the 12th, 2009?

20 A. Starting from the very top ...

21 This is the statement of James Anthony
22 Tucker, , dated 2/12/09, address of
23 , Anderson, South Carolina.

24 This is being written for me by R. Gebing of
25 the A.C.S.L. The other day I went to my dad's

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jackson v. Denno Hearing

47

1 house on with my girlfriend,
2 Jeannie Durham. We got twenty dollars from my
3 dad and stayed for about an hour. I got some
4 CDs from the car in the yard, and then we left
5 and went and got him some beer and brought it
6 back. I'm not sure where we went after that,
7 but later on I went back out by myself. I was
8 in Jeannie's dad's truck. I went to George's
9 and got some money from a collection jar and
10 hung out for a few minutes, and then I left. I
11 left and got beer and then went and got some
12 crack from a dope man on Airline near True
13 Temper. I didn't stay there long and left. I
14 smoked it while I was out riding. I started
15 thinking of how to get some more money and
16 remembered that my father had cashed his check.
17 I went to the house on and told him
18 I needed to pick up some clothes. I got two
19 shirts and some socks and put the socks in a
20 bag. I told him I needed to get some more CDs
21 from the car, and he gave me the key. I went
22 out to the car and got the CDs. And on the way
23 in, I grabbed a hammer from the back porch
24 somewhere. I walked into the kitchen, and my
25 dad's back was to me. I hit him in the back of

1 the head with the hammer. I was trying to
2 knock him out, not kill him. He turned around
3 and starting fighting with me over the hammer.
4 He never stood up, I don't think. I told him I
5 needed his money. And he said to let him go.
6 I told him no, you'll cut me, or something like
7 that. I reached in his pocket and took his
8 money. I don't remember how much money I got,
9 like four hundred dollars. I went back to the
10 dope man and threw the hammer out somewhere on
11 Airline, I think near the curb past Ed
12 Powell's. I threw it out the driver's-side
13 window. I don't know what to say. The real me
14 wouldn't do things like that. I swear I
15 wouldn't. I'm not that kind of person.
16 And then it went on to something unrelated but ...

17 The skill saw and DeWalt saws all in B and
18 B Pawn Shop belong to Dewey Little. He lent
19 (phonic) them to me. I think I pawned them the
20 same day.

21 And then I wrote in, end of statement, had Mr.
22 Tucker initial at that point and then his signature is on
23 the bottom of the form.

24 Q. And that is his statement, actual statement?

25 A. That was the statement that I took that day, yes,

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jackson v. Denno Hearing

49

1 sir.

2 Q. Detective, I don't have any further questions at
3 this point in time. If you would please answer any
4 questions that Mr. Potter may have.

5 A. Yes, sir.

6 MR. POTTER: May it please the Court.

7 THE COURT: Yes, sir.

8 CROSS EXAMINATION

9 BY MR. POTTER:

10 Q. Detective, you went out to the detention center,
11 according to what I've received, February 12th, 2009, at
12 14:21; is that correct?

13 A. That's correct.

14 Q. That's what, 2:21?

15 A. 2:21, yes, sir.

16 Q. Okay. Read him the statement. What time did your
17 interview conclude?

18 A. I don't know the exact time. I would have to
19 estimate. It was probably about forty minutes or so
20 total.

21 Q. And did you take individual notes while talking to
22 my client?

23 A. No. Most of it was just -- it was a very -- it
24 wasn't a lengthy one. It was a pretty cut-and-dry
25 conversation once he finally began speaking of it.

1 Q. Did you have any investigator notes ---

2 A. No.

3 Q. --- that you were referring to when you were
4 speaking with my client?

5 A. No.

6 Q. Okay. Now, do you know when he was booked in to the
7 detention center?

8 A. He was booked in the night before, the 11th. I don't
9 want to quote you times, but I remember his probation
10 officer calling me telling me that he was in custody. I
11 even remember I was at a little league game that night,
12 so I do remember where I was when I got the call.

13 Q. So you're aware that he did attempt a suicide and he
14 was in the hospital on February 12th -- excuse me --
15 February 10th because you met with him there?

16 A. That's correct.

17 Q. Were you aware of any type of medication or
18 prescriptions that he was prescribed when he was released
19 from the hospital?

20 A. No.

21 Q. Did you ask him?

22 A. No.

23 Q. Did you ask him had he taken any medications that
24 day or that afternoon before you met with him?

25 A. No.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jackson v. Denno Hearing

51

1 Q. Were you aware of any medications that he did take?

2 A. I'm not aware of any.

3 Q. How would you describe the demeanor -- I mean, how
4 did he look?

5 A. He looked very, just clear, especially compared to
6 the 10th, the way he was on the 10th, where he was, you
7 know, falling asleep every twelve seconds. He seemed
8 very alert, very -- just very clear headed. He came in.
9 I, you know, stood up, shook his hand, introduced myself.
10 He seemed very aware of his surroundings.

11 Q. Did you ask him any questions about his hospital
12 stay or anything of that sort before you began
13 interrogating him?

14 A. No. I think the only thing I asked him was do you
15 remember me, and he said yeah.

16 Q. Now, Detective Owens was there as well?

17 A. That's correct.

18 Q. How big is this room?

19 A. Probably about fifteen feet left to right, and it's
20 about ten feet deep.

21 Q. Okay. Is this ---

22 A. It's a large room. It's normally used as a supply
23 closet, and then one half of it has got a desk and a
24 bunch of shelves.

25 Q. Right. As you're walking past operations at the

1 detention center, is it on the left?

2 A. It's out nears the pods.

3 Q. It's in the pods?

4 A. It's across from the control room, the pod control
5 room. You're familiar with the multipurpose room, the
6 cafeteria room?

7 Q. I am.

8 A. To the left of that door is a little bathroom. To
9 the left of that door is the supply room.

10 Q. And that's where you met with him?

11 A. Correct. One half of it's got items on shelves and
12 boxes of paper towels and such. The other half has a
13 desk with a computer. It's got several -- it's got a
14 couple of computers actually, three or four chairs.

15 Q. Now, was Detective Owens there for the entire
16 interview?

17 A. He was.

18 Q. Is there any reason why he didn't sign as a witness
19 for the statements as well as the *Miranda*?

20 A. Probably just an oversight on my fault -- on my
21 part.

22 Q. Now, when you initially started talking with him,
23 with the Defendant, he told you he didn't do it?

24 A. Correct.

25 Q. Okay. And at that point in time you began

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jackson v. Denno Hearing

53

1 interrogating him, telling him that he's got all these
2 other stories, things of that sort, that you didn't feel
3 add up, correct?

4 A. Correct, especially as pertains to the time.

5 Q. Let's talk about that. What exactly did you talk to
6 him about in regards to the time?

7 A. Well, initially he claimed to have gone -- from what
8 I was gathering from the various people who were involved
9 in this, the attack occurred somewhere shortly before ten
10 o'clock, but he didn't return home until shortly after
11 midnight. He stated he went to George's, went to a
12 store, went to a friend's house, but the friend wasn't
13 home, and then went home himself. And that didn't just
14 seem to account for over two hours worth of time to me.
15 So when questioned about that, he said he didn't know
16 what to tell me. So then I told him I had looked at the
17 clothing he had given the officers that night and we had
18 collected something that appeared to be blood off of his
19 shirt. In fact, I have a picture of where the forensic
20 investigator done a presumptive test and showed that to
21 him. And again, I don't know what to tell you.

22 Q. Okay. What did you do then?

23 A. I told him that his father was very clear as to who
24 he said attacked him. And I don't think it was that he
25 was confused. I don't think he was attacked by somebody

1 else. That, you know, I had a sinking feeling that when
2 I sent the blood sample away it was going to come back to
3 his father. Mr. Tucker kind of ducked his head and asked
4 me what the worst thing he was looking at. What was the
5 worst thing he was looking at.

6 Q. And what did you tell him?

7 A. Armed robbery and ABWIK.

8 Q. Then what happened?

9 A. He asked me what I wanted him to say, and I told him
10 I wanted to hear what happened that night. And he went
11 on to tell me what's in the statement.

12 Q. And at that point in time, that's when you began
13 typing the statement for him?

14 A. We had went through the entire story the first time.
15 He kind of slumped his head, and he was -- I don't want
16 to say reluctant to talk. But he was just almost
17 ashamed.

18 Q. Uh-huh (affirmative).

19 A. He wasn't, you know, free-flow speaking. We had to
20 ask him, well, what happened? What next? Where did you
21 go? And he would have to answer a lot of that. So when
22 we got through it from beginning to end, that's when we
23 started actually -- started from the beginning. And I
24 said, all right, go ahead and tell me what happened that
25 night.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jackson v. Denno Hearing

55

1 Q. Okay. And you have no notes apart from the
2 statement that you typed out?

3 A. Correct.

4 Q. Did he appear intoxicated or anything of that sort
5 to you?

6 A. No, not at all.

7 Q. Was he unsteady on his feet?

8 A. No.

9 Q. Was he slurring his speech in any way?

10 A. No.

11 Q. Did you have a chance to look in his eyes? Were his
12 pupils dilated or anything of that sort?

13 A. I had looked him in the face when he came in. But
14 to be honest with you, I didn't focus in on his eyes or
15 his pupils.

16 Q. Okay.

17 A. But the impression that I got was that he was not
18 under the influence of anything.

19 Q. Was he in handcuffs or shackles at any time?

20 A. He was not.

21 MR. POTTER: Nothing further, Judge.

22 THE COURT: Anything else?

23 MR. CAMPBELL: No, Your Honor.

24 THE COURT: All right. Thank you, sir.

25 THE WITNESS: Thank you, Your Honor.

1 MR. CAMPBELL: That's it, Your Honor. That's
2 all the State has.

3 THE COURT: All right. Anything from the
4 Defense?

5 MR. POTTER: We call the Defendant, Your Honor.

6 THE COURT: All right.

7 MADAM CLERK: Place your left hand on the Bible
8 and raise your right, please, sir.

9 (WHEREUPON, the Defendant, James Anthony Tucker, was
10 duly sworn.)

11 MADAM CLERK: If you'll go right around and
12 have a seat in the witness chair, please, sir. If you'll
13 state your full name and spell your last name for the
14 record.

15 DEFENDANT TUCKER: James Anthony Tucker.
16 My last name is spelled T-U-C-K-E-R.

17 MR. POTTER: May it please the Court.

18 THE COURT: Yes, sir.

19 JAMES ANTHONY TUCKER,

20 Being first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. POTTER:

23 Q. Mr. Tucker, you've been charged with an ABWIK and
24 armed robbery; is that correct?

25 A. That's correct.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jackson v. Denno Hearing

57

1 Q. Okay. On February 10th, 2009, you were admitted to
2 the Anderson Area Medical Center Emergency Department; is
3 that correct?

4 A. Yes, sir.

5 Q. Okay. Why were you admitted?

6 A. For a drug overdose.

7 Q. Okay. And how did you -- it was an attempted -- you
8 attempted suicide; is that right?

9 A. Yes, sir, that's right.

10 Q. How did you do that?

11 A. Took an overdose of some over-the-counter sleeping
12 pills and also some prescription pills that I had.

13 Q. Do you know what type of prescriptions pills you
14 had?

15 A. They were sleeping pills. Amitriptyline is what
16 they are.

17 Q. Okay. What was the over-the-counter medication that
18 you took?

19 A. I think they were Tylenol P.M.

20 Q. Okay. How many Tylenol P.M. did you take?

21 A. I think around fifteen or twenty.

22 Q. Okay. And the prescription, the script medicine,
23 how many of those did you take?

24 A. I'm not sure. Five to ten maybe.

25 Q. Do you remember meeting with Detective Gebing at the

1 hospital or him coming to talk to you at the hospital?

2 A. No, sir, I don't.

3 Q. After you were discharged from the hospital, were
4 you given any medications or any prescription that needed
5 to be filled?

6 A. They -- on the medical reports, I don't know. I
7 don't remember.

8 Q. Okay. Do you remember if they gave you any
9 medication to take with you when you left?

10 A. No, they didn't I don't think.

11 Q. Okay. You got picked up by Tom Tucker who is a
12 probation agent; is that correct?

13 A. No. Actually I went there to the probation office.

14 Q. Okay. And when did you go to the probation office?

15 A. The very next day.

16 Q. The very next day. You were discharged around nine
17 thirty on the 10th; is that correct? At night?

18 A. Yes, sir.

19 Q. Okay. And the following day -- was it morning or
20 afternoon did you go meet with Agent Tucker?

21 A. I think it was more like afternoon.

22 Q. Okay. So that afternoon you go meet with your
23 probation agent; is that correct?

24 A. Yes, sir.

25 Q. What happened?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jackson v. Denno Hearing

59

1 A. Well, he arrested me. I knew he was going to arrest
2 me when I came there because the deputy sheriffs had been
3 to my house and questioned me about what happened. So I
4 knew automatically they would violate me because I was on
5 community supervision. So when I went there, he arrested
6 me.

7 Q. Okay. So that afternoon you were taken down to the
8 detention center; is that correct?

9 A. Yes, sir.

10 Q. Okay. And so you went to the probation agent, the
11 probation office, knew you were going to be arrested?

12 A. Yes, sir.

13 Q. And then they carried you down to the detention
14 center; is that correct?

15 A. Yes, sir.

16 Q. At the detention center, do you remember what time
17 it was when you got booked there?

18 A. I have no idea.

19 Q. Okay. The following day, May -- excuse me February
20 11th, do you have a recollection of meeting that afternoon
21 with Detective Gebling (phonic) -- Gebing?

22 A. No, I don't, not at all.

23 Q. Do you remember being pulled out of -- were you in a
24 cell pod or were you in -- where were you at?

25 A. I remember I was on ten side in the beginning.

1 Q. Is that the old section?

2 A. That's the old side. That's the old section.

3 Q. Say again?

4 A. That's the old side.

5 Q. Okay. And do you remember at all meeting with
6 Detective Gebing that day?

7 A. No, sir, I don't.

8 Q. Okay. Do you remember being questioned by anyone
9 that day?

10 A. No, sir, I don't.

11 Q. Do you remember being taken out of the cell pod or
12 the cell and brought over to the pods to meet with
13 anybody?

14 A. No, sir.

15 Q. Okay. Why don't you remember that?

16 A. Because when I went to the jail, I had taken some
17 Valium there with me.

18 Q. Uh-huh (affirmative).

19 A. I think I had about twenty Valium. And I was taking
20 anywhere from seven or eight of those a day until they
21 were gone.

22 Q. Okay. Did you take it before you were booked into
23 the jail?

24 A. No. Afterwards.

25 Q. Okay.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jackson v. Denno Hearing

61

1 MR. POTTER: Nothing further, Judge.

2 THE COURT: Anything from the State?

3 MR. CAMPBELL: Yes, sir, Your Honor.

4 CROSS EXAMINATION

5 BY MR. CAMPBELL:

6 Q. Mr. Tucker, you go by Tony; is that right?

7 A. Yes, sir, that's right.

8 Q. And it's true that you finished the eleventh grade
9 of high school; is that right?

10 A. Yes, sir.

11 Q. Are you from Anderson?

12 A. Yes, sir.

13 Q. Lived here all your life?

14 A. Yes, sir.

15 Q. Now, you've been involved in the criminal system
16 before; isn't that right?

17 A. Yes, sir.

18 Q. In fact, in '89 you were convicted of burglary
19 second and grand larceny; is that right?

20 A. That's correct.

21 Q. And also a burglary third and another count of grand
22 larceny. That was out in Anderson County; is that right?

23 A. Yes, sir.

24 Q. Then in '99, you were convicted of armed robbery
25 with a deadly weapon, burglary second degree, burglary

1 third degree, grand larceny, another burglary second
2 degree; isn't that right?

3 A. Yes, sir.

4 Q. In fact, you were just recently released from the
5 Department of Corrections; isn't that correct?

6 A. That's right.

7 Q. So you've had considerable experience in dealing
8 with law enforcement. Wouldn't that be fair to say?

9 A. I don't know if you'd say that.

10 Q. You've been in trouble a lot?

11 A. (Nodded head up and down in the affirmative).

12 Q. Now, when you went to the hospital, when you talked
13 about overdosing on the Tylenol P.M., did you talk to the
14 nurses or the doctors after the fact regarding the test
15 they ran on you?

16 A. No.

17 Q. But they did do some blood tests on you, didn't
18 they?

19 A. Yeah, they did.

20 Q. Didn't they at some point tell you that you also had
21 cocaine in your system?

22 A. They didn't tell me that. I read it in the motion
23 of discovery.

24 Q. But you already knew you had cocaine in your system;
25 isn't that correct?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jackson v. Denno Hearing

63

- 1 A. They didn't tell me.
- 2 Q. The question is, you already knew you had cocaine
3 because you were the one that ingested it just prior to
4 that?
- 5 A. That's correct.
- 6 Q. Now, it is true that when you go to -- whether it's
7 the Department of Corrections or whether you go to a
8 local county jail such as the Anderson County Detention
9 Center, that before they can give you prescriptions, a
10 nurse has to prescribe them to you or give them to you;
11 isn't that right?
- 12 A. That's correct.
- 13 Q. And you said you were taking Valium on the day of --
14 was it February the 12th, 2009?
- 15 A. That's correct.
- 16 Q. And who prescribed these or gave you this
17 medication?
- 18 A. I had those with me when I came there.
- 19 Q. So they just voluntarily gave it to you?
- 20 A. I didn't say they gave them to me. I said I had
21 them with me when I went there.
- 22 Q. So basically you got them in past the guards and
23 then took them later. Is that what you're saying?
- 24 A. Exactly.
- 25 Q. Exactly when did you take these Valium?

1 A. I took them from my mom's medicine bottles.

2 Q. And what's your mom's name?

3 A. Judy Hilton.

4 Q. And when did you get these Valium? What day?

5 A. I think that would be on the 10th.

6 Q. So that was prior to you being arrested; is that
7 right?

8 A. That's correct.

9 Q. And how many of these Valiums did you take that you
10 acquired on the 10th?

11 A. I didn't take any on the 10th.

12 Q. How many did you take on the 11th?

13 A. I didn't take them until I got to the jail. I
14 remember they put me on the old side. It's whatever date
15 that was. So that was like, I don't know, a day or two
16 after they -- I went through intake.

17 Q. Okay. And you had them on you and they just missed
18 them when they booked you in?

19 A. That's right.

20 Q. And you kept them in your orange jumpsuit; is that
21 right?

22 A. In my sock.

23 Q. Well, then how many did you take -- do you recall
24 how many you took?

25 A. I took a few for a couple of three days until they

State v. John Anthony Tucker . 2009-GS-04-1023, 1024
Jackson v. Denno Hearing

66

1 were gone.

2 Q. So you didn't take them all at once?

3 A. No.

4 Q. So then -- let me get this straight. You were
5 rationing these Valiums that you said you snuck in, but
6 yet you still can't remember the exact number that you
7 took on the day of February the 12th?

8 A. That's correct.

9 Q. Now, how does Valium typically -- how do you respond
10 to Valium? What does it make you do? How does it affect
11 you?

12 A. Relaxes you.

13 Q. To the point you can't walk?

14 A. If you take enough.

15 Q. How about your speech? How does it affect your
16 speech personally?

17 A. Well, I'm not sure.

18 Q. How about your memory?

19 A. It does effect your memory.

20 Q. In the past when you've taken Valium before, how
21 many did you have to take before, in your opinion, it
22 affected your memory?

23 A. I'm not sure.

24 Q. And you said you took some Valium on the 11th too; is
25 that right? The day you went and got locked up by

1 Probation?

2 A. No. I don't remember what day it was when they
3 moved me to the old side. When you come in the intake,
4 they got like a little area that they keep you in, I
5 think, like overnight. I don't remember the dates on
6 this. I don't.

7 Q. And do you recall telling a guard at the detention
8 center that you were not messed up on Valium but you were
9 messed up on the Tylenol P.M.?

10 A. Did I tell a guard that?

11 Q. Uh-huh (affirmative).

12 A. I don't recall.

13 Q. Or a family member. Do you recall that?

14 A. No, sir, I don't.

15 Q. Do you recall anybody coming to visit you?

16 A. When?

17 Q. Shortly after you were arrested, do you recall a
18 Tony Tuttle coming to see you?

19 A. Who?

20 Q. Tony Tuttle?

21 A. No.

22 Q. I'm going to show you what's been marked as State's
23 Exhibit 1 and 2. Do you recall seeing this document?

24 A. No, sir, I don't.

25 Q. Let me ask you, is that your signature on the

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jackson v. Denno Hearing

68

1 bottom?

2 A. It appears to be.

3 Q. Does it appear to be on the first part of the page
4 and on the bottom of the page?

5 A. Yes, sir.

6 Q. I'm going to show you what's been marked as State's
7 Exhibit 2, your statement. Does that appear to be your
8 statement?

9 A. I don't recall giving that statement. It does look
10 like my signature, yes.

11 Q. It does look like your signature; is that right?

12 A. Yes, it does.

13 MR. CAMPBELL: Your Honor, at this time I have
14 no further questions.

15 THE COURT: All right. Any redirect?

16 MR. POTTER: Judge, I don't think I have any
17 redirect.

18 THE COURT: Okay. Thank you, sir. You can
19 step down..

20 Anything else?

21 MR. CAMPBELL: Nothing from the State.

22 MR. POTTER: Judge, our argument, I think, is
23 pretty straightforward. He doesn't remember giving the
24 statement. Our position is that it was an involuntary
25 statement if he doesn't remember giving it. So we would

1 ask you to exclude it based upon the fact that it was not
2 freely and voluntarily given.

3 THE COURT: All right. Yes, sir?

4 MR. CAMPBELL: Your Honor, of course, we take
5 the exact opposite position, that his statement was
6 freely and voluntarily given. You're dealing with an
7 individual who has been in and out of prisons. He knows
8 what he's doing. And here he's trying to come in and
9 deny the part that, you know, implicates him the most,
10 his own words. He does not deny that's his signature on
11 both the Advice of Rights as well as the actual statement
12 of himself. And according to Detective Gebing -- you
13 heard his testimony on the stand -- that this is freely
14 and voluntarily given. He was in quite good shape when
15 he saw him. He wasn't like he was when he saw him in the
16 hospital. And based upon his testimony, we feel that
17 this statement is freely and voluntarily given by Mr.
18 Tucker and therefore should be entered as the case.

19 MR. POTTER: Just a brief rebuttal, Judge.

20 THE COURT: Yes, sir.

21 MR. POTTER: Judge, just to consider the
22 totality of the circumstances and that's what you need to
23 consider. He committed -- he attempted to commit suicide
24 on February 10th. He was immediately arrested thereafter
25 when he was released from the detention center -- or

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jackson v. Denno Hearing

70

1 released from the Anderson Area Medical Center. He's
2 obviously in a precarious mental state at the very least
3 when you attempt to commit suicide. He testified in
4 regards to the fact that he was taking medication, that
5 he took a prescription-type medication while he was in
6 the detention center. When Detective Gebing confronted
7 him with some what he felt were inconsistencies in
8 regards to the statement as to where he was during the
9 time period, he says, well, what do you want me to say,
10 puts his head down. And at that point in time, Gebing
11 gets a statement.

12 THE COURT: Okay. All right. Well, despite
13 the fact that he's testified that he took Valium, there's
14 no evidence that any Valium was brought into the jail.
15 And based upon the officer's testimony that he appeared
16 clear headed as opposed to two days prior when he was
17 obviously intoxicated or drugged, I'm going to allow the
18 statement. So I will allow it to be introduced.

19 MR. POTTER: Judge, I do have, if it -- may it
20 please the Court.

21 THE COURT: Yeah.

22 MR. POTTER: The last line in the statement
23 regarding skill saw, the DeWalt saw, and B and B Pawn
24 Shop, I would asked that that be removed so the jury does
25 not see that. I don't think it has any reference and

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Jackson v. Denno Hearing

71

1 relevance to what he's been charged with, and I think it
2 can be construed against him in an ---

3 THE COURT: And it's in his statement?

4 MR. CAMPBELL: Yes, sir. It's the last
5 sentence.

6 THE COURT: Any objection to redacting that?

7 MR. CAMPBELL: No, sir.

8 THE COURT: All right. We'll redact that.

9 MR. POTTER: Thank you, Judge.

10 THE COURT: Okie doke. Anything else we need
11 to do before tomorrow?

12 MR. CAMPBELL: I can't think of anything.

13 MR. POTTER: No, sir.

14 THE COURT: Okay. Ten o'clock tomorrow
15 morning.

16 (WHEREUPON, court stood at recess for the day.)

17 **SEPTEMBER 15, 2009**

18 (WHEREUPON, State's Exhibits Number 3 through 33
19 were marked for identification only.)

20 (WHEREUPON, court convened with all parties present
21 and the following proceedings were had.)

22 THE COURT: Okay. Anything we need to take up
23 before we start?

24 MR. CAMPBELL: We have just a few minor matters
25 to take up.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Pretrial Motions

72

1 THE COURT: Okay. Sure.

2 MR. CAMPBELL: I'll let you take up first.

3 MR. POTTER: Judge, may it please the Court.

4 THE COURT: Yes, sir.

5 MR. POTTER: Judge, I think I'm going to have
6 four separate issues. A lot of them might come into play
7 together. The first issue is in regards to some of the
8 anticipated testimony that will be put forth in front of
9 the jury today. Specifically with regards to the
10 Defendant's statement that was typed out by Detective
11 Gebing, there is a portion -- and I've already shown it
12 to Mr. Campbell -- where he indicates I left and got some
13 beer and then went and got some crack from a dope dealer
14 near Airline near True Temper. I did not stay there long
15 and left. I smoked it while I was out riding. I'm going
16 to ask that that be redacted and removed from the
17 statement because I think under 403 that's going to
18 confuse the issue. That's highly prejudicial toward my
19 client. And I would submit that it's not necessarily
20 relevant under 401 and 402 to an armed robbery and an
21 ABWIK. And that kind of goes in play with regards to
22 this -- the testimony of Detective Gebing yesterday where
23 he indicated he asked my client, did you get back on dope
24 again and the responses related to that as well as I
25 believe there is anticipated testimony where the

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Pretrial Motions

73

1 prosecuting witness will indicate there was talk between
2 the two while this alleged incident was occurring about
3 it. So we would submit that this Court, in regards to
4 the statement, redact that particular portion we're
5 asking for. In regards to the witnesses' testimony,
6 admonishing them that they not mention anything in
7 regards to crack cocaine or illegal narcotics or drugs in
8 any way under 403, 401 and 402.

9 THE COURT: Yes, sir?

10 MR. CAMPBELL: Your Honor, of course we take
11 the exact opposite view. This is actually the motive of
12 the case. He was out -- the reason why he hit his dad in
13 the head with a hammer and took his money was to go and
14 get more drugs. This is so intertwined throughout the
15 whole case, it's hard to separate it in this.

16 When Detective Gebing actually spoke with the victim
17 in this case, his dad Marshall Tucker, in his statement
18 he actually put -- and he will testify that when I spoke
19 to my son when he's running out the door, I asked him why
20 he did it and he stated dope. And you know, what he said
21 -- he put -- of course, that was in -- that's in his
22 statement. Detective Gebing, of course, knew that
23 because he had already taken a statement from the victim
24 in the case.

25 But when he asked the victim (sic) about it, you

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Pretrial Motions

74

1 know, are you back on dope, the guy said yes. And then
2 he explained why he did the robbery. That's the whole
3 motive of the case. You can't really get -- you can't
4 separate it and get around it. The reason for the armed
5 robbery was to get money to go get crack cocaine. In
6 fact, even the doctor reports -- and he stated yesterday
7 on the stand -- he testified that he had cocaine in his
8 system.

9 And it's -- you know, it's not prejudicial. It is
10 what it is. It's the reason why he committed the crimes
11 that he's being charged with, was to get more drugs. And
12 the two are so intertwined, you can't really separate the
13 two, Your Honor.

14 THE COURT: What did y'all decide to redact
15 yesterday? What was that?

16 MR. CAMPBELL: There was a statement in which
17 -- the last sentence of the statement stated that he took
18 a skill saw, a Sawsall, something that was owned by Mr.
19 Dewey Little, to a pawn shop to pawn it.

20 THE COURT: I got you. It had nothing to do
21 with drugs, right?

22 MR. CAMPBELL: It had nothing to do with drugs.
23 And the fact this -- I'll just hand this up for the Court
24 as to what statement that we're talking about.

25 (WHEREUPON, Mr. Campbell handed up document to the

1 Court.)

2 MR. CAMPBELL: This is a copy of the redacted
3 statement taking out the last sentence as we left
4 yesterday afternoon, which Mr. Potter has already looked
5 at it.

6 THE COURT: Well, in regard to the motions, I .
7 understand why you're making it. But I'm denying it. It
8 sounds like -- you know, it may be prejudicial, but I
9 think it's probative. So under the rules, I'll deny the
10 motion.

11 MR. POTTER: Thank you, Judge.

12 THE COURT: Sure. Anything else?

13 MR. POTTER: Yes, sir. There is also an issue
14 in regards to -- I've got a property report that was
15 provided by the Solicitor's office, a two-page property
16 report, indicating that some clothes were taken from my
17 client by Officer -- Deputy Pridemore. And that was done
18 the night of the incident or the very next morning after
19 twelve. And that indicates an address of

20 in Anderson, South Carolina, which -- clothes
21 which was a white long sleeve sweatshirt, clothes which
22 is a gray short sleeved sweat shirt. And then there's an
23 indication of a pair of blue jeans which I believe the
24 Solicitor intends -- that's the one thing they're going
25 to introduce to the jury in this case. And that

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Pretrial Motions

76

1 indicates a location taken from
2 Anderson, South Carolina, in which my understanding that
3 address is of a witness by the name of Dewey Little.

4 We would submit that the Court not allow the State
5 to have the jeans presented as evidence against my
6 client. Again, it's not relevant to the issue. I mean,
7 he was never at . He was never there. He
8 never lived there. And we would submit that those are
9 not relevant to the case at hand. And again, it's highly
10 prejudicial. There was blood found -- of the victim
11 found on those jeans.

12 And in all due candor, Judge, I have been provided a
13 property report that does have the address on
14 it; however, this has the address on it. So we
15 would submit that there's some sort of snafu or problem
16 with that. So as a result, it's not necessarily
17 reliable, and it shouldn't be submitted to the jury.

18 THE COURT: Yes, sir.

19 MR. CAMPBELL: Your Honor, it's a simple
20 scrivener's error. Tommy Clamp, the sergeant with the
21 forensics unit who enters in the evidence -- and he's
22 here today to testify that when he was just entering in
23 all the information and he was just typing in, he entered
24 in the wrong address. We actually do have the officers
25 here that took the clothing and the actual hard copy of

1 the property evidence sheet showing that it was taken
2 from the correct location, , and it
3 was signed by Defendant in this case, James Anthony
4 Tucker, showing that he -- that the officers took the
5 clothing.

6 THE COURT: Okay. So they're here in case you
7 need them? They're here?

8 MR. CAMPBELL: They're here to testify.

9 THE COURT: Okay. Well, assuming that they're
10 able to testify today, I deny that motion.

11 MR. POTTER: Two more quick things, Judge.

12 THE COURT: Yes, sir.

13 MR. POTTER: If it pleases the Court.

14 THE COURT: Sure.

15 MR. POTTER: It's my understanding that the
16 Solicitor intends -- what's -- there's an allegation that
17 the alleged weapon used in this particular assault and
18 robbery was a claw hammer. It's never been recovered.
19 It's my understanding the Solicitor intends to use
20 another claw hammer before the jury for demonstration
21 purposes. Obviously we're objecting to that. Again,
22 under 403 that's highly prejudicial. We don't know if
23 this matches what the alleged weapon was. We don't know
24 if it's the same weight. We don't know if it's the same
25 size. We don't know if the weapon was smaller or larger.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Pretrial Motions

78

1 I think it unduly confuses the jury and also inflames the
2 situation. It's a heavy steel hammer. And again, we
3 don't know what type of alleged weapon was used in this
4 assault. We know that the testimony will -- it's
5 anticipated -- excuse me. It's anticipated that the
6 testimony will be that he was assaulted with a claw
7 hammer, but that's all we know. And I think bringing in
8 something that is from the Solicitor's workshop is going
9 to confuse the jury, and it's potentially going to lead
10 them down the path that violates due process.

11 THE COURT: Yes, sir?

12 MR. CAMPBELL: Your Honor, what I intended to
13 show -- I brought a claw hammer for demonstrative
14 purposes only. The only difference is it does not have
15 the red fiberglass handle that he will describe. The
16 witness has looked at it. It's the identical head,
17 shape, size to the type that he was attacked with. A lot
18 of people, members of the jury, may not even know what a
19 claw hammer -- what we're talking about. The only thing
20 that it's going to be used for is to show what a hammer
21 looks like so some little lady that doesn't know -- has
22 never held a screwdriver or a hammer in her hand before
23 can understand what he was attacked with. The only
24 difference is it's not the same handle material.

25 MR. POTTER: The witness can draw it on a piece

1 of paper and show it to the jury.

2 THE COURT: Yeah, I got a little bit of a
3 problem. Here's the problem with that. Basically you've
4 got him identifying a hammer. I think most of them will
5 probably know what a hammer is. And since there's no --
6 nobody can find the hammer at all?

7 MR. CAMPBELL: The witness (sic) in his
8 statement stated that he threw it out. The officer is
9 going to testify that he actually went looking for it and
10 couldn't find it.

11 THE COURT: You're not going to use that in
12 your opening, are you?

13 MR. CAMPBELL: No.

14 THE COURT: All right. Don't use it now. Let
15 me withhold judgement on that and see how it -- how the
16 testimony goes. But I'm leaning toward not letting you
17 show a hammer since there's no real identification that
18 it's similar other than it has a claw on it.

19 Okay. Yes, sir.

20 MR. POTTER: Thank you, Judge. One last thing.
21 Judge, just for the record, we're going to make a 403
22 argument in regards to the photographs that the Solicitor
23 has shown me. Specifically -- they've already been pre-
24 marked. They're photographs of the injury taken the
25 night at the hospital. Exhibit 9, exhibit 10, 11, 12,

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Pretrial Motions

80

1 13, 14, 15, 16 and 17. Those are the objections we have
2 in regards to those pictures being introduced as
3 evidence. And again, we're making this argument under
4 403. We think it's unduly prejudicial. It will inflame
5 the passions of the jury to make a decision on the spot
6 and potentially ignoring potential evidence related to
7 whether or not my client was involved in causing those
8 injuries. The concern is that a jury will see those
9 photographs or a juror will see those photographs and
10 make a snap decision. And as a result they're unduly
11 prejudicial.

12 THE COURT: Okay. All right. Yeah. I'll deny
13 that motion. I mean, they're not as bad as unfortunately
14 I've seen in the last two weeks. But I understand why
15 you'd make them. You're protected for the record.

16 MR. POTTER: Thank you, Judge.

17 MR. CAMPBELL: Is that it? Is that all you
18 have motion-wise?

19 MR. POTTER: That's it.

20 MR. CAMPBELL: I have one motion. Your Honor,
21 I have provided the lay witnesses that we have RAP
22 sheets. Mr. Dewey Little does not have a RAP sheet or a
23 criminal history. The victim in this case, Marshall
24 Tucker, James Marshall Tucker, does have, from back in
25 July of 1999, a magistrate court offense, a solicitation

1 -- sex solicitation is what's it's called -- for
2 prostitution. It's a magistrate court offense. Under
3 609 it does not come in being it's a magistrate less than
4 a year and it's almost in the ten-year time frame. We
5 think it shouldn't be used and brought up in any type of
6 cross examination of the witness.

7 THE COURT: Yes, sir?

8 MR. POTTER: Judge, quite honestly -- I
9 understand the rule. I understand the nature of this
10 particular charge. I think it's a misdemeanor too.
11 Honestly at this point in time I don't know if I would
12 even use it in cross. I guess ultimately it's going to
13 determine what he says and what comes across in regards
14 to the testimony. There may be some testimony in regards
15 to the type of neighborhood he lives in and things like
16 that. But at this point in time, I don't anticipate
17 using or questioning ---

18 THE COURT: All right. Well, when you get to
19 the point where you -- and we'll deal with that then.
20 Just let me -- give me a high sign and we'll take a break
21 and deal with it.

22 MR. POTTER: Yes, sir.

23 THE COURT: Okay. We've already got some jury
24 questions. So the first question is, what are our lunch
25 arrangements, time allowed, family presence, out or in.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Pretial Motions

82

1 Telling me they need smoke breaks. And Cathy you'll
2 really appreciate this one. Can we park in the deck
3 without paying? If you lost your juror slip, can you get
4 a replacement? Can we bring a bottle of water into the
5 jury box? If we paid for parking, can we be reimbursed?

6 MADAM CLERK: Thank you, Your Honor.

7 (WHEREUPON, Court's Exhibit Number 1 was marked for
8 identification only.)

9 THE COURT: Lord have mercy is all I've got to
10 say. Cathy and I have spent more time worrying about
11 parking. I'm going to call Frankie McClain at the City
12 and send this to him.

13 Okay. Y'all ready? Again, we'll stop about three
14 fifteen, three thirty. I'm sorry about that. But we'll,
15 you know, go as far as we can go today.

16 MR. CAMPBELL: I just have one more
17 housekeeping matter dealing with the ruling you did on
18 the statement I redacted. Yesterday we pre-marked
19 exhibits 1, which is the Advice of Rights, and number 2,
20 which was the actual full statement.. Pursuant to the one
21 Mr. Potter requested that last sentence about pawning the
22 Sawsall and the tools was removed. This is the cleaned-
23 up copy, and this is the one that we will use in the
24 case-in-chief. And I'll go ahead and have it marked.

25 THE COURT: Okay. Is that right?

1 MR. POTTER: Yes, sir.

2 MR. CAMPBELL: And for the record, for the
3 Court, we're going to mark the one we're going to use in
4 the case-in-chief as number 2 and then the whole copy,
5 the actual complete statement, as 2-A.

6 THE COURT: Okay.

7 (WHEREUPON, State's Exhibit Number 2 was re-marked
8 as State's Exhibit Number 2-A, and State's Exhibit
9 Number 2 as redacted was marked for identification
10 only.)

11 THE COURT: Okay, you can bring them in.
12 (WHEREUPON the jury entered the courtroom at
13 approximately 10:56 a.m.)

14 THE COURT: Good morning, ladies and gentlemen.
15 First, I'm going to swear you, and then I'll deal with
16 your questions.

17 Yes, ma'am?

18 MADAM CLERK: Mr. Foreman and ladies and
19 gentlemen of the jury, if you'll please stand and raise
20 your right hand to take the jury oath.

21 (WHEREUPON, the jury was duly sworn.)

22 MADAM CLERK: Be seated, please.

23 THE COURT: All right. Ladies and gentlemen,
24 again, I do appreciate your patience this morning. I had
25 a meeting that I didn't know I had dealing with a totally

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Pretrial Motions

84

1 different case, and I had to do that back in the office.
2 So while you've been sitting back there waiting, everyone
3 in the courtroom has been waiting too. And I apologize.

4 Let me deal with the questions and -- first. The
5 first question is, what are your lunch arrangements? Is
6 that correct?

7 JURY FOREMAN: Yes, sir.

8 THE COURT: Well, I don't know. Whatever you
9 want. We'll take a break. Because today is going to be
10 a shorter day -- today we have to leave by three fifteen
11 which is much shorter than normal, and that's again
12 because I have an issue that I have to deal with. We'll
13 take a break -- normally we would break at twelve thirty
14 or one and give you an hour or an hour and a half to eat
15 and let you go on your own time and do that. Today may
16 be a little bit different. And when we get going, I'll
17 make a decision about that. It may very well be that
18 we'll continue to work through an early lunch hour and
19 then stop early, or we'll take a lunch break for only an
20 hour. I'm just not sure depending on how the witnesses
21 go. So you'll have to let me answer that as we get
22 moving.

23 The time allowed, family presence. Family can be
24 with you anytime outside of here. Most of the time --
25 the question is out or in. Most of the time you'll be --

1 we'll give you an hour and a half to go eat. And again,
2 we do that because I know that's it's a cooped-up feeling
3 back there. If you're deliberating and there's a
4 mealtime -- once you begin deliberating, you have to stay
5 back there -- we'll of course order food for you. Need
6 smoke breaks. I understand that and we'll give you a
7 break for that. If you take a smoke break, you need to
8 understand that you have to be accompanied by a bailiff,
9 and you can't speak to anyone outside while you're doing
10 that.

11 Now, the next set of questions, can we park in the
12 deck without paying? If you lost your juror slip, can
13 you get a replacement? Can we bring a bottle of water in
14 the jury box? Sure, that would be fine. If we paid for
15 parking, can we be reimbursed? Parking has been somewhat
16 of a huge issue here. Cathy Phillips and I, when I got
17 this question, had to laugh a little bit. We -- we're
18 sort of in an ongoing battle with the City about how to
19 deal with parking. Literally, my best friend is the City
20 attorney, and he and I argue about it all the time. He's
21 given us five thousand tokens.

22 Is that right?

23 MADAM CLERK: Something like that, Your Honor.

24 THE COURT: The problem is you have to pay when
25 you go in there. And we've only done this once with one

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Preliminary Charge

86

1 jury since the garage has been opened. We gave them all
2 the tokens to use and they just never brought them back.
3 I suppose they're being used every Saturday for the next
4 ten years. If you've parked today or yesterday and you
5 paid, at the end of this trial, let me know and we'll get
6 you reimbursed. On a break this morning, we'll get you
7 some tokens. If you lose your juror slip, that's not a
8 problem.

9 We'll work out parking; it's just new. The City
10 wants to keep track of who's parking there, so they want
11 us to use the tokens. But it's overly cumbersome, quite
12 frankly, to hand you forty tokens. I know nobody wants
13 that jingling around in your pocket while you're trying
14 to listen. So we'll deal with that.

15 Was that all of the questions?

16 JURY FOREMAN: It is, Your Honor.

17 THE COURT: That's exactly the way to do it.
18 Just write it down -- and I've made it a Court's Exhibit
19 -- and we'll deal with it.

20 All right. Ladies and gentlemen, we're getting
21 ready to start the case of the State versus James Anthony
22 Tucker. Mr. Tucker has been charged with an armed
23 robbery and with assault and battery with intent to kill.
24 I'm reading from the indictments. And as I told the
25 entire group yesterday -- the reason I told that whole

1 group is because I want you to start thinking immediately
2 upon coming into this room as a juror about what an
3 indictment is. An indictment is literally just a piece
4 of paper. And I'm holding them. And you'll have them
5 with you in the jury room when you begin your
6 deliberations. But you should never assume or give any
7 credibility to the indictment itself. An indictment in
8 our system is literally just the way that a process
9 starts. Once a defendant pleads not guilty, as Mr.
10 Tucker has, the indictment is just a piece of paper. And
11 as I said, it sets forth what the allegations of the
12 State are, but you should never assume that because a
13 person has been indicted that in any way that influences
14 whether they're guilty or not. It just doesn't. And so
15 I want you to understand that an indictment is not
16 evidence, and it's not evidence of guilt and you
17 shouldn't consider it. In fact, when you begin your
18 deliberations you shouldn't even consider the fact that
19 there is an indictment that's been issued.

20 Ladies and gentlemen, I have been a judge I guess
21 almost ten years. And one of the things that bothers me
22 the most is television. I don't watch the legal shows.
23 But I have grown concerned that over the past couple of
24 years I've noticed that juries get impatient. This is
25 not going to be similar to any of the T.V. shows that you

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Preliminary Charge

88

1 see. We're not going to wrap this up in an hour with
2 twenty minutes of commercials. And sometimes jurors, the
3 only contact they have with the system is what they see
4 on T.V. And I really get worried about the fact that
5 they'll get -- that juries get impatient.

6 This is a slow process, and it's meant to be slow
7 and it's meant to be deliberate. It's a place of honor.
8 This courtroom is a place of honor -- and that's the way
9 I look at it -- and we're searching for the truth. It is
10 going to be much slower than you're used to on
11 television. I'm sure you understand that. I don't mean
12 to preach to you about it, but please be patient.
13 There's going to be a lot of times here in the courtroom
14 when things will go slow. They'll be times when you'll
15 need to leave. And I'll explain that in a minute.

16 And please understand that we're doing everything we
17 can to reach the truth, and we're not really concerned
18 that much about time. We do have some concerns about
19 your schedules. And I never want to keep you sitting
20 back there in that small room for too long, but sometimes
21 it can't be helped. So please understand that.

22 Ladies and gentlemen, you and I have very different
23 roles during the course of this trial. You're the judge
24 of the facts. You have to listen to the testimony that
25 you hear from this witness stand. You have to review any

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Preliminary Charge

89

1 evidence that's been admitted into evidence and marked.
2 And you have to determine what the facts are. I'm the
3 judge of the law.

4 During the course of this trial, my law clerk and I
5 will be preparing the legal charge that I'll read to you
6 at the end of the case. And I'll also be ruling on
7 objections that the lawyers make. I'll have to deal with
8 any legal matters.

9 Our roles never cross. If for any reason you think
10 during the course of this trial that I have an opinion
11 about a fact, disregard it. Whether I believe a witness
12 or not is irrelevant to your decision. If I turn red, if
13 I yell at somebody or if I may give you any indication
14 that I have an opinion about the facts of this case,
15 disregard it. You are the only people in this courtroom
16 who will be the judge of the facts, and you will have to
17 determine what they are. As I said, I'm the judge of the
18 law. I'll have to determine the evidence admission.
19 I'll have to make decisions on objections.

20 And the most important thing I'll do is I will
21 prepare during the course of this week a charge of the
22 law. At the end of this trial, right before you begin
23 deliberating, I will literally read to you the law in
24 this case. And it may take thirty minutes for me to read
25 it to you. You have to take the law as I give it to you,

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Preliminary Charge

90

1 and you have to apply it to the facts as you've
2 determined them to be to reach a verdict. Just as you
3 shouldn't read into any -- or you shouldn't get any
4 indication from me about a fact, you have to take the law
5 as I give it to you as the law in this case. You can't
6 go back and begin deliberating and think that the law is
7 different or wish that the law was different or hope that
8 the law is different. You take the law as I give it to
9 you, you take the facts as you determined them to be, and
10 then you'll reach a verdict. Again, if -- just disregard
11 any facial expressions or anything else that I may give
12 you during the course of the trial.

13 Now, ladies and gentlemen, in just a few minutes
14 you're going to hear the opening statements from the
15 parties. The opening statements are not evidence in this
16 case. They're merely an opportunity for the lawyers to
17 outline their case and tell you a little bit about the
18 case they're going to present. But again, it's not
19 evidence.

20 Right after the opening statement, we'll begin
21 taking testimony, and that will all come from this
22 witness stand here. You'll have to determine the
23 credibility of the witnesses when they testify.
24 Credibility under the law simply means believability.
25 You can believe everything that a witness says from this

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Preliminary Charge

91

1 witness stand, or you can believe nothing that they say.
2 You can take a portion of what they say and believe it
3 and disregard the rest. That's up to you. But all the
4 testimony will come from this witness stand.

5 After the testimony has been given, there'll be a
6 closing argument by the lawyers. Again, the closing
7 argument is not evidence and shouldn't be considered
8 evidence, but it's merely an opportunity for the lawyers
9 to argue their case to you. So the opening statements
10 and the closing arguments are not evidence. Everything
11 in-between that comes from the witness stand is evidence.

12 Now, on occasion the lawyers will make objections.
13 Each time they make objection, I'm going to have to send
14 you out of the courtroom because I have to hear what the
15 objection is. I can tell you right now that you've got
16 two good lawyers in this case. I suspect that there will
17 be at least one time when an objection will be made, I'll
18 send you out of the courtroom, you'll sit out there for a
19 little while, I'll bring you back in, another objection
20 will be made and I'll have to send you out.

21 Please understand, we're not trying to hide anything
22 from you. We're just trying to determine legal issues
23 while you're out of the courtroom, because again the
24 legal issues are not your purview. If you sit back there
25 longer than you think you should be sitting back there,

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Preliminary Charge

92

1 don't blame the lawyers for making objections, blame me.
2 In addition to having legal -- having to determine the
3 law in this case and legal issues, I also have to manage
4 the courtroom. And I can promise you that you're going
5 to sit back there probably more than you'd like to. But
6 again, don't get mad at the lawyers when they make their
7 objections. That's what they're supposed to do. You can
8 get mad at me.

9 I told you yesterday about publicity. I looked this
10 morning. I haven't seen anything. Please don't listen
11 to anything about this case, read any newspaper articles
12 or watch any television that might contain information
13 about this case. As I said yesterday, you will know more
14 than anybody in the world about this case. And if you're
15 contacted in any way by anyone in the public or the press
16 about this case, let me know as soon as possible. But
17 I'm ordering you -- I'm asking and I'm ordering you based
18 upon the oath that you just gave, not to read, listen to
19 or watch any publicity about this case.

20 Also, every time you leave the courtroom, I'm going
21 to tell you not to deliberate, don't talk about this
22 case. From this point forward, you cannot talk about
23 this case or the evidence that you've just heard until I
24 tell you it's time to begin deliberating after I've told
25 you the law. You can introduce yourselves. You can talk

1 about anything you want, but nobody should bring up
2 anything about the case until you begin your
3 deliberations.

4 Ladies and gentlemen, finally, the State -- because
5 the Defendant has pled not guilty, the State has the
6 burden of proving their case beyond a reasonable doubt.
7 Now, at the end of this trial, I'll give you a much
8 longer definition of reasonable doubt. But reasonable
9 doubt in just a short phrase is the kind of doubt that
10 would cause a reasonable person to hesitate to act. It's
11 -- proof beyond a reasonable doubt is proof that leaves
12 you firmly convinced of the Defendant's guilt. Again,
13 I'll have a much longer charge on that at the end of this
14 case.

15 And as I told you yesterday, it's an old way of
16 thinking about it. But the Defendant is not guilty until
17 you determine that he's guilty. And that robe of
18 righteousness story, I don't know why it means so much to
19 me. It's just the way they started when I started
20 practicing law. It's a really good way to think about
21 it. He's sitting here in this courtroom innocent and he
22 will only have that robe of innocence stripped from his
23 shoulders by you once you begin your deliberations.

24 If you have any problems whatsoever, this is exactly
25 the way to do it. Send me a note. If you need to take a

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Opening Statement by Mr. Campbell

94

1 break during the course of the trial, just raise your
2 hand, get my attention, get the bailiff's attention, and
3 we'll take a break. No questions asked. We'll go for an
4 hour or hour and a half. Today, because we have to stop
5 a little early, I'm going to push a little bit. But if
6 you need to take a break, just raise your hand and we'll
7 break right then. If you have any problems, let me know
8 about it through a note. If anybody contacts you --
9 that's my main concern -- let me know as soon as
10 possible.

11 All right. We are going to begin our opening
12 statements now. As I said, these are not evidence.

13 Yes, sir?

14 MR. CAMPBELL: May it please the Court.

15 OPENING STATEMENT

16 BY MR. CAMPBELL:

17 Y'all ever heard that saying that no good deed goes
18 unpunished? You've probably heard that in passing and in
19 jest. Well, that's kind of what this case is about. Is
20 that what we're dealing with is two crimes have been
21 charged, assault and battery with intent to kill and
22 armed robbery. And the person that's been charged in
23 this case is James Anthony Tucker.

24 Now, you're going to hear some confusion in the
25 names because what you have is the person he attacked was

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Opening Statement by Mr. Campbell

95

1 his dad. And his dad is sitting in the courtroom today
2 in the beige long-sleeved shirt, and you're going to hear
3 from him. That is James Marshall Tucker.

4 Why I say it's a good deed is that during this time
5 frame, back in February of this year, the testimony is
6 going to show that the Defendant, James Anthony, was kind
7 of basically down on his luck and needed a place to stay.
8 So he was staying with his father. Free room and board.
9 And he had been there for a while. And eventually he got
10 him a girlfriend, and he started going back and forth
11 between the residences.

12 Well, the day this occurred was a Monday, February
13 9th, through the early morning hours of February the 10th.
14 And what took place was -- is that during that time frame
15 Mr. Anthony Tucker, James Anthony, came over to the house
16 that day, brought him and his girlfriend. And they
17 borrowed some money from his dad. Gave him twenty bucks.

18 Later on that night, he comes back. And when he
19 comes back, he's by himself. He asks his dad -- he
20 needed to get a few items. He needed to get some CDs,
21 get some clothing, asks about some more money. He goes
22 out the back door. And what the testimony is going to
23 show is that Mr. -- the victim in this case, James
24 Marshall Tucker, was seated in his kitchen in a chair
25 that swivels and rolls around. And while he had his back

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Opening Statement by Mr. Campbell

96

1 to the back door, the Defendant came in with a claw
2 hammer that he picked up from outside and began attacking
3 the victim in this case, his dad. Swung at him several
4 times, hit him several times in the head. In fact, you
5 will see testimony that he had defensive wounds trying to
6 fight him off. And what the whole thing was about is he
7 needed money. And he reached into his pocket and took
8 out a money clip and took approximately four to five
9 hundred dollars, and out the door he went.

10 Mr. Tucker, the victim in this case, was able to
11 call a friend of his, and they went to the Anderson Area
12 Hospital. And you'll hear testimony and see photographs
13 regarding his injuries. He identified to law enforcement
14 that showed up who his attacker was. Law enforcement
15 spoke with Mr. James Anthony Tucker, the Defendant in
16 this case, and eventually he was charged with two
17 warrants. That he was charged with armed robbery, the
18 taking of money from another person by force,
19 intimidation or threats, and depriving that person of it,
20 and by assault and battery with intent to kill, which is
21 basically a violent injury upon another person with
22 malicious intent, meaning you meant to do it.

23 And that is what, as the Judge stated, y'all are
24 here to decide and to determine. Y'all will determine
25 the facts of the case. And how y'all do that will come

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Opening Statement by Mr. Potter

97

1 from this witness stand right here. You'll listen to the
2 testimony of the witnesses. And you're going to hear
3 from eyewitnesses, you're going to hear from the victim,
4 you're going to hear from law enforcement, and you're
5 going to hear from some scientific people. And that is
6 how the State is going to remove or prove its burden in
7 this case and remove what the Judge has been talking
8 about, that cloak of innocence. Because right now, as
9 the Judge stated, he is innocent until proven guilty. It
10 is our burden and duty to prove to y'all that in fact he
11 is guilty of these crimes. And that's what we intend to
12 do through actual evidence, circumstantial evidence,
13 through eyewitness testimony.

14 And at the end of this trial, I'm going to have an
15 opportunity to get up and speak to y'all again. And at
16 that time, I'm going to ask you to come back with a
17 verdict, a verdict that speaks the truth. And I look
18 forward to speaking with y'all at the end of this case.

19 Thank y'all.

20 THE COURT: Yes, sir?

21 MR. POTTER: Thank you. May it please the
22 Court.

23 OPENING STATEMENT

24 BY MR. POTTER:

25 It was interesting that the Solicitor, the

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Opening Statement by Mr. Potter

98

1 Government's attorney, said that a good deed does not go
2 unpunished, because quite honestly what we have here
3 today is a rush to judgement. And we all know what that
4 is. It's happened before. It's happened in North
5 Carolina with some college students. And it's our
6 position that it's happened today. And it can happen
7 here.

8 When Mr. Tucker met with deputies in the hospital,
9 the deputies automatically rushed to judgement. They
10 went to Tony. They didn't look at anything else. They
11 didn't consider any other evidence. The evidence is
12 going to show that they never found any money on Tony.
13 The evidence is going to show that they never found this
14 weapon. The evidence is going to show that they never
15 found any blood in this car Tony was supposedly driving
16 or the car that he was driving. The evidence is going to
17 show that they didn't talk to anybody else to determine
18 whether or not somebody else could have been involved in
19 this.

20 They didn't case the neighborhood. They didn't ask
21 around for neighbors, if they heard anything or saw
22 anything, anybody running out the back door, any other
23 cars in Mr. Marshall Tucker's driveway or yard. They
24 rushed to judgement. And it's happened before and it can
25 happen again.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Dewey Little - Direct Examination by Mr. Campbell

99

1 The witness testimony is something that you're going
2 to have to determine on your own. Listen to them, watch
3 how they talk, watch how they sit. Do they make eye
4 contact? Evaluate the witnesses that the State and the
5 Government gives to you. Think about why the Government
6 investigators didn't do those things, why they
7 automatically went to Tony. Then make a decision, and
8 don't make a rush to judgement based on one witness or a
9 handful of photographs.

10 Thank you.

11 THE COURT: You can call your first witness.

12 MR. CAMPBELL: Your Honor, the State calls
13 Dewey Little to the stand.

14 MADAM CLERK: Please come around, please, sir,
15 to be sworn. If you will place your left hand on the
16 Bible and raise your right, please.

17 (WHEREUPON, the witness was duly sworn.)

18 MADAM CLERK: Go right around there and have a
19 seat in the witness chair, please, sir. If you'll please
20 state your full name and spell your last name for the
21 record.

22 THE WITNESS: Dewey Clyde Little, Junior. Last
23 name Little, L-I-T-T-L-E.

24 DEWEY LITTLE,

25 Being first duly sworn, testified as follows:

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Dewey Little - Direct Examination by Mr. Campbell

100

1 DIRECT EXAMINATION

2 BY MR. CAMPBELL:

3 Q. Mr. Little, are you from Anderson?

4 A. Yes.

5 Q. Okay. And how old are you?

6 A. Sixty-three.

7 Q. Are you currently employed?

8 A. Semi retired.

9 Q. And where did you retire from?

10 A. B.A.S.F. Corporation.

11 Q. How long did you work there for?

12 A. A little over twenty-nine years.

13 Q. And you're currently doing some side jobs?

14 A. Working at Anderson Country Club cutting grass.

15 Q. Now, do you know James Marshall Tucker?

16 A. I do.

17 Q. And how do you know him?

18 A. He's my brother-in-law.

19 Q. And you've been over to his house, I'm assuming; is
20 that correct?

21 A. Many, many times.

22 Q. Now, do you know his son James Anthony Tucker?

23 A. I met him several months ago, yes.

24 Q. Now, I want to talk to you about the events that

25 took place back in February of this year. Do you recall

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Dewey Little - Direct Examination by Mr. Campbell

101

1 -- at some point did you recall going over to Mr. James
2 Tucker's house after he called you?

3 A. Yes.

4 Q. And what was that in reference from? What was that
5 regarding to?

6 A. That night he called and said he was hurt ---

7 MR. POTTER: Objection.

8 A. --- and he needed me.

9 THE COURT: Hold on.

10 Yes, sir?

11 MR. POTTER: I have an objection under 801(C)
12 in regards to hearsay. This is a statement being offered
13 to prove the matter being asserted.

14 MR. CAMPBELL: Well, he hasn't asserted nothing
15 yet. He hasn't even stated -- he hasn't even got a
16 chance to finish what he was stating.

17 MR. POTTER: Well ---

18 MR. CAMPBELL: All he was going into is he was
19 called over to the house.

20 THE COURT: Yeah, but he can't testify to what
21 someone else said, so make sure you don't do that, okay?

22 MR. CAMPBELL: He can go into the fact that he
23 was called over there.

24 THE COURT: Right.

25 MR. POTTER: That's not my objection. My

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Dewey Little - Direct Examination by Mr. Campbell

102

1 objection is what the person who was calling him told
2 him.

3 THE COURT: Right. He can't testify to that.
4 Just make sure he understands that.

5 MR. CAMPBELL: He's not going -- he's just
6 going into that he went over to the house.

7 Q. Did you receive a call somewhere on the last night
8 of February 9th, 2009, from Mr. James Marshall Tucker?

9 A. That is correct.

10 Q. And what was the reason why you were called? What
11 was the purpose of that telephone call?

12 A. Marshall told me ---

13 MR. POTTER: Judge ---

14 A. --- he was hurt.

15 MR. POTTER: --- I have the same objection.

16 THE COURT: Hold on, hold on. Yes, sir?

17 MR. POTTER: I've got the same 801(C) objection
18 in regards to that.

19 MR. CAMPBELL: First ---

20 THE COURT: Okay. Ladies and gentlemen, let me
21 send you out for the first time just for a few minutes.

22 You won't be back there but about two minutes.

23 (WHEREUPON, the jury exited the courtroom at
24 approximately 11:22 a.m., and the following
25 proceedings were had outside their presence.)

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Dewey Little - Direct Examination by Mr. Campbell

103

1 THE COURT: Okay. What's the objection?

2 MR. POTTER: My concern is that this question
3 is going to elicit, I got a phone call from James
4 Marshall Tucker who got beat up by the Defendant and I'm
5 going over there to carry him to the hospital. That's
6 what I'm concerned that the statement is going -- that
7 the question is going to get.

8 THE WITNESS: That's it.

9 THE COURT: All right. Yeah. Make sure -- he
10 can't testify about what someone told him.

11 MR. POTTER: I mean, I have no objection to him
12 saying, I got a phone call and it caused me to go over
13 there.

14 THE COURT: He can't say I got a phone call and
15 he told me I got beat up.

16 MR. CAMPBELL: He told him I need to go to the
17 hospital. And that's what he's going to testify to.
18 We're not talking about anything else involved with the
19 case.

20 THE COURT: Okay.

21 MR. POTTER: Just for clarification, he can
22 testify to that he got a call that he was going over --
23 that caused him to go over to ---

24 THE COURT: Right.

25 MR. POTTER: --- Mr. Tucker's house.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Dewey Little - Direct Examination by Mr. Campbell

104

1 THE COURT: Yeah.

2 MR. POTTER: And that's it?

3 THE COURT: Yep.

4 All right. You can bring them back in.

5 THE WITNESS: Can I ask you a question, Your
6 Honor?

7 THE COURT: Yes, sir.

8 THE WITNESS: I'm not allowed to say what he
9 said to me that night?

10 THE COURT: No.

11 THE WITNESS: I can't say that he was hurt and
12 needed some ---

13 THE COURT: No.

14 His question was is he allowed to say what they told
15 him that night, and I'm telling him no, he can't do that.

16 THE WITNESS: So all I can say is that he
17 called and I went over there.

18 THE COURT: (Nodded head up and down in the
19 affirmative)

20 (WHEREUPON, the jury entered the courtroom at
21 approximately 11:25 a.m., and the following
22 proceedings were had.)

23 THE COURT: All right. You can continue.

24 MR. CAMPBELL: Thank you, Your Honor.

25 DIRECT EXAMINATION

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Dewey Little - Direct Examination by Mr. Campbell

105

1 CONTINUED BY MR. CAMPBELL:

2 Q. After you received a phone call from Mr. Tucker, you
3 went over to his house?

4 A. That is correct.

5 Q. And do you know what address that is?

6 A.

7 Q. That's here in Anderson; is that right?

8 A. That's correct.

9 Q. And when you arrived, did you see Mr. Tucker?

10 A. I knocked on the door. He didn't answer. I tried
11 the doorknob and went in. Yes, I did see him.

12 Q. And where was he?

13 A. He was in the kitchen.

14 Q. And can you please describe for the ladies and
15 gentlemen of the jury what you observed and saw?

16 A. I saw Marshall sitting in the kitchen in a chair
17 that you normally sit in which is a swivel chair. He had
18 a real bloody rag on his head and blood running down his
19 face and on his clothes.

20 Q. Was anybody else in the house?

21 A. Not to my knowledge. I didn't see anybody else.

22 Q. And at that point, what did you do next?

23 A. I got Marshall up out of the chair by the arm. I
24 helped him to the front of the house. We locked his
25 house and put him in my truck and carried him to the

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Dewey Little - Direct Examination by Mr. Campbell

106

1 hospital.

2 Q. And how far -- how close to the hospital were you?

3 A. Three or four miles.

4 Q. And then basically you got him admitted into the
5 emergency room?

6 A. Yes, I did. I ---

7 Q. Now ---

8 A. --- got him out of my truck, got him in a
9 wheelchair. They carried him inside, and I went and
10 parked my truck and went back to the hospital.

11 Q. And did you stay with him the entire time while he
12 was up there?

13 A. I did.

14 Q. At some point did you take possession of his
15 personal belongings while he was in the hospital?

16 A. I did. When they moved him into a room, he asked me
17 to take his wallet and his other belongings along with
18 his cell phone.

19 Q. Now, while you were at the hospital, did that cell
20 phone of Mr. Tucker's -- did he receive any calls?

21 A. Yes.

22 Q. And did you answer them?

23 A. Yes, I did.

24 Q. And how many time did you -- how many times were you
25 called?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Dewey Little - Direct Examination by Mr. Campbell

107

- 1 A. Twice.
- 2 Q. And the first time, who was the call from?
- 3 A. The lady said her name was Jeannie.
- 4 Q. And did you know a Jeannie?
- 5 A. No, I do not.
- 6 Q. Did you know of a Jeannie?
- 7 A. I have heard of her, yes.
- 8 Q. And who was she?
- 9 A. I have heard she was the Defendant's girlfriend.
- 10 Q. And did you speak to her?
- 11 A. Very quickly, yes.
- 12 Q. And then did she hang up, or what happened next?
- 13 A. Then the Defendant came on the phone.
- 14 Q. Is that Mr. James Anthony Tucker?
- 15 A. Yes.
- 16 Q. And you know his voice?
- 17 A. (No verbal response)
- 18 Q. And you know his voice, recognize it?
- 19 A. Yes, I do.
- 20 Q. Did he tell you who he was?
- 21 A. Yes, he did.
- 22 Q. Is he sitting the courtroom today?
- 23 A. Yes, he is.
- 24 Q. Can you please identify him?
- 25 A. He is the Defendant sitting right there in the light

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Dewey Little - Direct Examination by Mr. Campbell

108

1 colored shirt.

2 Q. And what, if anything, did he say to you?

3 A. He wanted to know why his pop was in the hospital.

4 And I told him what his pop had told me, and he denied

5 it.

6 Q. And then after that, did you have any more phone

7 calls?

8 A. About a half hour later, the phone rang again. And

9 it was the Defendant himself calling that time.

10 Q. And what did he want this time?

11 A. Same thing. How his pop was doing and why he

12 accused him of doing that.

13 Q. And how did he appear to you on the phone, in your

14 opinion?

15 A. Shocked. Shocked that he was at the hospital, was

16 my opinion.

17 Q. And did Mr. Tucker have to stay in the hospital

18 overnight?

19 A. No. We got out about six or six thirty that

20 morning.

21 Q. And afterwards, did you take him back to his house?

22 A. We went one time with a deputy. The rest of the

23 time he was with us for quite a while at our home.

24 Q. He lived with you?

25 A. Yes.

1 Q. Okay. And what was -- why was the reason for that?

2 A. He was too ---

3 MR. POTTER: Objection, Your Honor.

4 A. --- scared to go home.

5 THE COURT: Overruled. That's all right.

6 Q. What was the answer?

7 MR. POTTER: Judge, just for the record, 403

8 ---

9 THE COURT: Right.

10 MR. POTTER: --- is what we're basing our
11 objection on.

12 THE COURT: Right. You're protected.

13 Q. And why was he staying with you?

14 A. He was too scared to go home.

15 Q. And how long did he stay with you?

16 A. Approximately three weeks or so.

17 Q. And eventually he did go back ---

18 Y. Yes.

19 Q. --- to the residence at .?

20 A. Yes.

21 Q. And you continue to have contact with him?

22 A. Yes, we do. Four or five, six times a week I see
23 him or either call him, one.

24 Q. Mr. Little, I have no further question. Please
25 answer any questions Mr. Potter may have.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Dewey Little - Cross Examination by Mr. Potter

110

1 MR. POTTER: May it please the Court.

2 THE COURT: Yes, sir.

3 CROSS EXAMINATION

4 BY MR. POTTER:

5 Q. It's Little, correct?

6 A. (No verbal response)

7 Q. Little is your last name.

8 A. Little? Yes. You'll have to speak up so I can hear
9 you.

10 Q. Mr. Little, two times Tony Tucker called on the
11 phone while you were at the hospital?

12 A. No.

13 Q. Excuse me. You talked to him two times on the phone
14 ---

15 A. That is correct.

16 Q. --- at the hospital. His girlfriend called the
17 first time, he called the second time and he ---

18 A. That was my understanding, yes.

19 Q. Okay. And he was shocked?

20 A. Shocked that he was alive.

21 Q. That's not what you testified to earlier.

22 A. Shocked ---

23 Q. He was shocked that ---

24 A. That's my opinion.

25 Q. Excuse me, sir.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Dewey Little - Cross Examination by Mr. Potter

111

1 A. And I was told ---

2 THE COURT: Hold on. Hold on a minute.

3 A. --- I was entitled to it.

4 THE COURT: Listen. Hold on a minute. Let him
5 ask the question and you answer, and then you can explain
6 it. But don't talk at the same time.

7 Go ahead.

8 Q. Your testimony when the Solicitor asked you
9 questions was -- your opinion was he was shocked that he
10 was in the hospital, correct? That's how you testified,
11 correct?

12 A. Yes.

13 Q. There were beer cans in the kitchen, weren't there?

14 A. I'm sorry. I can't hear you.

15 Q. I'm sorry. There were beer cans in the kitchen,
16 were there not?

17 A. Yes.

18 Q. There were empty beer cans?

19 A. I don't know. I didn't pick them up.

20 Q. They were on the floor?

21 A. Sitting on the kitchen counter.

22 Q. Say again?

23 A. Kitchen counter, the best that I can tell.

24 MR. POTTER: Nothing further, Judge.

25 THE COURT: Okay. Anything in redirect?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

112

1 MR. CAMPBELL: No, Your Honor.

2 THE COURT: Okay. Thank you, sir. You can
3 step down.

4 MR. CAMPBELL: Your Honor, the State calls
5 James Marshall Tucker to the stand.

6 MADAM CLERK: Come around, please, Mr. Tucker.
7 Come right up here, please, sir, and place your left hand
8 on the Bible and raise your right. If you will place
9 your left hand on the Bible and raise your right, please.

10 (WHEREUPON, the witness was duly sworn.)

11 MADAM CLERK: Go right around there and have a
12 seat in the witness chair, please. If you'll please
13 state your full name and spell your last name for the
14 record.

15 THE WITNESS: James Marshall Tucker. Tucker,
16 T-U-C-K-E-R.

17 JAMES MARSHALL TUCKER,

18 Being first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. CAMPBELL:

21 Q. Mr. Tucker, how old are you?

22 A. Sixty-two.

23 Q. And it's my understanding you're the father of the
24 Defendant, James Anthony Tucker?

25 A. Yes, sir.

- 1 Q. From Anderson?
- 2 A. Yes, sir.
- 3 Q. Lived here all of your life?
- 4 A. Yes, sir.
- 5 Q. How far did you go in school?
- 6 A. I might have a third-grade education.
- 7 Q. Can you read and write?
- 8 A. No, sir.
- 9 Q. And now, during -- I mean you're sixty-two. I know
- 10 you had a job. What kind of employment did you do?
- 11 A. I used to do body and fender work on cars and paint
- 12 cars.
- 13 Q. And do you still do that type of work?
- 14 A. No, sir.
- 15 Q. Are you disabled?
- 16 A. I done had three heart attacks and five by-passes.
- 17 Q. Now, you currently live in Anderson; is that right?
- 18 A. Yes, sir.
- 19 Q. And where exactly do you live?
- 20 A.
- 21 Q. That's here within the city limits of -- or in the
- 22 county of Anderson?
- 23 A. County.
- 24 Q. And were you living there during February of this
- 25 year?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

114

1 A. Yes, sir. I think I been there pretty close to
2 three years.

3 Q. And you're currently living there today; is that
4 right?

5 A. Yes, sir.

6 Q. Now, I want to talk to you about that time a little
7 bit. Let's go back to February, January of this year.

8 A. All right.

9 Q. Was -- what do you call -- what does your son go by?

10 I know y'all basically have the same names except your
11 middle name is -- his is Anthony and yours is Marshall.

12 A. Well ---

13 Q. What do y'all call him?

14 A. Most of the time everybody calls him Tony.

15 Q. And was Tony living with you in February of this
16 year?

17 A. Well, when he come, I can't say exactly what year,
18 what month, when he moved in, when he was staying there.
19 Up until about two months before this happened, he was
20 kind of in and out from my house to her house.

21 Q. And when he was living with you, were you charging
22 him room and board?

23 A. No, sir.

24 Q. And was he working at that point in time?

25 A. He worked a pretty good while, and then he lost his

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

115

1 job somehow or another. I don't know. I never did get
2 any details or ask him why did he lose his job or what
3 happened.

4 Q. Now, when you say her, who are you referring to?

5 A. Jeannie.

6 Q. And is that his girlfriend or his wife?

7 A. His girlfriend as far as I know.

8 Q. And would he go back and forth between y'all's two
9 places?

10 A. Yes, sir.

11 Q. Now, you stated that you're on disability. Do you
12 receive some sort of monthly check?

13 A. Yes. I draw a Social Security check, and I draw a
14 check off my wife.

15 Q. And what was that from?

16 A. It's two different checks. But I get one from Owens
17 Corning Fiberglas, and I draw a Social Security check.

18 Q. And approximately how much a month do you receive?

19 A. Well, my Social Security check is eight hundred and
20 fifty-nine dollars. That little check I get from
21 Fiberglas is four hundred and ten dollars and forty-five
22 cents.

23 Q. Now -- and that's all the money you receive; is that
24 right?

25 A. Yes, sir.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

116

1 Q. Okay. And during February -- back in this time,
2 February 9th, did you have -- had you received these
3 checks and cashed them?

4 A. Yes, sir.

5 Q. And typically how do you keep your money?

6 A. In my left front pocket.

7 Q. Do you use a wallet or ---

8 A. A money clip.

9 Q. And that day -- I'm going to talk to you about February
10 the 9th. Do you recall that day?

11 A. Yes, sir, I do.

12 Q. And what -- did you see Tony that day?

13 A. Yes, sir.

14 Q. And about when was that?

15 A. The first time I seen him, him and Jeannie come to
16 the house. And I loaned him twenty bucks.

17 Q. And did he ask or say what they needed the twenty
18 dollars for?

19 A. He just said that he needed to borrow twenty
20 dollars.

21 Q. And at this point, was he still employed?

22 A. No, sir.

23 Q. And did you give him the twenty dollars?

24 A. Yes, sir, I sure did.

25 Q. And did you ask what they were going to use twenty

1 dollars for?

2 A. No, sir.

3 Q. Then did you give him any other type of money at
4 that point in time when you gave him the twenty dollars?

5 A. I give him some money to bring me back a twelve pack
6 of beer from Eddie's Minute Mart.

7 Q. And did they do that?

8 A. Yes, sir.

9 Q. And after they dropped it off, did you see him
10 again?

11 A. Not until later.

12 Q. And when you say later, about what time did you see
13 him?

14 A. Roughly around nine thirty.

15 Q. And who did you see?

16 A. Tony.

17 Q. Is he in the courtroom today?

18 A. Yes, sir, sitting right there.

19 Q. In kind of a light shirt?

20 A. Shirt and glasses on.

21 Q. And when you saw him this second time, was he by
22 himself?

23 A. He's the only one that come in my house.

24 Q. Let me step back to the first time you saw him
25 earlier in the day when he got the twenty dollars. When

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

118

1 he came in, did he ask for anything else, or was he
2 getting anything else?

3 A. He said he wanted to go in there and get a couple of
4 shirts and stuff, and he went in there and got some
5 shirts and come back and laid them across the chair on
6 the edge of my eating table.

7 Q. And where is that located in your house?

8 A. Most the time where I sit at.

9 Q. And where is that?

10 A. In the back part of the house.

11 Q. In the kitchen area?

12 A. Yes, sir.

13 Q. And when he came back the second time, you said he
14 was the only person that came inside; is that right?

15 A. Yes, sir.

16 Q. And what, if anything, did he say to you this next
17 time?

18 MR. POTTER: Objection, Your Honor.

19 THE COURT: What's the objection?

20 MR. POTTER: Judge, under -- again, it's an
21 objection under 802, 801(C) in regards to hearsay. Your
22 Honor, there's not been a determination whether he is
23 available or unavailable. So I don't think this falls
24 under any of the exceptions.

25 THE COURT: Okay. Ladies and gentlemen, I'm

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

119

1 going to send you out one last -- or one more time. Not
2 the last time, I promise you. Please don't discuss the
3 case.

4 (WHEREUPON the jury panel exited the courtroom at
5 approximately 11:39 a.m., and the following
6 proceedings were had outside the presence of the
7 jury.)

8 THE COURT: Yes, sir?

9 MR. CAMPBELL: Your Honor, obviously the
10 declarant in this case, being the Defendant, is available
11 as he is sitting here in the courtroom today. The victim
12 can testify to what the declarant, being Mr. James
13 Anthony Tucker, spoke to him. And it's clearly allowable
14 and admissible under the hearsay rules.

15 MR. POTTER: I'd like to know what that rule
16 is. In regards to 803, hearsay exception, availability
17 of declarant unavailable. There's nothing in there that
18 indicates a statement against interest or anything of
19 that sort. The statement against interest exception is
20 under 804, declarant unavailable. There has to be a
21 determination that he is unavailable. At that point in
22 time, it would come under 804(B)(3) which is a statement
23 against interest.

24 THE COURT: What is the answer going to be?
25 It's hard for me -- what -- your question is what?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

120

1 MR. CAMPBELL: It's his question. He doesn't
2 want him to say what the Defendant told him. That's
3 basically what we're getting into.

4 MR. POTTER: It's my -- I'm anticipating what
5 the question is going to elicit is he wanted money for
6 dope, and he attacked me for money for dope.

7 THE COURT: Right. Is that what the answer is
8 going to be?

9 MR. CAMPBELL: Eventually he's going to
10 describe what he said when he came in. That's what we're
11 getting to first. We're setting up what happened, what
12 transpired.

13 THE COURT: All right. Your question was what
14 did he say?

15 And what is the answer going to be?

16 MR. POTTER: (No verbal response)

17 THE COURT: Ask your question again.

18 IN-CAMERA EXAMINATION

19 BY MR. CAMPBELL:

20 Q. When he came in the second time, what was he asking
21 -- did he talk to you? Did you speak to him?

22 A. He said he had lost that twenty dollars that I had
23 give him. He needed the keys to the car to get some CDs
24 out of the car.

25 Q. And then afterwards he came back inside?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

121

1 A. He came back in -- came back in the house, and
2 that's when he hit me from behind with a claw hammer.

3 Q. And after that, did you say anything to him?

4 A. When I whirled around in that chair, he hit me again
5 right there (indicating). And I tried, kept trying to
6 grab that claw hammer. And I asked him what was he
7 hitting me for. He said, I need your money.

8 Q. And then what else did he say?

9 A. He kept hitting me, and I kept trying to block it.

10 Q. And did he eventually get your money?

11 A. Yes, sir, out of my ---

12 Q. And ---

13 A. Out of my left front pocket.

14 Q. And after he got his money, did you ask him why he
15 did this?

16 A. As he was going out the front door, I said, Son, why
17 did you beat me like that for. He said, I -- dope. And
18 out the front door he went.

19 MR. CAMPBELL: And that clearly falls under the
20 hearsay rules. It's admission by a party opponent. I
21 mean, he had direct contact and spoke with him.
22 Otherwise you can't say anything period what anybody
23 said.

24 MR. POTTER: But there has to be a finding that
25 he's unavailable under that exception, and he is not

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

122

1 unavailable at this time.

2 THE COURT: What about state of mind?

3 THE WITNESS: Can I say something, Judge?

4 THE COURT: Sure.

5 THE WITNESS: If I don't know who's hitting me
6 the head with a claw hammer looking them dead in the face
7 ...

8 THE COURT: Yeah. This is just -- I
9 understand. I'll tell you what. Let's take a five-
10 minute break as I need to step out. But I think it's
11 going to come in under an exception. And I -- whether
12 he's available or not. Just look and see. Look at the
13 exceptions. I think state of mind is probably the best,
14 but I'm not a lawyer anymore.

15 I'll be back.

16 (WHEREUPON, court stood at recess for a short
17 break.)

18 THE COURT: Thanks. Have a seat. Anything
19 else on that objection?

20 MR. CAMPBELL: Your Honor, I think it clearly
21 falls under the 803 exception. One is present sense
22 impression, and two is the statement of declarant under
23 803(3) existing state of mind, and it goes to his motive
24 which is why he was doing the robbery and then attacked
25 him.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

123

1 THE COURT: Yep. It comes in under 803, 1, 2,
2 or 3, so I'll allow that in. But your objection is noted
3 for the record.

4 MR. POTTER: Thank you, Judge.

5 THE COURT: Okie doke. You can bring them in.

6 (WHEREUPON the jury entered the courtroom at
7 approximately 11:42 a.m.)

8 THE COURT: All right. Ladies and gentlemen, I
9 told you you would get your exercise.

10 All right. You can continue.

11 DIRECT EXAMINATION

12 CONTINUED BY MR. CAMPBELL:

13 Q. Mr. Tucker, I want to go back and pick up where we
14 left off. When was the second time that Tony came back
15 over to your house?

16 A. Probably about nine thirty that afternoon.

17 Q. And was he by himself when he came in?

18 A. Well, he was the only one that come into my house.

19 Q. And you didn't see anybody else with him?

20 A. No, sir.

21 Q. Now, when he came in, did he speak to you?

22 A. He said he had lost that twenty dollars that he just
23 borrowed, and he needed a little bit more money. And I
24 said, well, I might have five more dollars I can spare.

25 Q. Did you ask him what happened to the twenty dollars?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

124

1 A. He said he lost it.

2 Q. Did you inquire where he lost it?

3 A. No, sir.

4 Q. And after he said he needed five more bucks or you
5 said you'd give him five more bucks, what, if anything,
6 did he say to you?

7 A. He said he needed the key to the little car out back
8 to get some CDs out of it.

9 Q. And what did you do at that point in time?

10 A. I was just sitting there in that chair where I
11 normally sit listening to the police scanner and watching
12 T.V.

13 Q. And did you give him the key to the car?

14 A. Yes, sir.

15 Q. Can you describe this key?

16 A. It was just a little silver key with a yellow tag on
17 it.

18 Q. And what kind of car does this go to?

19 A. A Nissan Maxima.

20 Q. Was that his car?

21 A. Yes, sir.

22 Q. And did he -- did you hand that key to him?

23 A. Yes, sir. I had it in my shirt pocket.

24 Q. And what, if anything, did he do with that key at
25 that point in time?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

125

- 1 A. The only thing I know he went out the back door. I
2 never did get up out of the chair.
- 3 Q. You stayed right where you were; is that right?
- 4 A. Sir?
- 5 Q. You stayed right in the kitchen in your chair?
- 6 A. Yes, sir.
- 7 Q. Now, there's been some testimony regarding that
8 there were some beer cans in the kitchen. Did you have
9 any beer? Were you drinking?
- 10 A. I wasn't drinking at the time, no, sir. I probably
11 had dranked (phonic) one or two before then.
- 12 Q. And how long of a period had you drank those, over
13 how many hours?
- 14 A. Normally it takes me twenty or thirty minutes to
15 drink a beer. I don't drink to get drunk. I just get
16 one and sip on it.
- 17 Q. And when he came back that second time,
18 approximately how many beers do you think you had
19 consumed by then?
- 20 A. I don't know. Two or three.
- 21 Q. Were you drunk?
- 22 A. No, sir.
- 23 Q. Did you understand what was going on?
- 24 A. Yes, sir.
- 25 Q. Now, when he was talking to you when he came back in

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

126

1 -- let me -- scratch that. After he went out the door,
2 how long did he stay out there?

3 A. Roughly five minutes.

4 Q. When you say he went out the back, can you please
5 describe for the ladies and gentlemen of the jury what
6 you're talking about when he went out the back door?

7 A. Okay. Say this is my eating table right here
8 (indicating), okay, this little table here. I got a
9 chair something similar to this, but it's got arms on it.
10 That's usually where I sit. And I got a doorway that
11 goes into my long living room. And I sit there at the
12 table. I can sit and watch my T.V. And there's a police
13 scanner sits over here on a little old stand, and I kind
14 of listen to the police scanner plus the T.V. All right.
15 When he went out the back door, when he come back in, he
16 hit me from behind.

17 Q. Okay. We're going to get to that. When you say he
18 went out the back door, is there a porch out there?

19 A. Yes, sir.

20 Q. And are you currently working on this porch?

21 A. Yes, sir.

22 Q. Or at that time?

23 A. Putting windows in it.

24 Q. So it was under some sort of state of construction?

25 A. Well, the porch is already, say, built up so high,

1 and it's got like two-by-fours. And I'm putting windows

2 up there where them two-by-fours are at.

3 Q. You're enclosing it in?

4 A. Yes, sir.

5 Q. And that's the way to get to your back yard?

6 A. Yes, sir.

7 Q. And that's the way he went to -- when he left you to
8 go to the car?

9 A. That's the only way he could get out the back door.

10 Q. And in your house, the back yard -- does it have a
11 fence or anything around it?

12 A. Yes, sir.

13 Q. Now, when he came back in, did you hear him come
14 back in the second time?

15 A. No, sir.

16 Q. And what is the next thing that you recall?

17 A. I got cracked in the back of the head with a hammer.

18 Q. And were you facing the back door ---

19 A. Yes, sir.

20 Q. --- or you had your back to the back door?

21 A. Just like this right here (indicating).

22 Q. And you just tell the ladies and gentlemen of the
23 jury at that point in time what happened and how the
24 events unfolded?

25 A. When he first hit me, I more or less swung around in

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

128

1 that chair. And there's a long counter over here where
2 my sink and all of that in my kitchen and my electric
3 stove. And I wound up kindly between the electric stove
4 and the counter. And he kept hitting me. And I kept
5 trying to block the hammer and grab it with this hand.

6 Q. And was he grabbing at any part of your body?

7 A. Well, he kindly had his hand on one of my shoulders
8 as he was hitting me so I couldn't get stood up.

9 Q. And did he touch or hold your hands down in any
10 shape, way or form?

11 A. He finally got a hold of this hand after I got a
12 hold of that hammer.

13 Q. And where exactly were you hit?

14 A. I was hit one time right there (indicating), one
15 time right there (indicating), once right there
16 (indicating), one time right there (indicating), and tore
17 that arm up and that finger up.

18 Q. And was he saying anything to you at this point in
19 time?

20 A. Every time he would hit me, he'd holler, I need your
21 money.

22 Q. Did he say why?

23 A. As he went out the front door ---

24 MR. POTTER: Judge, for the record, the same
25 objection.

1 THE COURT: Same objection? All right. You're
2 -- overruled.

3 Go ahead.

4 Q. At this point in time, did you ask him to let you go
5 and leave you alone?

6 A. He kept hollering he wanted my money. I said, well,
7 it's in my front left pocket. I said, turn my hand a
8 loose and let me up so I can get it. No. You'll cut me.

9 Q. Why did he make -- in your opinion, why would that
10 statement be made to you about cutting him?

11 A. Because everybody says I got a bad reputation of
12 cutting people.

13 Q. Did you have a knife in your pocket?

14 A. At the time, yes, sir.

15 Q. And he wouldn't let you up; is that right?

16 A. That's right.

17 Q. And would he let you get to your pocket?

18 A. He got the money out of my own pocket his self.

19 Q. He reached into your pocket and took the money out?

20 A. Yes, sir.

21 Q. And approximately how much money was in there?

22 A. There was four one-hundred-dollar bills and some
23 twenties and tens.

24 Q. And at this point, did you talk to him anymore?

25 A. After he went out the front door, that's the last

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

130

1 time I seen him.

2 Q. Did you say anything to him as he was ---

3 A. I asked him why ---

4 Q. --- leaving?

5 A. --- he done that to me. And the last word I heard
6 him say was dope.

7 MR. POTTER: Objection, Your Honor.

8 THE COURT: Same objection, overruled.

9 Go ahead.

10 Q. He objected to what you were saying. Can you please
11 repeat what you said?

12 A. The last word I said to him, I asked him why did he
13 do it. And the last word he said back, for dope. And I
14 haven't seen him no more till yesterday.

15 Q. Now, after your attack, what did you do next?

16 A. After I finally got my eyes wiped out so I could see
17 the numbers on my telephone, I called my brother-in-law,
18 Dewey Little.

19 Q. And did he come over to your house?

20 A. Yes, sir.

21 Q. And he took you to the hospital?

22 A. Took me to the Anderson emergency room.

23 Q. And how long were you in the hospital?

24 A. Just about all night long. I think it was around
25 six the next morning was when we finally got out of

1 there.

2 Q. And what did they do to you? How did they treat
3 you?

4 A. They put twenty-six stitches in my head and six
5 staples.

6 Q. And you were released basically the next morning?

7 A. Yes, sir.

8 Q. And did you go to -- did you go back to your house
9 to live?

10 A. No, sir. I went to Mr. Dewey Little's because I was
11 scared he would come back and finish the job.

12 Q. Are you still scared of him today?

13 A. Yes, sir.

14 Q. And since then, what -- has it changed your
15 lifestyle?

16 A. Yes, sir, it does.

17 Q. What type of precautions do you do now?

18 MR. POTTER: Objection, Your Honor. I don't
19 think this is necessarily relevant to the issues at hand.

20 THE COURT: I'll give you a little leeway.
21 Overruled.

22 Q. Continue.

23 A. I tote a pistol in the back of my pants when I'm in
24 my back yard. And when I go to bed at night, I lock my
25 door with two locks and kick a board under the door

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

132

1 handle.

2 Q. And before this, did you lock your doors?

3 A. No, sir, not in the daytime.

4 Q. Now, the weapon he attacked you with, the hammer,
5 was that your own hammer?

6 A. Yes, sir.

7 Q. Can you describe to the ladies and gentlemen what
8 type of hammer, what we're talking about here?

9 A. It's fiberglass, red-handled fiberglass hammer.

10 Q. Is it a typical claw-style hammer?

11 A. Yes, sir.

12 Q. And where was that hammer located?

13 A. Hanging on my back porch out there by the hooks,
14 hanging down.

15 Q. And after your attack, was that hammer -- did you
16 ever go back there to look and see if the hammer was
17 still there?

18 A. When he left, the hammer went with him.

19 Q. And did you see him leave with the hammer?

20 A. Yes, sir.

21 Q. And a hammer is obviously made of steel; is that
22 right?

23 A. The head of it was and the handle was fiberglass.

24 Q. I want to show you ...

25 MR. POTTER: Judge, may it please the Court.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

133

1 THE COURT: Yes, sir.

2 MR. POTTER: Can Mr. Campbell and I approach
3 real quick?

4 THE COURT: Sure.

5 (WHEREUPON, a bench conference was held off the
6 record.)

7 MR. POTTER: Thank you, Judge.

8 MR. CAMPBELL: Your Honor, may I have the
9 witness come off the stand?

10 THE COURT: Yes, sir.

11 THE WITNESS: Go sit down?

12 MR. CAMPBELL: No. Just stand right here.

13 (WHEREUPON, the witness stepped down from the
14 witness stand.)

15 Q. And you've got to talk. And I'm going to show you
16 some photographs. I want you to describe and identify
17 what they are, okay? And the jury also has a T.V. where
18 they can watch.

19 Now, is this showing -- what is this depicting of?

20 A. That's my mailbox.

21 Q. And that's your address there, ?

22 A. Yeah.

23 Q. That's State's Exhibit Number 1 -- or excuse me --
24 number 3. I want to show you what's been marked for
25 identification as States Exhibit Number 4. And please

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

134

1 describe what that is, sir.

2 A. That's my house.

3 Q. That's the front of your house?

4 A. Yes, sir.

5 Q. Showing the porch and the front door?

6 A. Yes, sir.

7 Q. And is that what you were talking about, the fence
8 right here?

9 A. Yes, sir. There's also a gate if you look close.

10 The whole yard is fenced in. There's a drive-through
11 gate right there.

12 Q. State's Exhibit Number 4. I'm showing you what's
13 been marked as State's Exhibit Number 5. Can you please
14 show the ladies and the gentlemen what we're talking
15 about here, what this is depicting?

16 A. That's the front section of my house.

17 Q. This right here, what is this area of the house?

18 A. That's the living room.

19 Q. And when you go through this door, what is that
20 leading into?

21 A. That's my kitchen.

22 Q. That's State's Exhibit Number 5. I'm going to show
23 you what's been marked for identification as State's
24 Exhibit Number 6. Please tell the ladies and gentlemen
25 of the jury what this is. Here, show them right here so

1 it will show up on the ...

2 A. That's that chair I was sitting in. That's where I
3 winded up at. My back door is over this way.

4 Q. And I am showing right here on the front -- what
5 exactly is that?

6 A. That's them clothes he laid there.

7 Q. Is that from the first time he came to see you?

8 A. Yes, sir.

9 Q. And that's on State's Exhibit Number 6. State's
10 Exhibit Number 7, what's this showing?

11 A. That's that chair I was sitting in and some of the
12 blood in the floor and on that cushion and some on that
13 counter top right there.

14 Q. Is this cushion what you keep in the chair?

15 A. At the time, yes, sir.

16 Q. And State is showing -- State's Exhibit Number 8.

17 And is this just another view of where the chair is
18 located?

19 A. Yes, sir.

20 Q. And is this your stove right here?

21 A. That's my stove.

22 Q. And is that blood on the floor?

23 A. Yes, sir.

24 Q. Now, you went to the hospital. And did you see --

25 when you were at the hospital, did officers come and talk

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

136

1 to you while you were at the hospital?

2 A. Yes, sir.

3 Q. And in fact, they took photographs of you, didn't
4 they?

5 A. Yes, sir.

6 Q. And I'm going to show you what has been marked for
7 identification as State's Exhibit Number 9. Can you
8 please tell the ladies and gentlemen of the jury -- can
9 you describe what this is depicting here?

10 THE COURT: Yeah. Hold on just a second.

11 MR. POTTER: Judge, we do have an objection to
12 State's Exhibit Number 9 under 403.

13 THE COURT: Okay. Overruled.

14 MR. POTTER: Thank you, Judge.

15 Q. Can you please tell ---

16 A. That's where I kept trying to block that claw hammer
17 with my arm.

18 Q. Is that your right arm?

19 A. My right arm.

20 Q. And do you still carry a scar today?

21 A. Right there (indicating).

22 Q. State's Exhibit Number 10, what is that depicting
23 of?

24 MR. POTTER: Judge, 403 objection on this one
25 as well.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

137

1 THE COURT: Overruled.

2 Q. What is that showing?

3 A. My finger.

4 Q. That's State's Exhibit Number 10. Also showing you
5 State's Exhibit Number 11. Is that just another view of
6 your right arm?

7 MR. POTTER: Your Honor, 403 objection.

8 THE COURT: Overruled.

9 MR. CAMPBELL: Your Honor, at this time, may I
10 also have the witness show to the jury the scars that are
11 remaining on him?

12 THE COURT: I'm sure -- any objection?

13 MR. POTTER: No, Your Honor.

14 THE COURT: That would be fine.

15 Q. Mr. Tucker, if you would please just stand here in
16 front of the jury and just hold up your arm and show them
17 the scar that's still remaining..

18 A. Right there (indicating).

19 Q. You have to show it where they all can see it.

20 A. That finger.

21 Q. Which finger? Can you identify -- point to your
22 finger.

23 A. That one right there (indicating).

24 MR. CAMPBELL: Let the record reflect that he's
25 identifying his right index finger.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

138

1 Q. All right. If you'll please come stand over here
2 again. I'm going to show you what's been marked as
3 State's Exhibit Number 12.

4 MR. POTTER: Your Honor, 403 objection.

5 THE COURT: Overruled.

6 Q. What does this photograph depicting of? First of
7 all, is that you in the photograph?

8 A. Yes, sir.

9 Q. And what is this photograph depicting?

10 A. That place right there above my eye.

11 Q. Are you talking about right here? Is that where one
12 of the blows occurred?

13 A. Over my left eye.

14 Q. And in number 13?

15 MR. POTTER: Same 403 objection, Judge.

16 THE COURT: Overruled.

17 Q. It's a closeup showing the back of your head and the
18 front -- left side of your head?

19 A. It's more or less showing that right there and a
20 little bit right there, right there on that side.

21 Q. Where else were you hit on this side of the face?
22 Can you just point to it with a pencil -- with a pen?

23 A. Kindly rightly in here above my ear, right above my
24 right eye and dead center of my head right there.

25 Q. And how about in the back? Does this show anything?

1 A. It would be on the opposite side.

2 Q. Okay. For identification State's Exhibit 14, is
3 that a -- what is that photograph depicting of?

4 MR. POTTER: 403, Your Honor ---

5 THE COURT: Overruled.

6 MR. POTTER: --- objection.

7 A. Right there in the center of my head.

8 Q. Is this where you received a blow from?

9 A. Yes, sir.

10 Q. Number 15.

11 MR. POTTER: Same 403 objection, Judge, to this
12 exhibit.

13 THE COURT: Overruled.

14 Q. Is this showing a different view?

15 A. That's on my left eye about the center of my head.

16 Q. I'm going to show you what's been marked as State's
17 Exhibit 16. It's showing the right side of your face.

18 Can you show where you were hit in this photograph?

19 A. I wasn't hit right there.

20 MR. POTTER: 403 objection, Your Honor.

21 THE COURT: Overruled.

22 A. I think that's where I more or less bumped my head
23 when I was holding to that counter. That place was
24 always there. I don't know what it is.

25 Q. And then the same thing on State's Exhibit Number

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

140

1 17.

2 MR. POTTER: Same 403 objection, Judge.

3 THE COURT: Overruled.

4 A. Right along over my left ear.

5 Q. Now, I am going to show you a series of photographs.

6 Now, you got out of the hospital. After you were

7 released from the hospital, did the officers come back

8 and take more photographs of you after your wounds were

9 cleaned up?

10 A. I think they did, and they come down at Mr. Little's

11 and took more pictures.

12 Q. I'm going to show you what's been marked as State's

13 Exhibit Number 18. Is this you ---

14 A. Yes, sir, that's me.

15 Q. --- a couple of days after the attack?

16 A. That's me down at Dewey's house.

17 Q. This is what -- showing like what you looked like

18 after they cleaned up the wounds at the hospital? It's

19 number 18. I'm going to show you State's Exhibit Number

20 19. What is that photograph depicting?

21 A. That's about two days after it happened.

22 Q. And is that showing your eye?

23 A. Showing how I'm turning black.

24 Q. State's Exhibit 20, what is that depicting of?

25 A. That's over my left eye and the top of my head and

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

141

1 ---

2 MR. POTTER: Same 403 objection.

3 THE COURT: Overruled.

4 Q. And are these -- what is this, stitches right here?

5 A. The stitching.

6 Q. How many stitches did you receive on the front of
7 your head?

8 A. There was twenty-six stitches up here and six
9 staples in that one right there.

10 Q. And were you also hit in this area right here?

11 A. Yes, sir, on that left ear.

12 Q. Exhibit Number 21.

13 MR. POTTER: Same 403 objection, Judge.

14 THE COURT: Okay. Overruled.

15 Q. Is that depicting the front of your -- the injuries
16 you received on the front of your forehead?

17 A. Yes, sir.

18 Q. The front of your head? Number 22.

19 MR. POTTER: 403, Your Honor, objection.

20 THE COURT: Overruled.

21 Q. What is that showing?

22 A. That's over the top of my left ear.

23 Q. And then 23?

24 A. That's the very back of my head.

25 MR. POTTER: 403 objection, Judge.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

142

1 THE COURT: Overruled.

2 Q. And is it showing anything in there?

3 A. You can see them little shiny staples.

4 Q. And how many staples did you receive in the back of
5 your head?

6 A. Six.

7 Q. Number 24, State's Exhibit Number 24, is that
8 depicting the same thing?

9 MR. POTTER: 403 objection, Your Honor.

10 THE COURT: Overruled.

11 A. Yes, sir.

12 Q. What is State's Exhibit Number 25 showing?

13 A. Where he knocked a hunk out of one of my thumbs.

14 MR. POTTER: Judge, 403 objection to that.

15 THE COURT: All right. Overruled.

16 Q. And number 26, what is that depicting? State's
17 Exhibit Number 26.

18 A. That's where he had me by my arm.

19 Q. Is that showing some bruising right there?

20 A. Right there.

21 MR. POTTER: Same 403 objection, Judge.

22 THE COURT: All right. Overruled.

23 Q. And also State's Exhibit Number 27, what is that
24 showing?

25 A. My arm skint up.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

143

1 MR. POTTER: Same 403 objection, Judge.

2 THE COURT: Overruled.

3 Q. And this is after the doctors cleaned it up; is that
4 right?

5 A. Yeah.

6 Q. I'm going to show you State's Exhibit Number 31.

7 A. That's blood in my kitchen floor.

8 Q. Is that where your chair was located?

9 A. That's where I winded up at.

10 Q. When you said you bumped your head, is this the
11 counter you're talking about?

12 A. Yeah.

13 Q. I'm going to show you what State's Exhibit 32 is.

14 A. That's ---

15 Q. Can you identify what that is?

16 A. That's part of my back porch. Right along there is
17 where that claw hammer was hanging.

18 Q. You just had it looped over this two-by-four?

19 A. That hook, I had it hanging there.

20 Q. And State's Exhibit 33, what is that showing?

21 A. That's where them clothes is draped over my table
22 and chair.

23 Q. And these were whose clothes?

24 A. That's James Anthony Tucker's clothes.

25 Q. These are the clothes he put there when he came the

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

144

1 first time?

2 A. That's where he put them.

3 Q. Please take the stand -- take a seat.

4 (WHEREUPON, the witness resumed the witness stand.)

5 MR. CAMPBELL: Your Honor, at this point, I
6 want to move into evidence -- and I'll just read the
7 numbers for the record -- State's Exhibit Number 3, 4, 5,
8 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20,
9 21, 22, 23, 24, 25, 26, 27, 31, 32, and 33 into evidence
10 at this point.

11 THE COURT: All objected to under 403?

12 MR. POTTER: Judge, under 403 of the South
13 Carolina Rules of Evidence 9 through 27. We're also
14 making an objection under the due process clauses of the
15 South Carolina Constitution as well as the United States
16 Constitution.

17 THE COURT: All right. Overruled, but you're
18 protected for the record.

19 (WHEREUPON, State's Exhibits Number 3 through 27 and
20 31 through 33 were admitted into evidence.)

21 THE COURT: All right.

22 MR. CAMPBELL: Court's indulgence, please, for
23 just a second.

24 (Pause)

25 Q. Now, Mr. Tucker, just a couple more questions. Did

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Direct Examination by Mr. Campbell

145

1 you voluntarily give your money that you had in your
2 pocket to Tony, the Defendant?

3 A. Not that almost five hundred dollars, no, sir.

4 Q. He by force took it from you?

5 MR. POTTER: Objection, Your Honor. He's
6 leading the witness.

7 THE COURT: Yeah. Don't lead.

8 Q. Now, do you recall what he was wearing that day when
9 he came in?

10 A. No, sir. I couldn't tell you what kind of clothes
11 he had on.

12 Q. At any point prior to the attack to your knowledge
13 had ever -- any of your blood ever got on any of his
14 clothing?

15 A. Now, that I don't know.

16 Q. Would there be any reason to?

17 A. The way ---

18 MR. POTTER: Objection, Your Honor. It's been
19 asked and answered.

20 THE COURT: Hold on. Hold on. What was the
21 objection?

22 MR. POTTER: It's been asked and answered
23 already. He says he doesn't know.

24 THE COURT: Overruled. It's answered.

25 Q. Mr. Tucker, I have no further questions for you at

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Cross Examination by Mr. Potter

146

1 this time. If you'll please answer any questions Mr.

2 Potter might have.

3 MR. POTTER: May it please the Court.

4 THE COURT: Yes, sir.

5 CROSS EXAMINATION

6 BY MR.. POTTER:

7 Q. Mr. Tucker, let's talk a little bit about your

8 house. We saw a photograph of it.

9 A. Yeah.

10 Q. And you have a living room that -- it's kind of like

11 a shotgun. Is that a fair statement to say? Living room

12 straight to the kitchen, correct?

13 A. Yes, sir.

14 Q. Okay. And there's an opening from the kitchen to

15 the living room, and then there's a door from where

16 you're sitting at the kitchen table to your left; is that

17 correct?

18 A. On the opposite side of my refrigerator, yeah.

19 Q. And your refrigerator would be to your right?

20 A. Well, if you're coming from in front of my house ---

21 Q. Let me -- my question confused you. I'm sorry.

22 You're sitting in your chair?

23 A. In my kitchen?

24 Q. Yes, sir.

25 A. It would be to my left.

- 1 Q. Okay. The open door outside would be to your left?
- 2 A. To your left.
- 3 Q. Behind you would be the stove?
- 4 A. Almost directly behind me would be the electric
- 5 stove.
- 6 Q. What type of neighborhood do you live in?
- 7 A. I got some good neighbors.
- 8 Q. Okay. Is there a lot of street traffic, a lot of
- 9 people walking up and down the sidewalk in front of the
- 10 house?
- 11 A. There ain't no sidewalks.
- 12 Q. Okay. Anybody walking up and down the street?
- 13 A. Pretty much ---
- 14 Q. Transient traffic?
- 15 A. --- because there's a walk track right -- just about
- 16 the distance from here to outside of that door yonder,
- 17 there's a walk track. And people are all the time
- 18 walking on it, up there behind the church.
- 19 Q. So there's -- but are other people walking on the
- 20 street, up and down the street going some places where
- 21 you live on .?
- 22 A. Yeah.
- 23 Q. Okay. And what I mean by walking, pedestrian
- 24 people, not cars, walking on their feet.
- 25 A. They ride bicycles, walk.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Cross Examination by Mr. Potter

148

1 Q. Okay. Lots of people ride by?

2 A. I ride a bike myself.

3 Q. Okay. Have you had anybody make any threats toward
4 you before this incident occurred?

5 A. No, sir. But after this happened, I had some prank
6 phone calls telling me to drop the charges and this and
7 that and the other.

8 Q. Okay. And the Defendant was in jail; isn't that
9 correct?

10 A. As far as I know.

11 Q. Mr. Tucker was in jail? Now, you didn't have any
12 calls from somebody making threats to you before this
13 incident happened?

14 A. No, sir.

15 Q. When Tony and Jeannie first came to your house and
16 you loaned them the twenty dollars, you testified that he
17 also wanted -- Tony wanted to get some clothes; is that
18 correct?

19 A. Yes, sir.

20 Q. A shirt and a couple pair of socks, and that was the
21 bag that was in the chair by the table; is that correct?

22 A. Yes, sir.

23 Q. Now -- just a second. When Jeannie and Tony came
24 by, you told Jeannie that you hadn't cashed your check;
25 isn't that true?

1 A. One of them I couldn't cash it.

2 Q. So you told Jeannie you hadn't cashed your check?

3 A. One of them. I get two different checks.

4 Q. So if Jeannie says you told her that you didn't cash
5 your check, that's not right?

6 A. I said I couldn't cash one of them. I had already
7 cashed one.

8 Q. Okay. You told them specifically you had cashed the
9 other one?

10 A. Probably.

11 Q. But we know that you did tell them you didn't cash
12 one check, correct?

13 A. I get one check that third Wednesday of the month.
14 All right?

15 Q. I understand. Let me ---

16 MR. CAMPBELL: Your Honor ---

17 A. I understand what you're saying.

18 THE COURT: Hold on, one at a time.

19 What's your objection?

20 MR. POTTER: I was just going to try and
21 restate the question. That's all.

22 THE COURT: All right.

23 What's your objection?

24 MR. CAMPBELL: He needs to let him get an
25 opportunity to finish his answer.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
James Marshall Tucker - Cross Examination by Mr. Potter

150

1 MR. POTTER: My interpretation is he doesn't
2 understand my question.

3 THE COURT: Re-ask the question.

4 MR. POTTER: So I was going to re-ask it.

5 THE COURT: Re-ask the question.

6 Q. I understand that you get two checks. Now, the
7 night that Jeannie and Tony came to see you and you
8 loaned them twenty dollars, okay, you don't remember --
9 if I remember your testimony, you don't remember if you
10 told them that you cashed one check, but you did not tell
11 them you did not cash the other; is that correct?

12 A. Yeah.

13 Q. Okay. Jeannie and Tony got you some beers?

14 A. Yeah.

15 Q. And they brought them back and gave it to you,
16 correct?

17 A. Yeah.

18 Q. And as you told the Solicitor, you drank some beers
19 that night; is that correct?

20 A. Yeah.

21 Q. Okay. Thank you.

22 Now, when you were at the hospital, a couple of
23 deputies came and saw you, correct?

24 A. Yes, sir.

25 Q. Okay. These two deputies here, if you remember?

1 A. I think that's them.

2 Q. I think they are. Do you remember telling Deputy
3 Pridemore -- do you remember telling one of the deputies
4 that the money was taken out of your back pocket wallet?
5 Do you remember telling them that?

6 A. No.

7 Q. Okay. If the deputy's report indicates that's what
8 you told him, does that refresh your recollection any?

9 A. I don't tote money in my wallet; I tote my money in
10 my left front pocket.

11 Q. Okay.

12 MR. POTTER: Nothing further, Judge.

13 THE COURT: Any redirect?

14 MR. CAMPBELL: I have no further questions,
15 Your Honor.

16 THE COURT: Thank you, sir. You can step down.
17 I appreciate it.

18 MR. CAMPBELL: May we approach?

19 THE COURT: Y'all approach a minute. Let me
20 figure out timing here.

21 (WHEREUPON, a bench conference was held off the
22 record.)

23 THE COURT: All right. You can call your next
24 witness.

25 MR. CAMPBELL: Your Honor, the State calls

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Christopher Lee Pridemore - Direct Examination by Mr. Campbell

152

1 Detective -- excuse me, Officer -- Deputy ---

2 THE WITNESS: Mr. Pridemore?

3 MR. CAMPBELL: I'll get it out eventually.

4 MADAM CLERK: Place your left hand on the Bible
5 and raise your right.

6 (WHEREUPON, the witness was duly sworn.)

7 MADAM CLERK: Go up and have a seat in the
8 witness chair. If you'll please state your full name and
9 spell your last name for the record.

10 THE WITNESS: Christopher Lee Pridemore. Last
11 name Pridemore, P-R-I-D-E-M-O-R-E.

12 CHRISTOPHER LEE PRIDEMORE,

13 Being first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. CAMPBELL:

16 Q. Deputy Pridemore, you're employed by the Anderson
17 County Sheriff's Office?

18 A. Yes, sir, I am.

19 Q. And how long have you been employed with law
20 enforcement?

21 A. Three years.

22 Q. Has it all been with the County?

23 A. Yes, sir.

24 Q. And do you hold a rank or anything at this point in
25 time?

1 A. Just deputy.

2 Q. And you were employed on February the 9th, 2009; is
3 that correct?

4 A. That is correct.

5 Q. On that night -- on that day, do you recall -- what
6 -- were you working night shift, day shift?

7 A. Yes, sir, we were on night shift.

8 Q. And you and Deputy Holbrooks were on the same shift?

9 A. Yes, sir, we are.

10 Q. Now, on that night did you have an occasion to go to
11 the Anderson Area Medical Center?

12 A. Yes, sir, I was. I was dispatched there.

13 Q. You say you were dispatched. Who's that from?

14 A. The 9-1-1, when they take the call, they're
15 dispatched out to us.

16 Q. And what was the reason or why were you going to the
17 hospital?

18 A. I was dispatched to the Anderson Area Medical Center
19 in regards to an assault.

20 Q. And when you arrived, did you speak or talk to
21 anyone there?

22 A. Yes, sir.

23 Q. And who did you talk to?

24 A. I spoke with James Marshall Tucker.

25 Q. Is he the individual who just testified before you?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Christopher Lee Pridemore - Direct Examination by Mr. Campbell

154

1 A. Yes, sir.

2 Q. And what did you observe? How was he when you
3 talked to him?

4 A. I observed Mr. Tucker to have several lacerations
5 and marks upon his head and arms. At that time he seemed
6 like he was not under the influence, appeared to be not
7 under the influence of medication. They had just started
8 working with him and patching up the spots that was on
9 his head and such.

10 Q. And when you spoke to him, did you have a one-on-one
11 conversation with him?

12 A. Yes, sir, I did.

13 Q. And as a result of the injuries that you observed,
14 did you start conducting an investigation into what had
15 happened?

16 A. Yes, sir.

17 Q. Now, when you spoke to him, how did he appear to
18 you? Did he appear to under the influence of any type of
19 medication or pain killers or anything?

20 A. No, sir, he did not.

21 Q. Now, in your career of three years in law
22 enforcement, have you dealt with people who were under
23 the influence of alcohol?

24 A. Yes, sir, I have.

25 Q. And did he appear to be under the influence of any

1 type of alcoholic beverage?

2 MR. POTTER: Objection.

3 A. No, sir, he did not.

4 THE COURT: What's the objection?

5 MR. POTTER: Judge, in regards to him rendering
6 an opinion, I don't think there's been any foundation
7 that he can render an opinion in regards to this.

8 THE COURT: Yeah, no opinion. You can ask him
9 what he observed though.

10 Q. Did you observe him to be under the influence of any
11 alcohol?

12 A. No, I did not.

13 Q. And when you spoke to him, how was his speech?

14 A. His speech was clear.

15 Q. And did he tell you who in fact attacked him?

16 A. Yes, sir, he did.

17 Q. Okay. And who did he indicate?

18 MR. POTTER: Objection, Your Honor, under 802
19 as well as 403.

20 THE COURT: All right. Overruled.

21 Q. And who did he indicate to you attacked him?

22 A. He stated that his son James Anthony Tucker had
23 assaulted him.

24 Q. Okay. And did he mention anybody else was involved
25 in this attack?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Christopher Lee Pridemore - Direct Examination by Mr. Campbell

156

1 A. No, sir.

2 Q. Now, at this point in time, what, if anything, did
3 you do next regarding -- first of all, did he tell you
4 what type of weapon he was attacked with?

5 MR. POTTER: Same objection, Your Honor ---

6 THE COURT: Sure.

7 MR. POTTER: --- under 403, 802 as well as the
8 Fifth -- U.S. and South Carolina Constitution.

9 THE COURT: Okay. Overruled.

10 Go ahead.

11 A. Mr. Marshall Tucker had informed me that his son
12 James Anthony had indeed assaulted him with a hammer.

13 Q. And did he also state to you the reason why?

14 A. He stated that ---

15 MR. POTTER: Same objection, Your Honor, under
16 403 as well as 802 and the U.S. Constitution as well as
17 the South Carolina Constitution.

18 THE COURT: All right. Overruled.

19 Q. Continue.

20 A. He stated that he had assaulted him because he
21 wanted his money.

22 Q. Now, up to this point -- of course, you're
23 definitely investigating an assault and a robbery. What,
24 if anything, did you do next?

25 A. We notified -- I notified my supervisor. I gave him

1 a heads-up of exactly what I had at that time. I had
2 also spoken to Mr. Little who was there as well.

3 Q. Dewey Little that testified earlier?

4 A. Yes, sir. Yes, sir. He had advised me of a
5 possible location of James Anthony at that time.

6 Q. And what was that location?

7 A. That was -- I believe it to be

8 Q. And that's here in Anderson County?

9 A. Yes, sir, it is.

10 Q. And at that point in time, did y'all -- did you and
11 Deputy Holbrooks -- did y'all go to that location, or did
12 you go back to the location?

13 A. No, sir. At that point we went back to the incident
14 location which is . We went back to that
15 location to clear the residence for forensics
16 investigators to come in and photograph.

17 Q. At this point, you've already notified your
18 supervisors, and they were conducting the investigation?

19 A. Yes, sir.

20 Q. And what was the reason why you went through and
21 cleared the area -- cleared the house?

22 A. For one -- there's two reasons. One, you don't want
23 to have someone go into an area that might have another
24 body or another suspect, another hostile individual. You
25 go ahead and clear it to make sure that it is clear and

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Christopher Lee Pridemore - Direct Examination by Mr. Campbell

159

1 regarding this investigation?

2 A. It wasn't long after that, myself and Deputy

3 Holbrooks ended up on -- I believe it's

4 , . Deputy Holbrooks had been by the residence

5 once looking for the truck that the Defendant was

6 supposedly driving.

7 Q. And eventually did y'all go up to the residence?

8 A. Yes, sir, we did. After sitting there for a little

9 while waiting for him to come out, we eventually went up

10 to the residence and made contact at the residence.

11 Q. And who did you make contact with while you were

12 there?

13 A. Well, while we were there we made contact with James

14 Anthony Tucker. We also made contact with Jeannie

15 Durham.

16 Q. And through your investigation, were you able to

17 determine who she was?

18 A. She's the girlfriend of Mr. Tucker, James Anthony

19 Tucker.

20 Q. Now, did you have an opportunity while you were

21 there to speak to Mr. James Anthony Tucker?

22 A. Yes, sir.

23 Q. Now, at this point was he under arrest or was he in

24 custody?

25 A. No, sir, he was not.

1 Q. You didn't have him handcuffed or anything like
2 that?

3 A. No, sir, we did not.

4 Q. And initially what was the purpose of why you wanted
5 to talk to him?

6 A. To get information and to see if he would give us an
7 idea of his statement of what had transpired that night.

8 Q. Now, did you speak to him?

9 A. Yes, I did.

10 Q. And when you spoke to him, how did he appear to you
11 in his demeanor, his speech?

12 A. He seemed to be nervous. Not so much that something
13 had happened to my dad, but it was the automatic that I
14 didn't do it.

15 Q. And did he say that to you, or that's what you felt?

16 A. No, sir. That's my impression.

17 Q. Your impression.

18 MR. POTTER: Judge, I'm going to move to strike
19 that last answer. I don't think that falls within the
20 rules of evidence. I think he's trying to render an
21 opinion in regards to my client's state of mind. I don't
22 think he's qualified to do so. I'd ask the jury be
23 instructed to disregard that.

24 THE COURT: Yeah, I think he can testify only
25 as to what he observed, not impressions. I won't strike,

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Christopher Lee Pridemore - Direct Examination by Mr. Campbell

161

- 1 but just maintain that type questioning.
- 2 Q. Now, when you were speaking to him, how close did
- 3 you get to him?
- 4 A. I was within an arm's reach.
- 5 Q. So if I walk up to you when you were speaking to
- 6 him, tell me where to stop.
- 7 (WHEREUPON, Mr. Campbell walked toward the witness.)
- 8 A. That's good.
- 9 Q. Okay. You talked to him from about the distance
- 10 from me to you, an arm's distance?
- 11 A. That's right.
- 12 Q. And you were able to accurately observe his features
- 13 and how he was acting and how his appearance was?
- 14 A. Yes, sir.
- 15 Q. Would that be fair to say?
- 16 A. Yes, sir.
- 17 Q. And did he appear -- when he was speaking to you,
- 18 was he speaking clearly?
- 19 A. Yes, sir.
- 20 Q. And did he -- and in your opinion was he under the
- 21 influence of any type of alcohol or drugs that affected
- 22 his ability to communicate with you?
- 23 A. No, sir.
- 24 Q. And if so, would you have noted that?
- 25 A. Yes, sir.

1 Q. So was there anything based on your observation that
2 would prohibit him from communicating with you and
3 telling you what had happened?

4 A. No.

5 Q. And did he actually tell you what happened or give
6 you a little bit of his version of where he had been that
7 day?

8 MR. POTTER: Objection to the version of his
9 day.

10 THE COURT: Yeah. Not a -- he can't answer a
11 version. He can tell you what he said.

12 Q. What did he tell you?

13 A. Basically, James Anthony Tucker stated to me that he
14 had been over to his father's residence earlier in the
15 day, him and Ms. Durham, and he did borrow twenty dollars
16 off of his father. He stated that they had come back
17 home and that later he had taken his stepdaughter to a
18 friend's house, picked her up, brought them back
19 whereupon he immediately went to George's to collect the
20 money from a cancer fund jar, and that he had stopped on
21 81 South and got an eighteen-pack of beer and returned
22 home.

23 Q. And that's what he told you regarding where -- his
24 whereabouts of that evening?

25 A. Yes, sir.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Christopher Lee Pridemore - Direct Examination by Mr. Campbell

163

1 Q. Now, based upon what you observed, were you able to
2 -- did you ask him what type of clothing or items he was
3 wearing earlier?

4 A. Yes, sir. Myself and Deputy Holbrooks had inquired
5 about the clothing that he was wearing earlier in the
6 day.

7 Q. Do you recall what he stated or what he ---

8 A. He had stated that he was wearing blue jeans, a
9 white shirt and -- with a gray shirt.

10 Q. And were you able -- did you ask if you could
11 collect these items?

12 A. Yes, sir, we did. Myself and Deputy Holbrooks did.

13 Q. And in fact, did you collect these items?

14 A. Yes, sir, we did.

15 Q. Now, Deputy Pridemore, just for clarification, at
16 this point was he under arrest for anything?

17 A. No, sir, he was not.

18 Q. Was he considered a suspect, a potential suspect, in
19 this case?

20 A. Yes, sir, he was.

21 Q. But at this point in time he was not under arrest?

22 A. No, sir, absolutely.

23 Q. And he voluntarily gave you the clothing items that
24 he indicated he wore that day?

25 A. Yes, sir, he did.

1 Q. Now, was he wearing these items at the point -- at
2 that time you were talking to him?

3 A. No, sir, he was not.

4 Q. And where did he collect these from?

5 A. I believe that the jeans were on the back of the
6 couch or behind the couch. And the shirts, I'm not sure.
7 I think they were in the bedroom.

8 Q. But they were all -- they were all -- they were not
9 all in one pile, I guess I want to say?

10 A. No, sir.

11 Q. And did you collect these items?

12 A. Yes.

13 Q. I'm going to show you ...

14 MR. CAMPBELL: I'm going to go ahead and get
15 those two marked whatever the next two numbers are.

16 (WHEREUPON, State's Exhibits Number 34 and 35 were
17 marked for identification only.)

18 Q. ... what's been marked for identification as State's
19 Exhibit Number 34. If you could please -- is this --
20 would you please describe what that is? You don't have
21 to fully open it.

22 A. The contents inside is going to be a pair of blue
23 jeans, a short sleeve gray shirt.

24 Q. Just in this one right here, what item is this right
25 here?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Christopher Lee Pridemore - Direct Examination by Mr. Campbell

165

1 A. This would be the blue jeans that was collected.

2 Q. Now, regarding item number 35, the blue jeans that
3 you collected, you just didn't walk out of his house with
4 them; is that right?

5 A. No, sir.

6 Q. I'm going to show you what's been marked for.
7 identification ...

8 MR. POTTER: And what number was that?

9 MR. CAMPBELL: That was -- 34 was the blue
10 jeans.

11 Q. I'm going to show you what's been marked for
12 identification as State's Exhibit Number 35. Can you
13 please identify what that is?

14 A. This is an evidence sheet. The bottom line is any
15 time we get something, whether we take it or it's given
16 to us, a sheet like this is filled out. It keeps the
17 integrity as to what is taken, who it is taken from and
18 what is done with it at that point.

19 Q. And on this you have indicated in number 35 that you
20 have received two shirts, a white long sleeve and then a
21 gray short sleeve shirt and one pair of blue jeans; is
22 that right?

23 A. Yes, sir.

24 Q. And where did you collect these items from? What
25 was the address location, the physical location?

1 A. That was

2 Q. And your signature is on there, correct? That's
3 your signature?

4 A. Yes, sir, it is.

5 Q. Did you give him a copy of this?

6 A. Yes, sir, I did.

7 Q. And prior to giving him a copy of this, does he get
8 a chance or opportunity to review it?

9 A. Yes, sir.

10 Q. And do you have him sign it?

11 A. Yes, sir.

12 Q. In fact, in number 15 -- item -- line 15, is that
13 his signature?

14 A. Yes, it is.

15 Q. And that was witnessed by you?

16 A. Yes, it was.

17 Q. And after that, what, if anything, did you do with
18 the items that you collected from him?

19 A. The items that were collected were placed into a
20 bag. The copy of the evidence sheet was attached to it.
21 It was taken to evidence and dropped off.

22 Q. When you say dropped off, where are you talking
23 about for that?

24 A. It goes into a locked bin for the evidence
25 personnel, the forensics people, to take an inventory.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Christopher Lee Pridemore - Direct Examination by Mr. Campbell

167

1 Q. And it goes in -- that sheet goes with it?

2 A. Absolutely.

3 Q. And after that, do you have access where you can get
4 back into the evidence room to get these items back out?

5 A. No, sir. You have to go through supervision.

6 Q. And in this case being Sergeant Tommy Clamp?

7 A. Yes, sir.

8 MR. CAMPBELL: Your Honor, at this time I would
9 like to enter into evidence State's Exhibit Number 35 and
10 34.

11 THE COURT: Any objection?

12 MR. POTTER: Judge, I do have some objections.
13 I would ask that you hold off on ruling until I've had an
14 opportunity to cross examine the witness.

15 THE COURT: All right. I'll do that.

16 MR. CAMPBELL: Your Honor, at this point in
17 time, I would like to publish to the jury item number 35.

18 THE COURT: All right. That's fine.

19 Q. Deputy Pridemore, I'd ask you -- can you see that?
20 You need me to help you? There we go.

21 Deputy Pridemore, step down here a second, please.

22 (WHEREUPON, the witness stepped down from the
23 witness stand.)

24 Q. I just want you to describe this for me. This is
25 your official form through the Sheriff's Office?

1 A. Yes, sir, it is.

2 Q. And when you put in here, you put in that you
3 recovered these items, and this is the individual you
4 recovered them from; is that right?

5 A. Yes, sir.

6 Q. And the actual physical location of these items and
7 where they were actually located?

8 A. Yes, sir.

9 Q. And this is a description of the items that you
10 recovered?

11 A. Yes, sir.

12 Q. This -- is that his signature right there?

13 A. Yes, sir.

14 Q. And of course your signature is right there?

15 A. Yes, sir.

16 Q. If you'll please retake the stand.

17 (WHEREUPON, the witness resumed the witness stand.)

18 Q. Now, Deputy Pridemore, after you recovered these
19 items, what, if anything, did you do next regarding this
20 investigation?

21 A. At this point we concluded -- Deputy Holbrooks and
22 myself left the residence. Prior to leaving the
23 residence, we informed Mr. Tucker that an investigator
24 would be getting in contact with him.

25 Q. And he didn't leave with you that night?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Christopher Lee Pridemore - Cross Examination by Mr. Potter

169

1 A. No, sir.

2 Q. And why didn't you make an arrest at that point in
3 time?

4 A. Well, at that point in time, I did not feel we had
5 enough information to effect an arrest. We were just
6 there to gather information.

7 Q. So you weren't rushing to judgement or anything in
8 this case?

9 A. No, sir. No, sir.

10 Q. Deputy, that's all the questions I have at this
11 point in time. Please answer any questions Mr. Potter
12 may have.

13 A. Yes, sir.

14 MR. POTTER: May it please the Court?

15 THE COURT: Yes, sir.

16 CROSS EXAMINATION

17 BY MR. POTTER:

18 Q. Deputy, let's talk a little bit about the jeans.
19 You indicated that these are the jeans that you recovered
20 that I'm looking at, State's Exhibit 34. These are the
21 jeans you recovered from the house that my client was in?

22 A. Yes, sir,

23 Q. ?

24 A. Correct.

25 Q. Got you. All right. And you did a property report

1 which was Exhibit 35?

2 A. Yes, sir.

3 Q. And that's your handwriting here?

4 A. Yes, sir, it is.

5 Q. And it indicates shirts, white long sleeve -- I
6 guess I probably should do it this way. I'm sorry. Let
7 me -- give me a second.

8 MR. POTTER: Judge, I have a copy of what's --
9 this.

10 THE COURT: Okay.

11 MR. POTTER: If I could show this to the
12 witness? This is a copy that has been provided to me by
13 the Government.

14 Q. That's what we're looking at right now which is
15 State's Exhibit 35; is that correct?

16 A. Yes, sir.

17 Q. Okay. Now, you indicate shirts, white long sleeved
18 sweatshirt, gray short sleeve shirt. Okay? Then you
19 also indicate one pair of blue jeans; is that correct?

20 A. Yes, sir.

21 Q. Okay. Now, what type of mark did you put on that
22 jeans to know that those were the ones you collected?

23 A. I did not mark them.

24 Q. Okay. You didn't tag them or anything like that,
25 the jeans specifically?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Christopher Lee Pridemore - Cross Examination by Mr. Potter

171

1 A. No, sir. When the ---

2 Q. You didn't tag them?

3 A. No, sir.

4 Q. You didn't indicate what type ---

5 MR. CAMPBELL: Objection, Your Honor. He was
6 going to answer a question more thoroughly, but he was
7 kind of cut off. I'd like the officer to finish
8 answering what the question was.

9 THE COURT: All right. Ask the question and
10 let him answer it.

11 Q. You didn't tag the jeans individually when you
12 collected them from my client, correct?

13 A. No, sir, we did not.

14 Q. Okay. You didn't -- when you filled out the
15 property report, you just indicated blue jeans, you don't
16 indicate what brand of blue jeans they are; is that
17 correct?

18 A. That is correct.

19 Q. You don't indicate what size the blue jeans are.
20 You don't put any specifics, you just put blue jeans?

21 A. That's correct.

22 Q. Now, the evidence report that was received -- that I
23 received from the Government -- I've got a property
24 report that would indicate ...

25 MR. POTTER: If I could hand this to the

1 witness, please?

2 THE COURT: Yes, sir.

3 Q. What is this?

4 A. When evidence is entered in, this is more or less
5 the inventory of each item.

6 Q. Forgive me. Can you say that again?

7 A. When property is entered into evidence, this is more
8 or less an inventory of each item.

9 Q. Okay. Do you do that?

10 A. No, I do not.

11 Q. Okay. So when you place it into the bin, somebody
12 else picks it up and then generates this report?

13 A. Yes.

14 Q. All right. Now -- can you step down for me, please

15 ---

16 A. Yes.

17 Q. --- because I don't have an extra copy.

18 (WHEREUPON, the witness stepped down from the
19 witness stand.)

20 Q. This is the amplification of this copy. And there's
21 your name, Chris Pridemore. Okay? And down here we've
22 got -- or up here we've got a pair of blue jeans?

23 A. Right.

24 Q. And it says location taken from,

25 Anderson?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Christopher Lee Pridemore - Cross Examination by Mr. Potter

173

- 1 A. Right.
- 2 Q. Okay. Were those taken jeans taken from
- 3 , or were they taken from ?
- 4 A. Those jeans were taken from .
- 5 Q. Do you have any reason why this report -- do you
- 6 know why this report would indicate ?
- 7 A. Possibly an error once the evidence was entered.
- 8 Q. Okay. But you don't know that for sure, you're just
- 9 ---
- 10 A. No, sir, I do not.
- 11 Q. --- surmising? Now, let's talk a little bit about
- 12 the night that you went to and you saw my
- 13 client and Jeannie Durham, okay?
- 14 A. Okay.
- 15 Q. You were with Deputy Holbrooks as well; is that
- 16 correct?
- 17 A. Yes.
- 18 Q. You're both in separate vehicles?
- 19 A. Yes.
- 20 Q. Okay. You indicated that you waited outside the
- 21 house for a period of time?
- 22 A. Yes, sir.
- 23 Q. Okay. About how long was that? Best estimate. I'm
- 24 not looking for specifics.
- 25 A. Possibly twenty minutes.

1 Q. Twenty minutes? At the time that you were sitting
2 outside the residence, my client's
3 vehicle was in the drive, was in the yard; is that
4 correct?

5 A. Yes, sir.

6 Q. What vehicle was that?

7 A. I believe it to be a blue truck.

8 Q. Okay. A little truck or a big ---

9 A. A small truck. Compact truck.

10 Q. --- pickup truck is what I was asking?

11 A. Exactly, yes, sir.

12 Q. Crew cab or just two doors?

13 A. I do not remember.

14 Q. Okay. Now, at that point in time, you and Deputy
15 Holbrooks decided to go ahead and knock on the door and
16 see what was going on, correct?

17 A. Yes, sir. That was a last attempt to try and make
18 contact.

19 Q. Right. And you met with my client as well as Ms.
20 Durham, correct?

21 A. Yes.

22 Q. And you've been a deputy and you've been involved in
23 law enforcement for a minium of three years. People get
24 nervous around police officers; isn't that true?

25 A. Yes, sir.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Christopher Lee Pridemore - Cross Examination by Mr. Potter

175

- 1 Q. He wasn't drunk?
- 2 A. No, sir.
- 3 Q. He wasn't high on crack cocaine or any drugs, was
- 4 he?
- 5 A. No, sir.
- 6 Q. You were aware when you're investigating a potential
- 7 armed robbery that money was stolen; is that correct?
- 8 A. Yes, sir.
- 9 Q. Okay. Did you search Tony for any cash?
- 10 A. No, we did not.
- 11 Q. Did you search Tony for the hammer that was alleged
- 12 to have been used in this assault?
- 13 A. No. We did get permission from Ms. Durham to look
- 14 in the vehicle, and which we did.
- 15 Q. Which vehicle was that?
- 16 A. That would be the truck that was sitting in the
- 17 driveway.
- 18 Q. Okay. And you didn't find a hammer did you?
- 19 A. No, sir, we did not.
- 20 Q. You didn't see any blood on Tony's hands, did you?
- 21 A. No, sir, we did not.
- 22 Q. You didn't see any blood on his clothes, did you,
- 23 that he was wearing?
- 24 A. No, sir, we did not.
- 25 Q. Okay. The clothes that you collected from that

1 residence, you didn't see any blood on the clothes, did
2 you?

3 A. I did not.

4 Q. You did not see any blood in the truck, did you?

5 A. No, sir.

6 Q. When you questioned Tony about what had happened, he
7 said he wasn't involved, correct?

8 A. That's correct.

9 Q. After you got done speaking with Tony and taking the
10 clothes you did take from that residence, did you and
11 Deputy Holbrooks leave together, or what happened next?

12 A. Yes, sir, we did leave at the same time.

13 Q. Did y'all go to the same place or did y'all -- what
14 did you do?

15 A. No, sir. Deputy Holbrooks went back in to service,
16 and I went directly to evidence and dropped the clothing
17 off.

18 Q. Got you. Now, let's talk a little bit about the
19 hospital visit. Your report that was provided to me by
20 Mr. Campbell indicated that Mr. Marshall Tucker indicated
21 that his money was taken out of his back pocket wallet;
22 is that correct?

23 A. Yes, sir.

24 Q. Okay. Then he later changed that story to be his
25 front left pocket; is that correct?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Christopher Lee Pridemore - Cross Examination by Mr. Potter

177

- 1 A. Yes, sir.
- 2 Q. You got to the hospital because dispatch told you to
3 go there, correct?
- 4 A. That is correct.
- 5 Q. All right. And you don't know how dispatch got that
6 information, by way -- was it 9-1-1 or was it a phone
7 call from security at the hospital, or do you know?
- 8 A. I do not know.
- 9 Q. You got to the hospital about ten forty-five, is
10 that -- does that sound right? Do you have your report?
- 11 A. My arrival time was actually ten fifty-three.
- 12 Q. Ten fifty-three, okay. Were you first or was Deputy
13 Holbrooks first?
- 14 A. No, sir. I was first.
- 15 Q. Okay. You stayed at the hospital. You accessed the
16 situation. You talked with Mr. Tucker. Then you said
17 you went to the address, correct?
- 18 A. That is correct.
- 19 Q. Where this alleged incident supposedly occurred; is
20 that correct?
- 21 A. That's correct.
- 22 Q. About what time did you go there? If it's not on
23 your report, then it's not on your report.
- 24 A. It's not in the report. I'm not exactly sure.
- 25 Q. Okay.

1 A. I can't answer that.

2 Q. Do you have any recollection to how long you spent
3 with Mr. Tucker before you left the hospital?

4 A. Possibly fifteen minutes, twenty minutes.

5 Q. All right. When you got to the address,
6 it was unlocked. You were able to go in, correct?

7 A. When we got there, I believe that the door was
8 locked. I think Mr. Little was there and provided a key.

9 Q. Okay. Was Mr. Little at the hospital as well when
10 you were there?

11 A. Mr. Little was at the hospital.

12 Q. So did you all go to the scene together?

13 A. Right. We actually -- I believe we met Deputy
14 Holbrooks in route over there as well.

15 Q. Got you. Now, from the time that Mr. Tucker was at
16 the hospital to the time you got to the scene, you don't
17 know what, if anything, happened to the scene, do you?

18 A. No.

19 Q. You don't know if the scene was tampered with, you
20 don't know if things were removed, correct?

21 A. Correct.

22 Q. You don't know if things were cleaned up. You don't
23 know that, do you?

24 A. No, sir.

25 Q. Okay. There was -- your report indicates there were

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Christopher Lee Pridemore - Cross Examination by Mr. Potter

179

1 several beer cans in the kitchen; is that correct?

2 A. Yes, sir.

3 Q. When you were at the scene, you testified that you
4 secured the scene for forensics to come and photograph,
5 correct?

6 A. Yes, sir.

7 Q. That was what you did. After that then you went to
8 the address, correct?

9 A. Yes, sir.

10 Q. Okay. Did you make any -- did you go around the
11 neighborhood talking to neighbors, asking questions or
12 anything of that sort?

13 A. At that point in time, there was no need to.

14 Q. Nobody was outside?

15 A. No. For one, no one was outside.

16 Q. Did you make a -- go around the residence to see or
17 anything of that sort?

18 A. Yes, sir. We did make a canvass of the front and
19 back yard.

20 Q. Okay. You didn't find any hammers or any money or
21 anything like ---

22 A. No, sir.

23 Q. --- that in the yards?

24 A. No, sir.

25 Q. The porch that was talked about and testified about

1 earlier, do you know what they were talking about? Do
2 you remember seeing that porch that was under
3 construction?

4 A. Yes, sir, the back porch.

5 Q. Okay. Did you see any tools or anything of that
6 sort?

7 A. It was extremely cluttered. There were some tools.

8 Q. But extremely cluttered on the porch area?

9 A. Yes, sir.

10 MR. POTTER: Nothing further, Your Honor.

11 Thank you.

12 THE COURT: Anything else?

13 MR. CAMPBELL: Just a couple of follow-ups.

14 THE JUROR: I have a request. Can y'all turn
15 that light down or something? It's like blinding us.

16 MR. CAMPBELL: How's that?

17 THE JUROR: Thank you.

18 THE COURT: Thanks.

19 REDIRECT EXAMINATION

20 BY MR. CAMPBELL:

21 Q. I just have a couple of follow-ups to finish this
22 up. Deputy Pridemore, did you ever go out to
23 , ?

24 A. I think so. I can't remember offhand.

25 Q. Did you ever go to Dewey Little's house?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Christopher Lee Pridemore - Redirect Examination by Mr. Campbell

181

- 1 A. Yes. I spoke with his wife.
- 2 Q. But you didn't collect any type of evidence from
3 there?
- 4 A. No, sir.
- 5 Q. And that sheet that Mr. Potter was showing you,
6 that's not something that you fill out, is it?
- 7 A. Absolutely not.
- 8 Q. That's generated through the forensic unit itself?
- 9 A. Yes, sir.
- 10 Q. But where you collected the clothes from was
11 in Anderson?
- 12 A. Yes, sir.
- 13 (WHEREUPON, State's Exhibit Number 36 was marked for
14 identification only.)
- 15 Q. Okay. I'm also going to show you what's been marked
16 as State's Exhibit 36. Is this also the other two items
17 you took from that residence of
18 that you have indicated on your State's Exhibit 35?
- 19 A. Yes, sir, it is.
- 20 Q. And that's what's indicated on your sheet that you
21 turned in to evidence; is that right?
- 22 A. Yes, sir.
- 23 Q. Now -- let me get that out of your way.
- 24 Now, when you went and spoke to Mr. James Anthony
25 Tucker at the residence, were you specifically

1 looking for the hammer and cash?

2 A. No, sir.

3 Q. And if you found any type of cash, would you have
4 any way of identifying that was the exact money that came
5 out of James Marshall Tucker's pocket?

6 A. No, sir.

7 Q. And the clothing he had on was not the same clothing
8 he indicated he wore that day; is that correct?

9 A. No, sir.

10 Q. And approximately how long -- when you were talking
11 -- when Mr. Potter was asking you on cross, you said you
12 were at the hospital around -- was ten thirty when you
13 arrived there?

14 A. Ten fifty-three.

15 Q. And what time did you go to ? If you
16 don't ...

17 A. I'm not -- I don't know.

18 Q. The report here on State's Exhibit 35, at the time
19 you took this clothing, what time does it indicate on
20 there?

21 A. That would be one fifty seven a.m.

22 Q. So about approximately a span of three hours
23 difference; is that right?

24 A. Give or take, yes.

25 Q. And you wouldn't know where Mr. James Anthony Tucker

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Christopher Lee Pridemore - Redirect Examination by Mr. Campbell

183

1 would have been located during those three hours, would
2 you?

3 A. No, sir.

4 MR. CAMPBELL: Your Honor, at this time I move
5 State's Exhibit Number 35 -- 34, 35, 36 into evidence.

6 THE COURT: Any objection?

7 MR. POTTER: What was 36?

8 MR. CAMPBELL: That was the shirts.

9 MR. POTTER: Judge, in regards to number 36, we
10 have no objection. In regards to 34 and 35 -- the jeans
11 specifically is 34 -- there's testimony that he got them
12 those particular jeans from my client; however, there's
13 no testimony or there's testimony indicating that he did
14 not specifically mark them, what type of jeans they were.
15 Did not tag them in any way before he bagged them. I
16 don't know -- and additionally, we've got testimony in
17 regards to the property report indicating that there were
18 pair of jeans were recovered at . I've got
19 a concern that there's some confusion here and those
20 jeans aren't necessarily reliable enough to be presented
21 to the jury.

22 THE COURT: All right. You got some testimony
23 regarding the address?

24 MR. CAMPBELL: Yes, sir.

25 THE COURT: I'll withhold. I'll admit

1 everything but the jeans, and we'll do that at a later
2 day.

3 MR. CAMPBELL: Okay.

4 (WHEREUPON, State's Exhibits Number 35 and 36 were
5 admitted into evidence.)

6 THE COURT: Anything?

7 MR. CAMPBELL: That's all I have for this
8 witness.

9 THE COURT: Anything?

10 MR. POTTER: Just one or two follow-up. Famous
11 last words.

12 RECROSS EXAMINATION

13 BY MR. POTTER:

14 Q. You canvassed the area for a hammer, correct?

15 A. Yes.

16 Q. And when I mean area, Did you walk
17 around the address looking for a hammer?

18 A. No.

19 Q. You walked around the address looking
20 for the hammer?

21 A. Yes.

22 Q. When you got to , you did search the
23 truck?

24 A. Yes.

25 Q. But you didn't search the house or my client?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Christopher Lee Pridemore - Redirect Examination by Mr. Potter

185

1 A. No.

2 Q. Thank you.

3 THE COURT: All right. Thank you.

4 MR. CAMPBELL: No further questions.

5 THE COURT: You can step down.

6 MR. CAMPBELL: Your Honor, may this witness be
7 excused?

8 THE COURT: Any objection?

9 MR. POTTER: No, Your Honor.

10 THE COURT: You can be excused. Be careful.

11 We'll take our break.

12 Ladies and gentlemen, we're going to take an hour
13 lunch break. As I said, when we come back, we'll
14 probably have time for one witness. And then I'll have
15 to leave here about three fifteen. Please don't discuss
16 this case with anybody. Keep your juror badges on. If
17 anybody discusses this or tries to contact you at all
18 during lunch, let me know. I'll see you back about two
19 o'clock.

20 (WHEREUPON, the jury exited the courtroom at
21 approximately 1:01 p.m. after which court stood at
22 recess for a lunch break.)

23 THE COURT: Y'all ready?

24 MR. POTTER: Yes, Judge.

25 THE COURT: Okie doke.

1 Bring them in.

2 (WHEREUPON the jury panel entered the courtroom at
3 approximately 2:14 p.m. and the following
4 proceedings were had.)

5 THE COURT: All right. Ladies and gentlemen, I
6 hope you had a good lunch. I spent lunch trying to get
7 my chair to quit squeaking. So we're going to go to
8 about three fifteen. Again, this is a short day. It's
9 my fault, but we'll get in as much as we can. But if you
10 need a break before then, please raise your hand.

11 THE COURT: Yes, sir?

12 MR. CAMPBELL: May it please the Court. Your
13 Honor, the State calls Deputy Holbrooks to the stand.

14 MADAM CLERK: Officer, if you will place your
15 left hand on the Bible and raise your right.

16 (WHEREUPON, the witness was duly sworn.)

17 MADAM CLERK: Go up and have a seat in the
18 witness chair. If you'll please state your full name and
19 spell your last name for the record.

20 THE WITNESS: Craig Holbrooks. Holbrooks, H-O-
21 L-B-R-O-O-K-S.

22 CRAIG HOLBROOKS,

23 Being first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. CAMPBELL:

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Craig Holbrooks - Direct Examination by Mr. Campbell

187

- 1 Q. Deputy Holbrooks, you're employed by the Anderson
2 County Sheriff's Office?
- 3 A. Yes, sir.
- 4 Q. How long have you been in law enforcement?
- 5 A. Five years.
- 6 Q. And were you employed as a deputy on the night of
7 February 9th, 2009?
- 8 A. Yes, I was.
- 9 Q. On that day did you have an occasion to go to the
10 hospital, or Anderson Area Medical Center with Craig
11 Holbrooks [sic]?
- 12 A. No, sir, I did not respond to the hospital.
- 13 Q. So you were present in the courtroom when Deputy
14 Pridemore testified?
- 15 A. Yes, sir.
- 16 Q. Now, on that night did you have an occasion to meet
17 up with Deputy Pridemore?
- 18 A. I did.
- 19 Q. Regarding an assault case?
- 20 A. Yes, sir.
- 21 Q. And where did you meet him?
- 22 A. I responded -- after Deputy Pridemore left the
23 hospital, I responded with him to in
24 reference to clearing a residence.
- 25 Q. And you went into the residence?

1 A. Yes, sir.

2 Q. And were you able to see the pictures that were
3 flashed up here earlier?

4 A. Yes, sir.

5 Q. And is that how the residence looked when you saw it
6 that night?

7 A. Yes, sir.

8 Q. And after that did you go to any other location
9 regarding this incident or investigation?

10 A. We did. We responded to and
11 made contact with Mr. Tucker.

12 MR. CAMPBELL: Let the record reflect that he .
13 is indicating -- pointing to the Defendant, James Anthony
14 Tucker.

15 Q. Now, Deputy Holbrooks, I'm not going to rehash what
16 Deputy Pridemore went over. But you also went to the
17 house and spoke with Mr. Tucker; is that correct?

18 A. Yes, sir.

19 Q. Now, regarding the clothes that were taken, were you
20 present when this was going on?

21 A. Yes, sir, I was.

22 Q. And were you present when the items that were taken,
23 State's Exhibit 35, was retrieved from

24 ?

25 A. I was.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Craig Holbrooks - Direct Examination by Mr. Campbell

189

1 Q. And that was done in your presence; is that right?

2 A. Yes, sir.

3 Q. Now, regarding the pants, the blue jeans that have
4 been indicated in State's Exhibit 34, were you present
5 when he retrieved those?

6 A. Yes, sir, I was.

7 Q. When he was taking items out of there, did he say
8 anything to you in regards to these pants?

9 MR. POTTER: I've got an objection regarding

10 ...

11 Who are we talking about as he?

12 MR. CAMPBELL: I'm talking about the Defendant,
13 James Anthony Tucker.

14 THE COURT: Okay. Overruled.

15 A. He did not make any verbal reference to the pants.
16 We had advised him what had -- that his father had been
17 assaulted and money had been taken. Mr. Tucker emptied
18 the contents of the pockets. And I believe there was one
19 or two one dollar bills and a key with a yellow tag on it
20 inside the pants pockets.

21 Q. And you distinctly remember the key with the yellow
22 tag?

23 A. Yes, sir.

24 Q. Now ---

25 A. He had taken and set it inside the residence at

1 3919. Behind the couch was a half-wall with columns
2 going up. He had set it in-between two of the columns on
3 the half-wall behind the couch.

4 Q. Now, did you take this key that he was referring to,
5 the yellow key, the key with the yellow tag on it?

6 A. No, sir.

7 Q. And after that, the items were collected, he
8 voluntarily gave you the pants and the shirts; is that
9 right?

10 A. That's correct.

11 Q. After that, after you left 3919, did you continue on
12 or do anything else, have any other involvement in this
13 case?

14 A. Not in this case.

15 Q. Okay. And the -- and you're positive the items
16 never came from ?

17 A. I'm positive.

18 MR. CAMPBELL: I have no further questions from
19 this witness.

20 Please answer any questions Mr. Potter may have.

21 CROSS EXAMINATION

22 BY MR. POTTER:

23 Q. Deputy, how can you be sure those items didn't come
24 from ? You weren't there when they were
25 placed in the evidence bin, were you?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Craig Holbrooks - Cross Examination by Mr. Potter

191

1 A. I was at the residence on when they
2 were -- when Mr. Tucker -- the blue jeans were sitting on
3 the back of the couch and he emptied the contents of the
4 pockets. He, Mr. Tucker, escorted me to the rear bedroom
5 of the residence where the gray shirt and the white
6 sweatshirt came from the clothes hamper.

7 Q. I understand. How do you know that those jeans
8 right there today are the jeans that you saw from
9 ?

10 A. That I can't say.

11 Q. Right. Because Pridemore took the clothes, and he
12 was the one who put them into evidence?

13 A. Yes, Deputy Pridemore placed them into evidence.

14 Q. Right. So the only time you saw any jeans was at
15 -- ?

16 A. Yes.

17 Q. Okay. And Pridemore didn't put any specific
18 markings or tags on those jeans that he collected from
19 the Defendant, did he?

20 A. No.

21 Q. Do you know -- strike that. The -- you found a
22 couple of dollar bills in his pants?

23 A. I believe there was a couple of one-dollar bills in
24 the pants pocket.

25 Q. Right. And a key with a yellow tag on it. You

1 don't know where the key belonged or what it was for?

2 A. Not at that time.

3 Q. You didn't find any -- didn't find a hammer?

4 A. No, sir.

5 Q. Didn't find -- didn't see any blood on my client,
6 did you?

7 A. No, sir.

8 Q. Okay. Didn't see any blood on any clothes?

9 A. Not until -- when he -- when we went to the rear
10 bedroom and he showed me the white long sleeve shirt, I
11 saw what I believed to be a small spot of blood on the
12 lower edge of the shirt.

13 Q. Okay. But you didn't know if that was blood or not?

14 A. Not at the time.

15 Q. Okay. Could it be -- could it have been red wine?

16 A. That's a possibility.

17 Q. It could have been something, cranberry juice or
18 something of that sort, couldn't it?

19 A. Yes, sir.

20 Q. Or it could have been blood from himself, from my
21 client?

22 A. Yes, sir.

23 Q. Okay. You didn't find -- I may have asked this, but
24 I need to make sure. You didn't find a hammer at the
25 house, did you?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Craig Holbrooks - Redirect Examination by Mr. Campbell

193

1 A. No, sir.

2 Q. You searched his truck that he was allegedly driving
3 that night, didn't you?

4 A. Yes, sir.

5 Q. Didn't see any blood in the truck?

6 A. No, sir.

7 Q. Didn't see any money in the truck?

8 A. No, sir.

9 Q. Didn't see a hammer in the truck?

10 A. No, sir.

11 Q. And when you spoke with Mr. Tucker, he was not
12 intoxicated?

13 A. No, sir.

14 Q. He wasn't under the influence of any drugs or
15 medications or anything like that? He spoke -- he was a
16 little nervous; but he spoke to you clearly, didn't he?

17 A. Yes, sir. He did not appear to be under the
18 influence.

19 Q. When you went to the address, you saw
20 empty cans of -- beer cans; isn't that correct?

21 A. That is correct.

22 Q. Nothing further. Thank you.

23 THE COURT: Any redirect?

24 MR. CAMPBELL: Just a couple of questions.

25 REDIRECT EXAMINATION

1 BY MR. CAMPBELL:

2 Q. Now, Deputy Holbrooks, as part of your position --
3 were you the -- what did you say -- the supervisor, the
4 superior officer in charge that night regarding Deputy
5 Pridemore and yourself?

6 A. Between the two of us, I was the senior officer on
7 the scene.

8 Q. Now -- and through your training and experience, is
9 it typical that once y'all collect what could possibly be
10 evidence involved in a case, you mark it -- and do you
11 physically mark it in any shape, way or form or try to
12 alter it in any shape, way or form?

13 A. No.

14 Q. Basically the only thing you do is you turn it in
15 with that sheet right there?

16 A. We complete the evidence sheet, and then we respond
17 and place it into an evidence -- a locked evidence bin at
18 the Sheriff's office.

19 Q. And it goes it with that evidence sheet; is that
20 correct?

21 A. Yes, sir.

22 Q. Now, as part of your job, do y'all continue on --
23 even though y'all are the responding officers to the
24 scene, is it part of your responsibility to continue on
25 with the investigation, or do you turn it over to someone

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Craig Holbrooks - Recross Examination by Mr. Potter

195

1 else?

2 A. On this type of incident, it is turned over to an
3 investigator to continue the investigation after we cover
4 the initial response.

5 Q. And in this case, was that -- is that what happened?

6 A. Yes, sir.

7 Q. And it was turned over to Detective Gebing?

8 A. Yes, sir.

9 Q. I have no further questions.

10 THE COURT: Anything?

11 MR. POTTER: Just real quick.

12 RECCROSS EXAMINATION

13 BY MR. POTTER:

14 Q. If you have a weapon at a crime scene like a gun or
15 something like that and you recover that gun, you don't
16 put any markings on that gun to make sure that is the gun
17 you recovered from the scene?

18 A. The only thing I do when I respond -- and say it was
19 a gun ...

20 Q. Uh-huh (affirmative).

21 A. ... I take and I carry gun locks in my patrol car.
22 And I will place a gun lock inside the barrel to secure
23 the weapon.

24 Q. And it also helps you identify that that is the
25 weapon that you recovered from the scene; isn't that

State v. John Anthony Tucker 2009-GS-04-1023, 1024
John Thomas Clamp, Jr. - Direct Examination by Mr. Campbell

197

1 witness chair. If you'll please state your full name and
2 spell your last name for the record, please.

3 THE WITNESS: My name is John Thomas Clamp, Jr.
4 My last name is spelled C-L-A-M-P.

5 JOHN THOMAS CLAMP, JR.,

6 Being first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. CAMPBELL:

9 Q. Mr. Clamp, I believe you're a sergeant at the
10 Sheriff's office?

11 A. Yes, sir.

12 Q. How long have you been involved in law enforcement?

13 A. I've been in law enforcement twenty years, been
14 working actively at the Sheriff's office for -- December
15 -- Christmas Day it will be eighteen years.

16 Q. And what is your responsibilities and duties at the
17 Sheriff's office?

18 A. My responsibilities at the Sheriff's office as of
19 today is I'm the supervisor of the evidence division.

20 Once the evidence is taken in, I'm one of the four
21 persons who has access to the evidence rooms. And it's
22 just basically to secure that evidence and maintain the
23 paperwork while it's in the possession of the Sheriff's
24 office until it's returned to the rightful owner,

25 submitted to the lab for analysis or in this case brought

State v. John Anthony Tucker 2009-GS-04-1023, 1024
John Thomas Clamp, Jr. - Direct Examination by Mr. Campbell

198

1 to court.

2 Q. And as part of your responsibility when items are
3 brought in, typically how do officers bring it in to
4 y'all or your area?

5 A. During the working hours, during normal business
6 hours, typically nine to five, eight to five Monday
7 through Friday, they'll bring those in and hand-deliver
8 them. In the event that we are not there or on the
9 weekend or holiday hours, there's drop boxes that are
10 dropped directly into the evidence storage areas. Those
11 lockers are individual and they're secure. Once the
12 officer puts that item into the locker and closes it, he
13 or anyone else has no way to access that. It can only be
14 accessed from the inside of the evidence room by one of
15 the four persons that has evidence access with a key.

16 Q. When you were talking about drop boxes, is this --
17 as a comparison it would be like a night deposit box at a
18 bank where it rolls down and you drop stuff in, and it
19 closes up and you can't get back to it?

20 A. Exactly. There is no way for the officers to access
21 that. It's dropped into that individual box that they
22 cannot access in the hours when there is no persons in
23 the evidence building. The building is also alarmed.

24 Q. And as part of the evidence that comes in, do
25 typically the officers put the information in or put the

1 items in with the property evidence sheet?

2 A. That's correct.

3 Q. I want to show you what's been marked for State's
4 Exhibit Number 35. Can you please identify what this is?

5 A. This is a copy of the Anderson County Sheriff's
6 Office evidence submission form.

7 Q. And that's y'all's form?

8 A. That's our form, yes, sir.

9 Q. And what is the purpose of this form?

10 A. This form is to begin the chain of custody once it
11 comes into the custody of the Sheriff's office. I'd
12 equate it in layman's terms to a deposit slip at a bank.

13 Q. And typically the items that are placed into the
14 evidence locker is listed on this sheet?

15 A. That's correct, they are.

16 Q. And are any items listed on this sheet?

17 A. I'm sorry. Yes, there is.

18 Q. What items are listed on this sheet?

19 A. There are two shirts -- it further describes those
20 -- and one pair of blue jeans.

21 Q. Now, I'm going to show you what's been marked as
22 State's Exhibit 36 and State's Exhibit 35. Are these
23 items y'all received and corresponding with this property
24 and evidence sheet in number 35?

25 A. That's correct, they are.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
John Thomas Clamp, Jr. - Direct Examination by Mr. Campbell

200

1 Q. Okay. And typically when you receive clothing items
2 such as this, do you do any special marks or
3 identification upon the clothing?

4 A. We do not mark any item of evidence. We mark the
5 packaging that it's in with a bar code label for later
6 identification. We don't want to alter or tamper with
7 the evidence to change its value.

8 Q. And when you retrieve the items from the evidence
9 locker, at that point it's in your care, custody and
10 control; is that right?

11 A. That's correct.

12 Q. And are the officers allowed to come and check these
13 items out after that?

14 A. They are allowed to check the items out, but very
15 seldom that happens. They're in our care, custody and
16 control. They can't check them out unless we're there to
17 give them to them, and they would subsequently sign for
18 them.

19 Q. And was these items removed from your care, custody
20 and control at any point in time to your knowledge?

21 A. No, sir, they have not been.

22 Q. And after you receive these items, what do you do
23 with them?

24 A. Those items will be retained in that locked secured
25 area accessible to only four persons there until the

1 request is made to submit it to a lab for analysis or in
2 this case bring it to court.

3 Q. And when the request is made for analysis, who does
4 that typically come from?

5 A. That would typically come from the investigating
6 officer involved in the case. In this case it was Deputy
7 -- excuse me -- Investigator Gebing.

8 Q. And then you would transport these items down to
9 SLED; is that correct?

10 A. That's correct.

11 Q. And that's in Columbia?

12 A. That's correct.

13 Q. And that's where they would be analyzed and tested?

14 A. That's correct.

15 Q. Now, were you present in the courtroom earlier when
16 Mr. Potter was talking about the property report?

17 A. Yes, sir, I was.

18 Q. I'm going to show you what Mr. Potter handed up.

19 Would you please take a look at that?

20 A. Yes, sir. This is just a reference guide as to a
21 list -- if anyone, the Defense, the Solicitor, the case
22 investigator, were to call for a list of property, this
23 is basically a quick reference list of property that's
24 generated through the evidence division.

25 Q. So this isn't what the officer does or fills out; is

State v. John Anthony Tucker 2009-GS-04-1023, 1024
John Thomas Clamp, Jr. - Direct Examination by Mr. Campbell

202

1 that right?

2 A. No. This is a computer generated report from the
3 computer system that we put the data into.

4 Q. And does that list all the evidence that was
5 retrieved or items that were recovered in relationship to
6 this case?

7 A. That's correct. It does.

8 Q. Now, there was some mention on the items -- I think
9 it's on page 2 -- in regards to the blue jeans that was
10 put down the address as ?

11 A. That's correct.

12 Q. Now, that doesn't correspond with the evidence sheet
13 that the officer dropped off in item number 35; is that
14 right?

15 A. That's correct.

16 Q. What is different about it?

17 A. It's just basically the address. We manually do the
18 data entry into the computer system that allows us to
19 access the evidence or tell us where the evidence is
20 located in the property room. We manage and take in on
21 any given day or any given week, you know, twenty items a
22 day to a hundred items a day. In some cases, I manage,
23 you know, a couple hundred and fifty thousand pieces of
24 property. So this is just a reference guide that helps
25 us to access that property once it's in the storage area.

1 Q. And basically that's just a scrivener's error then?

2 A. That's data entry on my part, data entry error.

3 That's all it is. It doesn't change the value. It's one

4 and the same, speaking of one and the same. I just

5 perhaps typed the address rather than typing

6 the address here, just basically, if I'm looking at two

7 different reports.

8 Q. But the report that you're going to go by is the

9 property and sheet submitted by the officer himself?

10 A. That's correct. In this case the property report

11 that we would go by is identified as State's Exhibit 35.

12 Q. And what was the address on -- where the items were

13 collected?

14 A. The address on State's Exhibit 35, is

15 in Anderson, South Carolina.

16 Q. Now, as part as your job as a sergeant in forensics,

17 do you typically talk to the road deputies on how to mark

18 and bring in items?

19 A. Yes, we do.

20 Q. And do you tell them to mark any items that they

21 bring in before -- to be placed into evidence?

22 A. We do not tell anybody to mark any particular item

23 as far as marking on the item. We encourage them to

24 place it in a bag, a container of some type, seal that

25 and submit it in the same locker with the property sheet.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
John Thomas Clamp, Jr. - Direct Examination by Mr. Campbell

204

1 Q. And that's what was done in this case?

2 A. That's correct.

3 Q. And these items, I think it's 35 -- 34 and 36, the
4 two shirts and the pants, you took those yourself down to
5 SLED; is that right?

6 A. That's correct. I did.

7 Q. I have no further questions. Please answer any
8 questions that Mr. Potter may have.

9 MR. POTTER: No questions, Judge.

10 THE COURT: No questions?

11 MR. POTTER: No, sir.

12 THE COURT: Thank you, sir. You may step down.

13 MR. CAMPBELL: Your Honor, can I just have one
14 second to check my exhibits?

15 THE COURT: Sure.

16 MR. CAMPBELL: Your Honor, at this time I would
17 like to move State's Exhibit Number 34 into evidence.
18 That's the blue jeans.

19 THE COURT: Any objection?

20 MR. POTTER: Judge, I just reaffirm my previous
21 objection under 403, equal protection and due process.

22 THE COURT: Reaffirmed and you're protected for
23 the record. It's overruled.

24 MR. POTTER: Thank you.

25 (WHEREUPON, State's Exhibit Number 34 was admitted

1 into evidence.)

2 MR. CAMPBELL: Ready for the last witness, Your
3 Honor?

4 THE COURT: Yes, sir.

5 MR. CAMPBELL: Your Honor, the State calls
6 Amanda Webb to the stand.

7 MADAM CLERK: Come around, please. Place your left
8 hand on the Bible and raise your right.

9 (WHEREUPON, the witness was duly sworn.)

10 MADAM CLERK: Please go up and have a seat in
11 the witness chair. If you'll state your full name and
12 spell your last name for the record.

13 THE WITNESS: Amanda Webb, W-E-B-B.

14 **AMANDA WEBB,**

15 Being first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. CAMPBELL:

18 Q. And Ms. Webb, where are you currently employed?

19 A. I'm currently employed with the South Carolina Law
20 Enforcement Division, also known as SLED.

21 Q. And how long have you been employed there?

22 A. About a year and a half.

23 Q. And what typically -- what are your job duties, your
24 job description at SLED?

25 A. I'm a Forensic DNA Analyst. Local, regional, county

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Amanda Webb - Direct Examination by Mr. Campbell

206

1 law enforcement divisions will submit evidence in to
2 SLED. And if there is a DNA request and I'm assigned
3 that case, I'll perform the DNA analysis on that
4 evidentiary item.

5 Q. As part of your job -- you don't go out and collect
6 evidence or anything like that; is that right?

7 A. That's correct.

8 Q. You just analyze what is submitted to you for
9 whatever test the officer is asking for or the agency is
10 asking for?

11 A. That's correct.

12 Q. Now, I just want to get a little bit about your
13 background. Can you tell the ladies and gentlemen a
14 little bit about your education and training that you
15 have had and received?

16 A. Sure. I have a Bachelors of Science Degree in
17 Forensic Chemistry and a Masters of Science in Forensic
18 Science. Both of those were earned at Marshall
19 University in Huntington, West Virginia. When I was
20 hired on at SLED, I did an extensive training program
21 under a court qualified analyst. I trained for
22 approximately a year. And first I just observed her
23 performing the laboratory protocols and techniques. And
24 then as I progressed in my training, I took casework
25 under her supervision and worked the casework, and she

1 reviewed all of my results. And then I had some
2 competency tests where I had to pass and get the correct
3 results for serology and DNA and became an individual
4 independent analyst. And I have been working as an
5 independent analyst for approximately six months.

6 Q. And in this case here, I understand this is your
7 first time testifying in court; is that correct?

8 A. That's correct.

9 Q. And as part of your ongoing education and process,
10 are you continually -- are you evaluated such as a
11 proficiency test or competency test by SLED?

12 A. That's correct. Not only by SLED, but also an
13 outside agency -- we -- by proficiency test. We perform
14 the work and send our results to an outside lab, and they
15 review the results to make sure that we are still able to
16 perform all of our testing and are up to date with our
17 technology. And we choose an outside laboratory because
18 it helps eliminate bias.

19 Q. And you have passed all proficiency tests and
20 competency tests to date; is that correct?

21 A. Yes, that's correct.

22 Q. And ...

23 MR. CAMPBELL: Your Honor, at this time I move
24 her in -- to have her declared as an expert in the area
25 of forensic serology and DNA analysis.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Amanda Webb - Direct Examination by Mr. Campbell

208

1 THE COURT: Any objection?

2 MR. POTTER: No objection.

3 THE COURT: All right. Without objection,
4 she's admitted.

5 Q. Now, Ms. Webb, I want to talk to you a little bit
6 about this actual case itself. You received -- your
7 agency, SLED, received, from the Anderson County
8 Sheriff's Office approximately four items; is that
9 correct?

10 A. That's correct.

11 Q. And I believe one was a cutting from a shirt,
12 cutting from the jeans and sweat shirt and a buccal swab
13 from James Marshall Tucker; is that right?

14 A. Yes, that's correct.

15 Q. And what exactly -- when you receive -- when the
16 report says buccal swab, what is it referring to?

17 A. That's what we call a known standard. And basically
18 those swabs are just, you take a sterile cotton tipped
19 swab and swab the inside cells of the cheek, and it
20 collects DNA. And we know that DNA is from that
21 individual. In this case we know that that DNA was
22 collected from James Marshall Tucker. Then we can use
23 that and compare any DNA profile that we might develop
24 from evidence to that known standard to see if it
25 potentially came from that known individual.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Amanda Webb - Direct Examination by Mr. Campbell

209

1 Q. And when the item gets to SLED, such as the items
2 we're getting ready to go into, do you actually receive
3 -- in this case, I'm going to show you what's been marked
4 State's Exhibit 36 and 34.

5 THE COURT: Here's some water, if you need it.
6 While she's doing that, let me -- just hold on a
7 second.

8 Chris?

9 (Off record discussion)

10 THE COURT: All right. Ready?

11 MR. CAMPBELL: Yes, Your Honor.

12 Q. Ms. Webb, just for clarification, when items come in
13 to y'all they're typically packaged; is that correct?

14 A. That's correct.

15 Q. And when your agency receives these items, does it
16 first -- does it go directly to you, or does it goes
17 somewhere else first before coming directly to you?

18 A. These items are larger items like articles of
19 clothing, and sometimes we get bed sheets and things like
20 that. But since these were being screened for biological
21 fluid in this instance, blood to begin with, it's sent to
22 our evidence processing area. And they just look at
23 large items to see if they can find any biological
24 fluids. If they do, they make a cutting out of that
25 item. And I get the cuttings later on to perform the DNA

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Amanda Webb - Direct Examination by Mr. Campbell

210

1 analysis on them.

2 Q. And was that done in this case?

3 A. Yes, it was.

4 Q. And I notice there's some markings. I think it's
5 like V.T.G. or something. Some writing on these
6 packages?

7 A. Yes, that's correct.

8 Q. I think right here. What is that information that
9 you see on the package?

10 A. I see our SLED laboratory number, which each case
11 that comes in, SLED assigns a lab number to make it
12 distinct. And also I see item numbers and some initials.
13 The initials are of the evidence processing technician
14 who looked at these items, Verona Gibson in this case,
15 and the date that she looked at them.

16 Q. And if these items had been submitted -- say the bag
17 had been torn or been changed or altered in any shape,
18 way or form, would it have eventually gotten to you or
19 they would not have submitted it to you?

20 A. At that time the evidence processing technician
21 would have called the investigator and made a denotation
22 if there was anything wrong with the packaging.

23 Q. Was there anything wrong to your knowledge in this
24 case?

25 A. Not to my knowledge.

1 Q. Okay. And so at that point you received -- you say
2 Ms. Gibson received them, she screened them and made some
3 cuttings off these items; is that right?

4 A. Yes, that's correct.

5 Q. And dealing first with item number 34, what exactly
6 is State's Exhibit Number 34? Could you please open
7 that?

8 (WHEREUPON, the witness complied.)

9 A. Again, I can see the initials and the SLED lab
10 number, the initials of the evidence processing
11 technician on the outside of the packaging. And these
12 are a pair of blue jeans that she processed for this
13 case.

14 Q. If you could just open it up and tell us when you're
15 talking about cutting, what exactly are you referring to?

16 A. When they find -- when the evidence processing
17 technician finds potential biological materials, in this
18 case blood, they'll make a cutting out of the item. And
19 in this case, I have her worksheet which told me what
20 area where she took the cutting from. She said it was
21 from the left front near the top of the pocket. And if
22 you can see, there's the hole there. That's the cutting.
23 She cut out that area and then sent that for DNA
24 processing. And that's what I received was the cutting.

25 Q. And you still have these cuttings is my

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Amanda Webb - Direct Examination by Mr. Campbell

212

1 understanding; is that right?

2 A. Yes. They're still in my custody at the lab.

3 Q. And dealing with the other two items, I want you to
4 open up -- I believe it's number 36, exhibit number 36.

5 (WHEREUPON, the witness complied.)

6 A. I again also see the SLED lab number for this case
7 and the evidence processing technician's initials and the
8 item numbers on here. And there is a gray tee shirt
9 which correlates with my item number 1.1, and a white
10 sweatshirt which correlates with my item 3.1.

11 Q. And these are the items that the cuttings were
12 taking off of that you received to analyze; is that
13 correct?

14 A. Yes, that's correct. Here is the cutting from the
15 sweatshirt.

16 Q. And the 3.1, what does that indicate?

17 A. That indicates the item number. The item itself,
18 the sweatshirt itself is item 3. And anytime we take a
19 piece of an item, we sub-itemize it as 3.1. So we just
20 give it a point whatever number. And the same thing with
21 the gray tee shirt. It is original item 1.1 [sic]. And
22 then when she takes a cutting, it becomes item 1.1 for
23 me.

24 Q. And what part of this tee shirt is that cutting
25 taken from? The bottom side?

1 A. The lower bottom. And it's inside out, so it would
2 be the right-hand side lower bottom.

3 Q. All right. I'll put this over here. Now, after you
4 received these cuttings from these items, did you perform
5 any type of test or analysis upon them?

6 A. Yes, I did. I performed first -- I performed a
7 serology test, which serology is just the identification
8 of bodily fluids. And in this case there was a request
9 for blood. And I could see a small dark spot, and so I
10 did a test, a chemical test, for blood. And it was
11 positive on all three of those items. Blood was
12 indicated. So then I performed a DNA analysis procedure
13 on all those trying to develop a DNA profile from the
14 evidentiary items.

15 Q. And when you say you determined it was blood, can
16 the test that you performed -- can it determine between
17 human and animal blood?

18 A. No, not this test.

19 Q. And this test only -- what does it -- does it only
20 correspond with human blood?

21 A. No. It could be other kinds of blood as well. It
22 could be animal blood.

23 Q. And the test though that you do in your lab, is it
24 specifically for human blood?

25 A. We can do a test specifically for human blood. I

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Amanda Webb - Direct Examination by Mr. Campbell

214

1 just did a general test for blood which could be human or
2 non human. But the DNA analysis that we perform, it's
3 specifically human DNA.

4 Q. That's what I'm getting to. Okay. Now, you
5 analyzed these for DNA. And briefly describe for the
6 ladies and gentlemen of the jury in layman's terms what
7 DNA is and how you go about acquiring it.

8 A. Sure. DNA is basically just the genetic blueprint
9 for life. It's what determines our physical and chemical
10 characteristics and traits. We inherit half of our DNA
11 from our mothers and half from our fathers. And in
12 forensic testing, what we do is we look at sixteen
13 different areas of your DNA. And we develop what's
14 called a profile at these sixteen different areas. And
15 it's just a bunch of numbers, but we can compare those
16 numbers from evidence to the known standards like the
17 buccal swabs that we were talking about earlier to see if
18 it could potentially match evidence to a known
19 individual.

20 Q. And in this case, you looked at the jeans and the
21 sweatshirt, is that right, and you were able to recover
22 DNA from those two items?

23 A. Yes, that's correct.

24 Q. Now, you're only saying that you -- just because you
25 detect blood, does that mean you can also retrieve DNA

1 out of an item?

2 A. Sometimes you -- just because you can see a spot
3 that you think is blood or after testing it, it is blood,
4 you still need quite a large amount. You can't just take
5 a very small amount. And in this instance, I remember
6 from my notes when looking at the items that there was
7 just a small circle of blood on these items. And
8 sometimes it can be degraded over time as well.

9 Q. And when you're doing your test, the test you
10 perform to determine if this blood is actually in this
11 case Mr. James Marshall Tucker's, do you -- does it -- is
12 it based off of red blood cells or white blood cells?

13 A. White blood cells. We look for nuclear DNA. And
14 that means the cells have to be nucleated. And that's
15 only in white blood cells. Red blood cells do not
16 contain DNA.

17 Q. So if there's not enough white blood cells -- if my
18 understanding is correct, if there's not enough white
19 blood cells in a sample that you receive or find, then
20 you're not able to retrieve DNA even though you
21 determined there's blood there?

22 A. Right, that's correct.

23 Q. Now, starting with item number -- we'll start with
24 the jeans first, item number 2.1. That was indicating a
25 cutting from the blue jeans. What, if anything, did your

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Amanda Webb - Direct Examination by Mr. Campbell

216

1 analysis determine?

2 A. A partial DNA profile was developed from the jeans,
3 and it matched the DNA profile of the victim, James
4 Marshall Tucker. And the probability of randomly
5 selecting an individual, unrelated individual, having a
6 DNA profile matching this item is one in 4.9 quadrillion.

7 Q. And I believe that's with fifteen zeros; is that
8 right?

9 A. Yes, it would be four nine with fourteen zeros after
10 it, yes.

11 Q. Now -- so what you're saying is that the victim in
12 this case, James Marshall Tucker's blood is on that set
13 of blue jeans there?

14 A. Yes. In my opinion, yes.

15 Q. Now, when you said partial, what exactly are you
16 referring to? What does that mean?

17 A. Before when I was talking about the areas that we
18 test -- in forensics we test sixteen different areas of
19 your DNA. For a full profile we expect to see numbers at
20 all sixteen of those areas, locations. And in this case,
21 I did see numbers in all sixteen locations. However,
22 when I compared the profile developed from the items to
23 James Marshall Tucker's standard, there was one number
24 that didn't appear. So that makes it a partial profile
25 because one little piece was missing.

1 Q. But beyond that, there's no other indication that
2 it's anybody else's blood but James Marshall's?

3 A. That's correct.

4 Q. Now, looking at item 3.1, the cutting from the
5 sweatshirt, were you able through your analysis to
6 determine anything from it?

7 A. Yes. I was able to develop a partial DNA profile.
8 And in my report, it says it's an unidentified
9 individual. However, I can say that there is enough
10 information here that it would be consistent with either
11 the offspring or a parent of James Marshall Tucker.

12 Q. And then looking at item 1.1, the cutting from the
13 tee shirt, what, if anything, did your analysis
14 determine?

15 A. I wasn't able to get any human DNA from that item.

16 Q. Would that be because the sample was too little?

17 A. That would be my opinion in this case, yes. It was
18 a small amount.

19 Q. And is that typically -- is that unusual or not
20 unusual to get a sample that will say that blood is
21 indicated, but you can't get DNA out of it?

22 A. It's not unusual when you have just a small area,
23 just a small stain that you can see on the clothing. You
24 can still see the stain because proteins in blood last
25 longer and is more abundant than DNA.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Amanda Webb - Cross Examination by Mr. Potter

218

1 Q. When -- now, through your training in serology and
2 DNA -- officers can do a type of field test to determine
3 if blood is available on an item; is that correct?

4 A. Yes, oftentimes they do.

5 Q. And what type of test do they typically do?

6 A. They usually do a chemical test, a phenylethylene
7 test. And basically you swab the area where you think
8 the blood is, and then you drop on a chemical solution
9 called phenylethylene. And then after that you drop
10 hydrogen peroxide on it, and it will turn bright pink if
11 there is blood present.

12 Q. Ms. Webb, I have no further questions for you.

13 Please answer any questions Mr. Potter may have.

14 THE COURT: Yes, sir?

15 MR. POTTER: May it please the Court.

16 CROSS EXAMINATION

17 BY MR. POTTER:

18 Q. On the jeans that you analysis -- that you did the
19 analysis on, one small cutting was given to you; is that
20 correct?

21 A. Yes, that's correct.

22 Q. About what was the size of that cutting?

23 A. I'd say maybe approximately two inches by two
24 inches.

25 Q. I'm sorry. Say that again?

1 A. Approximately two inches by two inches.

2 Q. Okay. That was the only blood that was found on
3 those jeans?

4 A. Yes, that's correct.

5 Q. Because if there was any other blood, there would be
6 another cutting for you to do analysis on, correct?

7 A. Yes. They would have made another cutting and sent
8 that to DNA.

9 Q. Now, you don't know how that blood got there?

10 A. No, I don't.

11 Q. You don't know when that blood got there?

12 A. No. I can't determine that.

13 Q. There's no way to date it, whether it was in
14 February of '09 or February of '08?

15 A. No. There's no test to determine that.

16 Q. Okay. And in your report that you provided to the
17 Government's attorney which is dated August 26th, 2009,
18 you indicate that the cutting from the tee shirt involves
19 a -- your finding was a partial DNA profile developed
20 from item 3.1 -- excuse me -- the sweatshirt is from an
21 unidentified individual, correct?

22 A. Yes, that's correct.

23 Q. You don't know who that blood is to or who it
24 belongs to or anything of that sort, do you?

25 A. No. The only thing that I can say from look -- from

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Amanda Webb - Redirect Examination by Mr. Campbell

220

1 comparing ---

2 Q. Well, that's not my question. You don't know whose
3 blood that is ---

4 MR. CAMPBELL: Your Honor, objection.

5 THE COURT: Hold on.

6 MR. CAMPBELL: Let her answer the question.

7 THE COURT: Well ...

8 MR. CAMPBELL: He cut her off.

9 THE COURT: Okay. Let him ask -- that's all
10 right. Let him ask the question -- ask the question
11 again, let her answer. And then if she wants to explain,
12 that's fine.

13 Q. The cutting on the sweatshirt, you don't know whose
14 blood that is? You don't know who that belongs to?

15 A. Yes, sir, that's correct.

16 THE COURT: Okay. Now she can explain if she
17 wants to.

18 You can explain if you want to.

19 REDIRECT EXAMINATION

20 BY MR. CAMPBELL:

21 Q. Explain.

22 A. However, I can say that upon comparing the profile
23 from the sweatshirt to Mr. James Marshall Tucker's DNA
24 that the profile from the sweatshirt is consistent with
25 being an offspring, a child or a parent to James Marshall

1 Tucker.

2 Q. Could it be Mr. Tucker's blood itself?

3 A. No, it couldn't because it doesn't match his
4 profile. But it does share a lot of the DNA which is how
5 I'm able to say it's either an offspring or a parent.
6 Because where I said before we inherent half of our DNA
7 from our mothers and half from our fathers; and
8 therefore, you expect to see half of that shared.

9 Q. I have no questions.

10 RECROSS EXAMINATION

11 BY MR. POTTER:

12 Q. You didn't put it in your report, did you?

13 A. No, I didn't.

14 Q. You said unidentified individual, didn't you?

15 A. Yes, I did.

16 Q. And you're changing your testimony now; is that
17 correct?

18 A. It's still unidentified.

19 Q. Correct.. You don't know whose blood that is?

20 A. No, I don't.

21 Q. Nothing further.

22 THE COURT: All right.. Thank you. You can
23 step down.

24 THE WITNESS: Thank you.

25 THE COURT: Does she need to be excused?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Amanda Webb - Recross Examination by Mr. Potter

222

1 MR. CAMPBELL: Yes, Your Honor. Can we
2 approach for a second?

3 THE COURT: Yeah.

4 (WHEREUPON, a bench conference was held off the
5 record.)

6 THE COURT: You can step down. Thank you.

7 THE WITNESS: Thank you.

8 (WHEREUPON, Court's Exhibit Number 2 was marked for
9 identification only.)

10 MR. CAMPBELL: Your Honor, that was the last
11 witness I have for today.

12 THE COURT: All right.

13 Ladies and gentlemen, that's going to be the
14 testimony that we're going to hear today. Again, I have
15 a problem that's causing me to be out of the office.
16 We'll start tomorrow morning at ten o'clock. I can
17 promise you that we will start closer to ten than we did
18 today because I hope to goodness I resolved the issues
19 with the other cases.

20 Please don't talk about this case with your
21 families. I understand siblings and parents and wives
22 and whoever else may want to talk to you about this case.
23 Don't talk to them. Anything that you hear outside of
24 this courtroom could influence you. So I understand
25 that's it's very difficult say to somebody that you live

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Amanda Webb - Recross Examination by Mr. Potter

223

1 with, I can't talk about it. But wait until Thursday,
2 and then you can talk about it all you want.

3 We'll see you at ten o'clock. If anybody tries to
4 contact you about this case, let me know. Don't watch
5 anything, listen to anything or read anything about this
6 case. Have a good night.

7 (WHEREUPON, the jury panel exited the courtroom at
8 approximately 2:59 p.m.)

9 THE COURT: Okay. Tomorrow morning.

10 MR. CAMPBELL: What time you want us to be
11 here?

12 THE COURT: Ten.

13 (WHEREUPON, court stood at recess until for the
14 day.)

15 **SEPTEMBER 16, 2009**

16 (WHEREUPON, court convened with all parties present
17 and the following proceedings were had commencing at
18 approximately 10:26 a.m.)

19 THE COURT: Thanks. Have a seat. Well, I have
20 a couple of jury questions. The jury has asked, can
21 jurors ask a question for clarification? Two examples,
22 need more information or don't understand something. I'm
23 just going to tell them no.

24 (WHEREUPON, Court's Exhibit Number 3 was marked for
25 identification only.)

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Amanda Webb - Recross Examination by Mr. Potter

224

1 THE COURT: Y'all ready this morning?

2 MR. CAMPBELL: Just a couple of pretrial
3 issues.

4 THE COURT: Okay.

5 MR. CAMPBELL: Your Honor, on the indictment,
6 when you look at it, it states that it's February the
7 10th, 2009, the incidents occurred on the armed robbery
8 and the assault and battery with intent to kill. The
9 State makes a motion pursuant to § 17-19-100 to amend the
10 indictment just on the date to February the 9th because
11 the testimony in evidence has shown that the attacks
12 actually occurred and the robbery occurred on Feb -- the
13 late hours of February the 9th.

14 THE COURT: Okay. Any objection to that?

15 MR. POTTER: Judge, for the record, we do have
16 an objection. I think what he needs to do is go back to
17 the Grand Jury and get a proper indictment. So at this
18 point in time, if that's their motion and I would ask
19 that you deny it and mistry the case.

20 THE COURT: Okay. All right. Overruled. What
21 I'll do is I'll allow you to amend it since you're just
22 amending a scrivener's error, I guess, the date. But
23 you're protected for the record.

24 MR. CAMPBELL: And I think Mr. Potter has a
25 couple of motions.

1 MR. POTTER: Judge, I do have a couple of
2 things to take up if it pleases the Court.

3 THE COURT: Yes, sir.

4 MR. POTTER: It is my understanding that
5 Detective Gebling (phonic) -- Gebing, excuse me, and
6 Detective Owens are going to testify, and that's going to
7 be pretty much the rest of the State's case. As we heard
8 in the *Jackson v. Denno* hearing, there is testimony that
9 Detective Gebing went to the hospital to meet with my
10 client who attempted suicide and was unable to get a
11 statement from him at that time. Your Honor, I'm going
12 to ask that any testimony related to that particular
13 visit and to the suicide attempt and the hospital visit
14 be excluded under 403. Obviously the probative value
15 does not outweigh the prejudicial. It's going to cause
16 the jury to speculate as to why he attempted to commit
17 suicide or why he was there. I think as a result, that's
18 going to be way prejudicial to ourselves as well as to
19 the State because I guess that can be speculated two
20 different ways. He attempted to commit suicide because
21 he was falsely accused or he attempted to commit suicide
22 because he knew he did it. So I would ask that no
23 testimony be brought forth unless obviously I open the
24 door -- which I don't intend to do -- but in the direct
25 of the detective.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Amanda Webb - Recross Examination by Mr. Potter

226

1 THE COURT: Okay. I tend to agree with him.
2 I'm not sure what probative value the suicide attempt
3 has. But I'll be happy to hear from you.

4 MR. CAMPBELL: Your Honor, I'm not going to
5 oppose it. The only thing that I would like to make
6 mention is that pursuant to his motion to take away or
7 keep out any reference to Mr. Tucker's alleged suicide
8 attempt that -- he also had a letter in there to his
9 girlfriend. And that nothing in that nature gets
10 mentioned about that. We just will not mention the fact
11 that he did attempt suicide taking Tylenol P.M. and just
12 brush it -- we won't even go into it. So I have no
13 problems with that.

14 THE COURT: Okay.

15 MR. POTTER: If it pleases the Court, one small
16 other issue. And I had talked briefly with Mr. Campbell
17 about this before you got on the bench. And that deals
18 with the location of where the interview was done with my
19 client and where the statement was taken which was in the
20 detention center. He was being held on a probation
21 violation warrant. And I have some concerns that under
22 403 as well as 404(B) related to what a jury may infer in
23 regards to that. I have no problem with the detective
24 saying that I met with him in a room in a building owned
25 by the Anderson County or a building owned by or operated

1 by the Sheriff's Department or something of that sort.
2 But in regards to him being, you know, in an orange
3 jumpsuit and being locked up on other charges I think,
4 again, are highly prejudicial.

5 THE COURT: Yes, sir?

6 MR. CAMPBELL: Your Honor, I don't know how I
7 can get around that because part of the thing is going to
8 be when the officer takes the stand and talks about being
9 freely and voluntarily given this statement. He wasn't
10 in any shackles; he wasn't in handcuffs. The guards took
11 him and the guard went into a room. Two officers were
12 there. And I think that it's too intertwined that we're
13 going to have a hard time separating everything and going
14 through the questions of saying this was given freely and
15 voluntarily and talking about the description of, you
16 know, the room and how things were. It just limits what
17 we can go into.

18 THE COURT: Yeah, I agree with you. I
19 understand.

20 You're protected again for the record, but I'm going
21 to deny that motion. I mean, obviously it took place at
22 the detention center. I wouldn't go too far into what
23 ---

24 MR. CAMPBELL: One of the things he and I, Mr.
25 Potter and I, have already talked about is -- bring up to

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Amanda Webb - Recross Examination by Mr. Potter

228

1 the Court is how to handle -- he was picked up on a
2 probation violation on February the 11th. And I wasn't
3 going to go into the fact that he was picked up for a
4 probation violation and that's why when you talked to him
5 on the 12th at the detention center, he was already locked
6 up. Basically I was just really going to gloss over the
7 fact that -- I was just going to say he was already -- he
8 was at the detention center.

9 THE COURT: We had our meeting at the detention
10 center.

11 MR. CAMPBELL: Right.

12 THE COURT: I mean, quite frankly most of them
13 are going to think that, you know, they picked him up for
14 questioning. But ...

15 MR. POTTER: I don't think I have a problem
16 with that, Your Honor.

17 THE COURT: Okay.

18 MR. POTTER: And Judge, lastly -- I know I made
19 this motion yesterday in regards to a separate redaction
20 of a portion of his statement. I've got a copy and I
21 boxed the language I was seeking to have removed. If I
22 -- I would like to go ahead and proffer that for the
23 record.

24 THE COURT: Yeah, that would be fine. Why
25 don't you do that?

1 MR. POTTER: And that way we're preserved.

2 THE COURT: Yeah.

3 MR. POTTER: And then I'll make the objection
4 on the record if and when that time comes.

5 THE COURT: All right. If you can proffer it,
6 that would be good. You're going to make that a Court's
7 Exhibit or your exhibit?

8 MR. POTTER: How about Defendant's 1?

9 (WHEREUPON, Defendant's Exhibit Number 1 was marked
10 for identification only.)

11 MR. POTTER: I think that's all I have
12 pretrial-wise, Your Honor.

13 THE COURT: Okay. All right. Well, I'm going
14 to bring them in and deal with this question. This is
15 why I worry about television. This is the kind of
16 question you get from people who watch T.V. too much.

17 All right. You can bring them in.

18 (WHEREUPON, the jury entered the courtroom at
19 approximately 10:34 a.m.)

20 THE COURT: Good morning, ladies and gentlemen.
21 Ladies and gentlemen, we've been out here dealing with a
22 couple of issues including your question. Let me make
23 sure I've got the question right. The question is, can
24 jurors ask a question for clarification? Two examples,
25 need more information or don't understand something. Is

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Amanda Webb - Recross Examination by Mr. Potter

230

1 that the question?

2 JURY FOREMAN: It is, Your Honor.

3 THE COURT: The answer is sort of a short --
4 the answer is no, you can't. You have to basically take
5 the testimony as it's elicited from the witness stand by
6 the attorneys. And quite frankly, just so you
7 understand, there are reasons for that. There may be
8 reasons that even I don't know that a question is not
9 asked. So basically the lawyers fashion their case and
10 ask the questions, and then you're unfortunately limited
11 to those answers in forming your decision about the
12 facts.

13 But again, this is exactly the way to do it.

14 JURY FOREMAN: Thank you.

15 THE COURT: Okay. That's a Court's Exhibit,
16 right?

17 All right. You can call your next witness.

18 MR. CAMPBELL: Your Honor, the State calls
19 Detective Rob Gebing to the stand.

20 MADAM CLERK: If you'll come around this way.

21 (WHEREUPON, the witness was duly sworn.)

22 MADAM CLERK: Have a seat in the witness chair.
23 If you'll please state your full name and spell your last
24 name for the record.

25 THE WITNESS: My name is Robert Kim Gebing, Jr.

1 Gebing is spelled G-E-B-I-N-G.

2 ROBERT KIM GEBING, JR.,

3 Being first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. CAMPBELL:

6 Q. Detective Gebing, you're employed with the Anderson
7 County Sheriff's Office?

8 A. I am.

9 Q. And how long have you been in law enforcement?

10 A. I've been with this agency a little over eight
11 years. Prior to that, I was with the United States Army
12 Military Police for five years.

13 Q. And how long have you been a detective?

14 A. A little over four years.

15 Q. And prior to that, were you a road deputy?

16 A. I was.

17 Q. Now, were you the detective that was assigned this
18 case?

19 A. I was assigned follow-up on this case, yes.

20 Q. And approximately what date were you assigned to
21 this case?

22 A. The day after it occurred which would have been
23 February the 10th.

24 Q. And you -- can you just briefly describe for the
25 ladies and gentlemen of the jury how cases are assigned

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Kim Gebing, Jr. - Direct Examination by Mr. Campbell

232

1 and how you receive them?

2 A. Sure. Traditionally what happens is a uniformed
3 patrol officer will go and respond to the initial call,
4 whatever the case may be. They will get there and
5 determine what kind of case it is. Depending on the
6 severity, they'll notify their supervisor. And then a
7 supervisor will take into account all the findings based
8 on what the road deputies have seen and obtained. From
9 that point, I guess sometimes if it's severe enough,
10 they'll call a detective out that night. But most of the
11 cases of this nature, violent crimes, something that's
12 probably a little bit beyond the scope of the road
13 deputy's availability and skills, they'll usually assign
14 something like this to a detective. And which we usually
15 get assigned out the next business day which is what
16 happened in this case.

17 Q. So when you got to work on the morning of February
18 the 10th, this case was sitting on your desk?

19 A. Yes.

20 Q. And just describe for the ladies and gentlemen of
21 the jury what procedure you went through or how you went
22 about first going through this case, what you did.

23 A. Well, obviously I print out the report and, you
24 know, go over what the reporting deputy had indicated his
25 findings were that night. You know, who was involved,

1 the victim, locations. Things of that nature. That
2 gives me an idea of where I need to steer my
3 investigation as I begin to follow up.

4 Q. And what was the first thing you started doing in
5 this case?

6 A. The first thing I would have liked to have done was
7 made contact with the victim. I went to his house the
8 morning of the 10th, but I got no answer. Didn't know it
9 at the time, but he wasn't living there. He had gone to
10 stay with his brother-in-law.

11 Q. And then did you at that point -- did you eventually
12 make contact with the victim?

13 A. I did, but it wasn't until the next day.

14 Q. And what else did you do on the 10th?

15 A. On the 10th, after not being able to get a hold of
16 the victim, I decided to go to the alleged suspect's
17 house at . Upon arrival there I
18 found that he wasn't there either. I ended up speaking
19 to his girlfriend for a period of time. But Mr. Tucker,
20 Tony, James Anthony Tucker, was not home at that time.

21 Q. At that point, did you go to where the crime scene
22 occurred?

23 A. I had been there earlier and again got no answer,
24 that being on the 10th. After speaking with the
25 girlfriend -- I spoke to her briefly about some issues

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Kim Gebing, Jr. - Direct Examination by Mr. Campbell

234

1 just trying to establish time frames, things of that
2 nature -- took a statement from her, left there.

3 Q. What was her name?

4 A. Jeannie Durham.

5 Q. Please continue.

6 A. After leaving there I tried to go make contact with
7 Mr. Tucker at another location.

8 Q. Now, did you -- at that point in time, did you take
9 a look at any type of evidence that were collected in
10 this case?

11 A. I took a look at some physical evidence that was
12 collected the next morning, the morning of the 11th.

13 Q. Let's talk about that. Now, where was the evidence
14 located?

15 A. When I examined it, it was at the Anderson County
16 Sheriff's office evidence building. It was still being
17 held in evidence.

18 Q. And what, if anything, did you have the evidence
19 people do?

20 A. The shirts -- one of the shirts I examined myself,
21 and I noted a patch of a brownish material. Not knowing
22 what it was, whether it was blood, mud, rust, whatever, I
23 had one of the forensic investigators, Deputy Blair Hill,
24 conduct a presumptive chemical test on this stain to
25 determine whether it was blood or not.

1 Q. And do you remember what that test was called?

2 A. He told me it was phenylethylene.

3 Q. I'm going to show you what's been marked for
4 identification State's Exhibit 28, 29, and 30. Can you
5 please identify what these photographs are, sir?

6 A. This is the shirt that had been placed into evidence
7 by Deputy Pridemore. This is the shirt that I had
8 examined and noted the small patch of the faint brownish
9 substance. And the third picture is a Q-tip which has a
10 pinkish color on the tip of it. That is, as it was
11 explained to me by Deputy Hill, a positive result for
12 blood using the phenylethylene test.

13 MR. CAMPBELL: Your Honor, may I have the
14 witness step off the stand so he can show the jury?

15 THE COURT: Yes, sir.

16 (WHEREUPON, the witness stepped down from the
17 witness stand.)

18 Q. This is what's been marked as State's Exhibit Number
19 28. Is it -- what -- first of all, what -- to your
20 knowledge where did this shirt come from?

21 A. According to the records that I had available, the
22 report and the property report, this is the shirt that
23 was collected by Deputy Pridemore from

24 And again, this shirt -- this was -- I actually
25 took this picture in the evidence building at the

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Kim Gebing, Jr. - Direct Examination by Mr. Campbell

236

1 Anderson County Sheriff's Office as I was examining it.

2 Q. Okay. And then number 29, what is this? State's

3 Exhibit Number 29, what is this depicting?

4 A. This is a closeup of the same shirt illustrating the
5 area of the faint brownish -- there was two spots. This
6 is a scale just to kind of give it some dimension so that
7 way you could realize how big the area actually was.

8 Q. And then State's Exhibit Number 30, what is this
9 showing?

10 A. This is Deputy Hill's hand holding the Q-tip. This
11 is to illustrate the pink which, as was explained to me,
12 was a positive reaction to the phenylethylene test for
13 blood.

14 Q. And these are the photographs that you actually took
15 yourself?

16 A. I physically took these. These are three of five.

17 (WHEREUPON, the witness resumed the witness stand.)

18 MR. CAMPBELL: Your Honor, at this time I move
19 to publish -- I mean move into evidence State's Exhibits
20 28, 29, and 30.

21 THE COURT: Any objection?

22 MR. POTTER: No, Your Honor.

23 THE COURT: Without objection.

24 (WHEREUPON, State's Exhibits Number 28, 29 and 30
25 were admitted into evidence.)

1 Q. Now, this shirt, according to your knowledge at
2 that point in time, was supposedly a shirt the suspect
3 was wearing on the night of the attack?

4 A. As had been indicated from the records I had
5 available, yes.

6 Q. Now, after you did this, you had this information,
7 what was your next procedure or step that you took in
8 investigating this case?

9 A. Well, this morning -- after doing that, I managed to
10 meet with the victim at the home of his brother-in-law,
11 brother-in-law being Dewey Little.

12 Q. What was that address?

13 A.

14 Q. And he was -- the victim was there?

15 A. Yes. James Marshall Tucker, being the victim, he
16 was there.

17 Q. And did you have an opportunity to observe any type
18 of wounds that he may have suffered?

19 A. I did.

20 Q. And what did you see?

21 A. He had suffered laceration-type injuries to the
22 front of the head, to the back of the head. He had some
23 injuries to his arms and hands, and he had begun to
24 develop some bruising. It had begun to turn purple, kind
25 of darken up. They were cleaned up. They were -- you

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Kim Gebing, Jr. - Direct Examination by Mr. Campbell

238

1 know, he wasn't covered in blood as he would have been
2 earlier. He had been cleaned up and had since been
3 released from the hospital, but you could tell the
4 bruising had begun to develop.

5 Q. As a result did you take any steps to preserve what
6 his injuries looked like the day after?

7 A. I did. I contacted the forensic division. And
8 they, after I had left, sent a forensic investigator down
9 to take follow-up pictures of the bruising as it had
10 begun to develop. And I also requested that a buccal
11 swab, a sample of the victim's DNA, be obtained for
12 possible later comparison.

13 Q. And that was done in this case; is that right?

14 A. It was.

15 Q. In fact, the photographs you saw yesterday -- let me
16 show you what's been marked State's Exhibit 18 through
17 27. Are these the photographs of how you -- do those
18 photographs accurately depict and show how he looked on
19 the 11th when you looked at -- when you saw him?

20 A. Yes. These accurately depict how I observed Mr.
21 Tucker, Marshall Tucker, when I went and interviewed him
22 on the 11th. And again, because of the bruising that had
23 begun to develop, I asked that these pictures be taken.
24 These are an accurate representation of what I saw.

25 Q. Now, did you discuss with the victim in this case,

1 James Marshall Tucker, the events that took place and
2 what had happened to him?

3 A. I did.

4 Q. And what, if anything, through your investigation
5 did you learn from him?

6 A. He gave pretty much the testimony he gave yesterday
7 which was his son had ---

8 MR. POTTER: Objection, Your Honor, at this
9 time. I don't think this is necessarily relevant, it is
10 undue burdensome, and it's repeating testimony that has
11 already been before the jury.

12 THE COURT: Yeah. I'll give you a little
13 leeway, but don't repeat the whole conversation.

14 A. He told me approximately the same story he gave in
15 court yesterday. Recounted the details of the attack,
16 brushed briefly on the visit earlier, the attack and some
17 of the things that were said during the course of it,
18 what was taken. Things of that nature.

19 Q. And did he identify a suspect to you?

20 A. He did.

21 Q. And who did he identify as a suspect?

22 A. His son, James Anthony Tucker.

23 Q. And is he sitting in the courtroom today?

24 A. He is.

25 Q. Can you please identify him?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Kim Gebing, Jr. - Direct Examination by Mr. Campbell

240

1 A. Mr. Tucker is wearing a dark colored checkered
2 shirt. He is to Mr. Potter's right at the Defense table.

3 Q. Now, as a result of you talking to Mr. James
4 Marshall Tucker, did you take a statement from him?

5 A. I did.

6 Q. And through your investigation, did you learn what
7 type of weapon was used that he was attacked and robbed
8 with?

9 A. He told me he was attacked with a hammer.

10 Q. And it's my understanding it was his own hammer?

11 A. That's -- yes.

12 Q. Now, after you discussed that with him, did you have
13 an opportunity to go to here in
14 Anderson?

15 A. Yes. I accompanied Mr. Tucker and Mr. Little back
16 to the incident location so I could observe the scene
17 myself.

18 Q. And this was after you had already spoke to him at
19 ?

20 A. That's correct.

21 Q. Dewey Little's house?

22 A. That's correct.

23 Q. And when you arrived -- well, when you went to the
24 scene, had the scene already been cleaned up?

25 A. No. There was still -- the blood was still in place

1 on the floor in the kitchen.

2 Q. In fact, I think -- number 31, can you please
3 identify that?

4 A. This is a photograph I took when I went on the 11th
5 to the scene. It was more for my own reference just to
6 kind of get an understanding of where this attack had
7 taken place or was alleged to have taken place. But this
8 is a photograph of the corner of the kitchen where Mr. --
9 where Marshall had told me he had been attacked.

10 Q. And this photograph actually depicts just the blood
11 droppings on the floor; is that right?

12 A. That's correct.

13 Q. Where the -- and the chair that he was sitting in,
14 that he alleged he was sitting in, had been moved away?

15 A. It had been moved, but I noted that there's a void
16 in the picture where -- which would have been consistent
17 with where the chair had been according to Marshall.

18 Q. Now, did you look at the kitchen to determine or
19 look at the blood spots that you found? Did you find any
20 like on the ceiling or on the walls or anywhere else?

21 A. No. It was fairly well isolated to that general
22 area. Mostly on the floor and on the chair.

23 Q. Now, did the blood droppings that you observed, did
24 it look like they were high impact type of ---

25 MR. POTTER: Objection, Your Honor. I don't

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Klm Gebing, Jr. - Direct Examination by Mr. Campbell

242

1 know if he is qualified to make an opinion on that.

2 THE COURT: Yeah, sustained. That's probably
3 not a fair question for him. You can tell him -- you can
4 ask him to describe it for you.

5 Q. Just go ahead and describe what you observed in the
6 blood droppings that you observed in the kitchen.

7 THE COURT: Hold on a second.

8 MR. POTTER: I'm going to object to that. I
9 think the photographs are the best evidence in regards to
10 that particular situation. So I would submit that that's
11 sufficient enough for the jury and that any testimony of
12 him describing what he seen in the pictures, I think, is
13 again duplicative and not probative under 403.

14 THE COURT: Okay. Overruled. I'll let him go
15 into a short description.

16 Q. Just briefly describe it.

17 A. The blood dropping -- the blood droplets that I saw
18 on the floor were consistent with the attack as described
19 by Mr. Tucker and consistent with his injuries,
20 consistent with the photos from the hospital. I didn't
21 see more or less blood than I would have expected to have
22 seen.

23 Q. Now, eventually -- after that did you get an
24 opportunity later to talk to the person who was
25 identified as a suspect in the case, James Anthony

1 Tucker?

2 A. I talked to him the next day.

3 Q. That would have been on February the 12th?

4 A. The 12th, yes, sir.

5 Q. And I want to talk to you a little about that.

6 After -- let me just step back. After you went to the
7 house, is there anything else you did during your
8 investigation on the 11th?

9 A. Well, while at the house, I asked Marshall to show
10 me some of the things he had mentioned when we discussed
11 the case previously, where the car was located that he
12 stated that Tony had gone to get some CDs out of.

13 Q. When you say Tony, you're referring -- who are you
14 referring to?

15 A. I'm referring to the Defendant.

16 Q. Okay.

17 A. I asked him to show me where the hammer had been
18 taken -- he even offered that. He said, I know exactly
19 where the hammer came from. I asked him to show me. And
20 that's when he indicated it had come from the back porch
21 where it was hanging on the rail just beside the entrance
22 to the back porch. And I actually took a picture of
23 that. He pointed out a bag of clothing that he had
24 mentioned in his earlier testimony that Tony had gathered
25 up and had set aside and then left behind.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Klm Gebing, Jr. - Direct Examination by Mr. Campbell

244

1 Q. And I believe these are depicted in item 32 and 33;
2 is that correct?

3 A. Yes. Item 32 is -- I took this photo as well. This
4 is the approximate location, as described by Marshall,
5 where the hammer had been prior to this assault.

6 Q. So that's where you indicated ---

7 A. That's where Marshall indicated to me the hammer had
8 been at his last opportunity to know where it was.

9 Q. All right. And what does 33 depict?

10 A. Item number 33 is a plastic shopping-type bag with
11 some clothing items. Marshall indicated to me that Tony
12 had previously -- had come to the house and stated he
13 needed to pair some items up, put them in this bag, left
14 them in a chair in the kitchen. I gathered these just as
15 corroborative type detail. But upon reviewing Forensic
16 Investigator Ables' earlier photos, the bag is seen in
17 those as well.

18 Q. And what type of clothing items were these?

19 A. A couple socks -- a couple pairs of socks and a
20 couple of shirts.

21 Q. And this was taken on the 11th, I believe?

22 A. I took those on the 11th. I seized those items on
23 the 11th.

24 Q. Okay. And this is actually your photograph?

25 A. That is my photograph.

1 Q. Now, did you have anything else you did on the 11th
2 after -- following this investigation?

3 A. Prior to having left -- and I don't know if it
4 matters or not. But prior to having left
5 I collected the shirt Marshall had been wearing the night
6 of that attack, placed those into our evidence as well.
7 That -- I would like to have talked to Tony that day, but
8 was unable to locate him. I later learned of a location
9 for him and spoke to him on the 12th.

10 Q. And let's go ahead and talk about that. Did you
11 eventually -- you eventually spoke to him; is that right?

12 A. That's correct.

13 Q. And where did you speak to him? What location?

14 A. At the Anderson County Detention Center.

15 Q. What was the purpose of why did you wanted to speak
16 to him?

17 A. I wanted to get his side of this. I didn't want to
18 rush into something. I'd like to have heard what his
19 account may or may not have been to see if he could
20 provide for his whereabouts that night.

21 Q. And as a result, did you -- because he was a
22 potential suspect, did you first read him his rights?

23 A. I did.

24 Q. I want to go ahead and go through with this. I'm
25 going to show you what's been marked for identification

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Kim Gebing, Jr. - Direct Examination by Mr. Campbell

246

1 as State's Exhibit Number 1. Please let you just --
2 please, Officer, just please look at it first and tell me
3 what kind of form is this?

4 A. State's Exhibit 1 is an Anderson County Sheriff's
5 Office Advisory of Rights form.

6 Q. And what is the purpose of this form?

7 A. It advises a potential suspect or a person who is
8 being questioned -- it advises them of what's commonly
9 referred to as their Miranda rights or their right to
10 remain silent and so on.

11 MR. CAMPBELL: Your Honor, may I have the
12 officer step off the stand ---

13 THE COURT: Yes, sir.

14 MR. CAMPBELL: --- so that we can go through
15 this together?

16 (WHEREUPON, the witness stepped down from the
17 witness stand.)

18 Q. I want go through this here. First of all, at the
19 top it says Advice of Rights, Sheriff's Office, Anderson
20 County Sheriff's Office; is that right?

21 A. That's correct.

22 Q. And you wrote his name on there, James A. Tucker?

23 A. Yes.

24 Q. And when you're looking at it on the right, it says
25 F.I.N. eleven. What does that mean?

- 1 A. I asked him how far he had gone in school.
- 2 Q. And what did he tell you?
- 3 A. He told me that he had finished the eleventh grade.
- 4 Q. Now, when you were talking to him, was he in
- 5 handcuffs?
- 6 A. No.
- 7 Q. Was he in shackles?
- 8 A. No.
- 9 Q. Did he appear to be clear-minded to you?
- 10 A. He had a very clear mind.
- 11 Q. Was he able to hold a conversation with you?
- 12 A. Yes.
- 13 Q. Did he speak clearly to you?
- 14 A. He spoke clearly with me.
- 15 Q. In your opinion did he appear to be under the
- 16 influence of any type of alcohol or drugs or any type of
- 17 medication?
- 18 A. No, he did not appear to under the influence of any
- 19 sort of substance that would alter his ability to know
- 20 what was going on.
- 21 Q. Now, did he appear to you to be argumentative, or
- 22 was he holding a conversation with you?
- 23 A. He was pleasant actually when he came in. He was
- 24 not argumentative. He was very matter of fact.
- 25 Q. And when you put down location, A.C.D.C., what is

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Kim Geblog, Jr. - Direct Examination by Mr. Campbell

248

1 that referring to?

2 A. That refers to the Anderson County Jail located at
3 1009 County Home Road in Anderson, South Carolina.

4 Q. And of course, the date is February 12th, '09. The
5 time is 14:21. Is that military time?

6 A. That's military time for two twenty-one p.m. That's
7 when I began going through the form.

8 Q. Now, can you explain to the ladies and gentlemen of
9 the jury the process you went through when you reviewed
10 this form with him?

11 A. Sure. Again, when somebody first comes in, I'm
12 trying to gage their capability of reading and writing
13 and understanding what it is we're going through which is
14 why I ask them, you know, how far they went in school. I
15 also -- this is just my personal preference. Even though
16 it doesn't ask for a name, I always put it there in print
17 because some people's signature, if I'm trying to look at
18 it a month later on down the line and figure out which
19 file it needed to go in, it can be difficult. So those
20 are just -- that's my own preference.

21 We go through. I add the date, the time and the
22 location. And I'll flip this upside down and read it to
23 them. I'll read the first line out loud for them.

24 Before you're asked any questions, you must understand
25 your rights. I'll make these two slash marks here with

- 1 my pen and ask them to read those two out loud for me.
2 Once they've done so, I'll ask them to initial on those
3 lines. And I'll tell them, what that does is help me
4 gauge the level in which you are capable of reading and
5 writing. I'll ask them to follow along, and then I will
6 continue again reading it out loud as they follow along.
7 And I'll trace as I'm going with my pen without -- you
8 know, without the pen part actually functioning. But
9 I'll trace it and read it word-for-word with them.
10 Q. And in this case, did he read the first two lines to
11 you?
12 A. He did.
13 Q. And is that his initials where he signed it?
14 A. They are.
15 Q. Now, was anybody else present in this room with you?
16 A. Detective Todd Owens, my office partner, was with
17 me.
18 Q. Now, let me ask you this question. At the time was
19 he under arrest for this crime?
20 A. No, he was not.
21 Q. And please continue. You went through the rest of
22 the remaining Advice of Rights to him?
23 A. Again, once he reads those two out loud, then I will
24 have him follow along with me. I'll read these remaining
25 three portions here. I'll ask him if he understands

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Klm Gebing, Jr. - Direct Examination by Mr. Campbell

250

1 those. And if he understands, I'll ask for his signature
2 here, which he did sign. I will date and time, the time
3 when we finished this portion. And he affixed his
4 signature, and I signed myself as a witness.

5 Q. Now, further along in the bottom, further down in
6 this statement, the Waiver of Rights, what exactly is
7 that?

8 A. The Waiver of Rights is that, yes, they understand
9 what their rights are, but they are willing to waive that
10 right to remain silent, the right to an attorney and to
11 speak to me regarding this matter.

12 Q. And did you -- did he read this?

13 A. I asked him to follow along, and I read it out loud
14 with him, again, tracing as I go with my pen. I'm
15 reading upside down and tracing it with my pen so he can
16 keep up with me. When I get to the word coercion, you'll
17 note that there is a small little line under the word
18 coercion. It's one of those words that some people do
19 and some people don't know what it means. So it's just
20 my habit, and it has been ever since I've been in
21 investigations, to make the line below the word coercion
22 and ask them, do you know what the word coercion is.
23 Ninety-five percent of the people will probably tell me
24 no. And I'll just tell them a real approximate
25 definition by coercion is I'm not offering you anything,

1 I'm not bribing you, I'm not threatening you with
2 anything to get you to talk to me. And if you choose not
3 to, that's your right to do so. After we get through
4 this portion, I'll ask him if he agrees to that to affix
5 his signature here, which he has done.

6 Q. And then you signed it also and he signed it?

7 A. Yes, my signature as a witness, date it and time at
8 the time of completion of this portion.

9 Q. Now, as you were going through this, in your opinion
10 did he understand what he was signing?

11 A. Yes.

12 Q. And you didn't promise him anything?

13 A. No.

14 Q. And you didn't offer him anything?

15 A. No.

16 Q. At any point did he ask you to stop your interview
17 with him?

18 A. No, he did not.

19 Q. At any point did he ask for a lawyer, to stop and
20 talk to one?

21 A. No, he did not.

22 Q. Did he ever request or ask for an attorney to be
23 present?

24 A. No, he did not.

25 Q. And after you had taken this Advice of Rights form

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Kim Gebing, Jr. - Direct Examination by Mr. Campbell

252

1 down, what did you do next?

2 A. I began asking about the attack on his father.

3 Q. Now, let me just step back. We'll get to the
4 attack. When you were talking to him, it was at the
5 detention center?

6 A. Correct.

7 Q. While you were there, did you take a statement from
8 him after this?

9 A. I did after this.

10 Q. And was that statement typed or was it handwritten?

11 A. It was typed. The office that we have available has
12 a computer with a printer. And it's back there partially
13 for this reason, so that way detectives needing to
14 interview somebody at the detention center would have
15 that available to them for, I guess, neatness purposes.
16 It is available.

17 Q. Now ...

18 MR. CAMPBELL: Your Honor, at this time I want
19 to admit State's Exhibit Number 1 into evidence.

20 THE COURT: Any objection?

21 MR. POTTER: No, sir.

22 THE COURT: Without objection.

23 (WHEREUPON, State's Exhibit Number 1 was admitted
24 into evidence.)

25 Q. Now, you did talk to him about the events that took

1 place ...

2 A. We did.

3 Q. ... regarding the attack and the robbery of his dad?

4 A. Yes.

5 Q. And this was reduced to writing; is that correct?

6 A. At the completion of the interview, yes, it was
7 reduced to writing.

8 Q. I want to show you what's been marked as State's
9 Exhibit 2. Can you please identify what this is, sir?

10 A. This is a copy of the written statement. Again, Mr.
11 Tony Tucker's statement reduced to writing. This is a
12 copy of the written statement I took that day.

13 Q. Now, when you're taking this statement, is it your
14 words that you're putting down on this piece of paper, or
15 is it his words and you're typing them out as he's
16 speaking them to you?

17 A. Other than the very first sentence, which is, this
18 is being written for you by R. Gebing of the A.C.S.O.,
19 the body of this statement itself is the Defendant's
20 words either just as he states them himself or as he
21 answers questions. But what he says is what's on paper.

22 Q. Now, let's go ahead and ---

23 MR. POTTER: Judge, for the record, we do have
24 an objection related to this particular statement. I
25 know we've done some pretrial motions on it, and I want

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Kim Gebing, Jr. - Direct Examination by Mr. Campbell

254

1 to reaffirm that objection under 403 as well as *Miranda*
2 *v. Arizona* ---

3 THE COURT: Okay.

4 MR. POTTER: --- and as well as due process and
5 equal protection under the U.S. Constitution.

6 THE COURT: All right. And you're
7 incorporating your previous objection?

8 MR. POTTER: Yes, sir.

9 THE COURT: Okay. Overruled.

10 MR. POTTER: Thank you.

11 THE COURT: Okay. Go ahead.

12 Q. Okay. Detective Gebing, is this a copy -- I think
13 you just stated that this is the statement you took from
14 him; is that right?

15 A. This is a copy of his statement. I maintained the
16 original.

17 Q. And you still have the original; is that right?

18 A. I do, right.

19 Q. Now, at the top of it, that's his personal
20 information he's given you; is that correct?

21 A. That is his -- it shows his name, his full name, his
22 address, his date of birth, and to the right 2/12/09 is
23 the date that the statement was taken.

24 Q. And at the time when he -- he gives you this
25 information; is that right?

1 A. What's that?

2 Q. The address -- he gives you this information up top?

3 A. Yes.

4 Q. Okay. And he told you where he was living at the
5 time this occurred was ; is that right?

6 A. That's the address that he uses officially or was
7 using officially at the time.

8 Q. And next is his date of birth, ?

9 A. Yes.

10 Q. And the 2/12/09, that just correlates to the time or
11 the date this statement was taken?

12 A. Correct.

13 Q. Now, go ahead -- I want you to go ahead and go
14 through what you did and how you -- the procedures you
15 did, and explain to the ladies and gentlemen of the jury
16 what was said and how he understood this statement was
17 his.

18 A. The interview took a brief period of time. But once
19 we finally got to where he was giving the corroborative
20 details, things that I felt were consistent and honest, I
21 began preparing this document. Again, up here indicating
22 the name, birth date, address and the date. Again, this
23 is being written for me by R. Gebing of the A.C.S.O.
24 That's my -- every statement I've ever taken starts with
25 that, and that is so the Defendant knows that I'm the one

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Kim Gebing, Jr. - Direct Examination by Mr. Campbell

256

1 typing that document for them.

2 Q. And A.C.S.O. stands for Anderson County Sheriff's
3 Office?

4 A. Anderson County Sheriff's Office. Beyond that I'll
5 ask him, tell me what happened. And as he spoke or as he
6 answered questions, I would type his response.

7 Q. And read to the ladies and gentlemen of the jury
8 what his response was.

9 A. The other day I went to my dad's house on
10 with my girlfriend, Jeannie Durham. We
11 got twenty dollars from my dad and stayed for
12 about an hour. I got some CDs from the car in
13 the yard, and then we left and went and got him
14 some beer and brought it back.

15 I'm not sure where we went after that, but
16 later on I went back out by myself. I was in
17 Jeannie's dad's truck. I went to George's and
18 got some money from a collection jar and hung
19 out for a few minutes, and then I left. I left
20 and got beer and then went and got some crack
21 from a dope man on Airline near True Temper. I
22 didn't stay there long and left. I smoked it
23 while I was out riding.

24 I starting thinking of how to get some
25 more money and remembered that my father had

1 cashed his check. I went to the house on
2 and told him I needed to pick up some
3 clothes. I got two shirts and some socks and
4 put the socks in a bag. I told him I needed to
5 get some more CDs from the car, and he gave me
6 the key.

7 I went out to the car and got the CDs. .
8 And on the way in, I grabbed a hammer from the
9 back porch somewhere. I walked in the kitchen,
10 and my dad's back was to me. I hit him in the
11 back of the head with the hammer. I was trying
12 to knock him out, not kill him. He turned
13 around and starting fighting with me over the
14 hammer. He never stood up, I don't think. I
15 told him I needed his money and he said to let
16 him go. And I told him no, you'll cut me or
17 something like that. I reached in his pocket
18 and took his money. I don't remember how much
19 money I got. Like four hundred dollars.

20 I went back to the dope man and threw the
21 hammer out somewhere on Airline, I think near
22 the curve past Ed Powell's. I threw it out the
23 driver's-side window.

24 I don't know what to say. The real me
25 wouldn't do things like that. I swear I

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Kim Gebling, Jr. - Direct Examination by Mr. Campbell

258

1 wouldn't. I'm not that kind of person.

2 Q. And after you wrote this statement out, did you give
3 him an opportunity to review it?

4 A. Yes. I'll print it out in paper and tell them,
5 please read that and make sure that it's accurate and let
6 me know if there's anything that you want to add, change
7 or delete.

8 Q. And you did that in this case?

9 A. I did.

10 Q. And did he change, add or delete anything to the
11 statement as he read it?

12 A. No. This was the one version. He didn't change
13 anything.

14 Q. And did you have him sign it in some shape, way or
15 form to identify this was his statement?

16 A. I had him actually mark this in several places. At
17 the beginning there's the initials J.T. for James Tucker.
18 I'll have them put the initials at the end point, so that
19 way nobody can go in after and fill in anything. And
20 I'll mark it myself, end of statement. And then I have
21 him sign down on this brief line, and I'll note here
22 received a copy. I physically give a copy of the actual
23 statement to him. And then this statement as well bears
24 my signature of the A.C.S.O. as a witness.

25 Q. Okay. If you'll take the stand for me.

1 (WHEREUPON, the witness resumed the witness stand.)

2 MR. CAMPBELL: Your Honor, at this time I move
3 to have State's Exhibit Number 2 entered into evidence.

4 THE COURT: Any objection?

5 MR. POTTER: Your Honor, again, same objections
6 as I mentioned before under 403, due process and equal
7 protection as well as all pretrial objections. I would
8 ask that they be incorporated in this objection.

9 THE COURT: All right. Overruled. Go ahead.

10 (WHEREUPON, State's Exhibit Number 2 was admitted
11 into evidence.)

12 Q. Now, I want to step back just a little bit regarding
13 your investigation. After you took a statement -- you
14 took a statement from the victim, James Marshall Tucker?

15 A. Yes.

16 Q. At that point in time, did you take out a warrant
17 for Mr. James Anthony Tucker's arrest?

18 A. I did not.

19 Q. And after you took this statement from James Anthony
20 Tucker on the 12th, did you take out a warrant for his
21 arrest for the assault and battery with attempt to kill
22 and armed robbery of his father?

23 A. I took one out the next day.

24 Q. Now, after you had his statement, why didn't you
25 just go ahead and arrest him right then?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Kim Gebing, Jr. - Direct Examination by Mr. Campbell

260

1 A. Well, I needed to compare some of the details in the
2 statement given by the accused and the statement given by
3 the victim to make sure some of the details that were
4 mentioned in both of these statements of course
5 correlated with what was found at the scene. It's just,
6 you know, there are people out there in the past would,
7 for whatever reason, confess to something they didn't
8 necessarily do. But that's why we go back and review
9 what we have to make sure that what he says actually
10 fits.

11 Q. So at this point, you're not rushing to judgement to
12 arrest him; is that right?

13 A. No, I was not.

14 Q. And do you take the statements from the victim and
15 the statements from, in this case, James Anthony Tucker,
16 and do you compare them and then go back and look to see
17 if the evidence matches what the statements say?

18 A. I do.

19 Q. And did you do that in this case?

20 A. I did.

21 Q. And what, if anything, were you able to determine
22 that matched up?

23 A. Some of the things that matched up ---

24 MR. POTTER: Judge, I'm going to object on
25 that, again, 403. It's repetitive in regards to evidence

1 that's already been before the jury. It's his
2 interpretation of the evidence that the jury has to make
3 the decision on.

4 THE COURT: All right. I'll allow him to go
5 ahead as long as it's not too repetitive. That's the
6 only concern.

7 MR. CAMPBELL: It's not. It's going further
8 into what his investigation consisted of.

9 THE COURT: Okay.

10 A. Some of the details that matched up, again, the use
11 of the hammer, where the victim was sitting, the fact
12 that he was sitting with his back turned. In fact, one
13 of the things that struck me was Tony recalling his
14 father or saying to his father, no, you'll cut me. That
15 was one of those details that unless you were in the
16 house, you shouldn't have known about. There were, you
17 know, some little things that Tony didn't recall. But
18 for the most part, a lot of the details did match up with
19 what Marshall had said. And things like the clothing,
20 the key that Deputy Holbrooks later on observed in Mr.
21 Tucker's clothing when he got the pants from him. Again,
22 Marshall had recalled, you know, giving him the key. In
23 fact, he brought it to my attention about a week later
24 that he wanted that key back so he could sell the car.

25 Q. That's the one with the yellow tag?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Kim Gebing, Jr. - Direct Examination by Mr. Campbell

262

1 A. Correct.

2 Q. Now, did you look -- did you find -- the hammer was
3 not found; is that correct?

4 A. The hammer still to this day still has not been
5 found.

6 Q. Okay. And did you make any attempt to find this
7 hammer?

8 A. Based on where he said he had thrown it, I walked a
9 length of Airline Road from approximately about Mary
10 Street -- there's a used car lot -- to the Abbeville
11 Highway side. I parked there, walked down to Hickory
12 Lane, turned around and walked up the other side which
13 well encompasses the curve near Ed Powell's Garage.

14 Q. Now, the picture you showed -- of course, I believe
15 it was State's Exhibit 33, the picture of the shirt and
16 socks?

17 A. Yes.

18 Q. And that was corroborated by Mr. Tucker's statement;
19 is that right?

20 A. He did state that, yeah, he had gone over there and
21 to gather some shirts and socks.

22 Q. Now, after you prepared the statements, in your
23 opinion did you feel that Mr. James Anthony Tucker was
24 the suspect in this case?

25 A. I did based on the strength of the statement and

1 comparison to both the scene and Marshall's statement.

2 Q. And as a result you took out a warrant for his
3 arrest?

4 A. I did.

5 Q. And what date was that?

6 A. On the 13th.

7 Q. And what warrants -- what charges did you bring upon
8 him?

9 A. I charged him with armed robbery and assault and
10 battery with intent to kill.

11 Q. Now, as far as the lead investigator in this case,
12 you reviewed the evidence that was recovered by the road
13 officers, Pridemore and Holbrooks; is that right?

14 A. That's right.

15 Q. And is it your -- since you are the lead
16 investigator, do you determine what, if anything, is sent
17 to SLED to be analyzed?

18 A. It is one of my responsibilities to fill out
19 requests and have things sent to SLED.

20 Q. And in this case, did you do that?

21 A. I did.

22 Q. And what did you actually ask to have analyzed?

23 A. I asked for a comparison of in particular that shirt
24 that we had found the faint brown spot on which later
25 tested tentative for blood. I requested that that be

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Kim Gebing, Jr. - Direct Examination by Mr. Campbell

264

1 sent, compared to the known standard, the buccal swab
2 that we had taken from the victim, as well as the other
3 two items of clothing that were collected by Deputy
4 Pridemore that night.

5 Q. And of course, you got the -- you heard the
6 testimony of the chemist. Is there any reason why you
7 didn't have any type of DNA or buccal swab from the
8 Defendant tested to compare?

9 A. No reason. I just didn't think it would have much
10 probative value. It was his clothing. Had I found his
11 own blood on his clothing, that wouldn't ...

12 Q. And during your investigation, did any other leads
13 or suspects emerge in this case?

14 A. No. Based on again on Marshall's statement and
15 again Tony acknowledging that he went out by himself --
16 he did not indicate that anybody was involved with him.
17 And I've to date not found anything to make me think
18 there were any other suspects involved.

19 Q. So you didn't feel it was necessary to canvass the
20 neighborhood or search and talk to neighbors or anything
21 like that?

22 A. Again, based -- his statement was very strong.

23 MR. CAMPBELL: The Court's indulgence, please.

24 (Pause)

25 MR. CAMPBELL: Your Honor, I don't have any

1 further questions at this point in time for Detective
2 Gebing.

3 Detective, if you would please answer any questions
4 Mr. Potter may have.

5 THE WITNESS: Yes, sir.

6 MR. POTTER: May it please the Court.

7 THE COURT: Yes, sir.

8 CROSS EXAMINATION

9 BY MR. POTTER:

10 Q. Detective, you indicated that you went to James
11 Anthony Tucker's house which was on
12 correct?

13 A. Where he was -- where he had been contacted the
14 night before on , that's right.

15 Q. And that was where you met with his girlfriend,
16 Jeannie Durham?

17 A. Correct.

18 Q. All right. Did you search the property?

19 A. No.

20 Q. Did you search the house?

21 A. No.

22 Q. Did you search Ms. Durham's vehicle?

23 A. No.

24 Q. Did you see a blue pickup truck, a small pickup
25 truck, in the driveway or the yard?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Klm Gebing, Jr. - Cross Examination by Mr. Potter

266

1 A. No. The pickup truck belongs to her father.

2 Actually it stays ---

3 Q. Okay.

4 A. --- two doors down.

5 Q. So you didn't see a pickup truck?

6 A. It was two doors down.

7 Q. Okay. Did you search that?

8 A. No.

9 Q. Okay. After you took the statement from Mr. Tucker,
10 did you go back to the house with a search warrant
11 looking for drugs, look for money that was allegedly
12 stolen? The key with the yellow ticket or the hammer or
13 anything of that sort?

14 A. No. The key -- I wasn't really aware of the key. I
15 wasn't aware that the key will still amongst the missing
16 and had been seen by the deputies until about a week
17 afterwards. At that point I didn't think that I would be
18 able to obtain a search warrant. But no, I did not go
19 back to the house with a search warrant at any time.

20 Q. So after the statement, you didn't do a search
21 warrant for the Defendant where he was staying to see if
22 there was any additional evidence there, correct?

23 A. No.

24 Q. Okay. Now, you took a statement from my client.

25 And the size of this room, fifteen by ten, fifteen by

1 twelve? What's the size?

2 A. Approximations again. It's probably about fifteen
3 feet left to right; it's probably about ten or twelve
4 feet deep.

5 Q. How many desks are in there?

6 A. There's one desk. There's currently a swivel-type
7 office chair and two hard chairs.

8 Q. And any windows in this room?

9 A. No. Well, there's one window on the door -- I stand
10 corrected -- but no windows facing the outside world.

11 Q. I got you.

12 A. Just one that faces into a hallway.

13 Q. All right. And you said that Mr. Tucker didn't have
14 any handcuffs or shackles on?

15 A. That's correct.

16 Q. Okay. Was he under arrest at that point in time?

17 A. Not for this. He was under arrest for something
18 else at the time.

19 Q. I understand. But was he under arrest for this, for
20 what you eventually charged him with?

21 A. No, he was not under arrest for my investigation.

22 Q. Okay. Now, when an inmate is at the detention
23 center, any phone calls he makes to family members or
24 whatever, those are recorded, aren't they?

25 A. Yes.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Kim Gebing, Jr. - Cross Examination by Mr. Potter

268

1 Q. And you're familiar with -- you've seen state
2 trooper cruisers, correct?

3 A. Yes.

4 Q. Okay. And all those state cruisers have video
5 cameras in them, correct?

6 A. Correct.

7 Q. And when somebody is arrested for DUI and they're
8 brought to the detention center, there's a video system
9 set up for when they take a DataMaster, reading of the
10 rights, that's all videotaped; isn't that correct?

11 A. Correct.

12 Q. Okay. This was videotaped as well, correct?

13 A. My interview ---

14 Q. Your interview with Mr. Tucker?

15 A. No, it was not.

16 Q. Okay. So there's no video? Was there audio
17 equipment available so this could be audio-taped?

18 A. No, it was not.

19 Q. Okay. So your testimony today, based upon this
20 interview with Mr. Tucker, this interrogation of Mr.
21 Tucker, is your interpretation of what happened, correct?

22 A. Correct.

23 Q. Okay. The nature of the interview or the nature of
24 the interrogation could have been seen through a video,
25 couldn't it?

1 A. It's not common practice with this agency to video
2 or audiotape any interviews or interrogations.

3 Q. Why is that?

4 A. It's ---

5 Q. Is there some ---

6 A. You would have to speak with someone higher on the
7 food chain than me.

8 Q. Is there a reason why you don't videotape
9 interrogations?

10 A. No. It's just, again, not common practice.

11 Q. But you videotape someone who is arrested for drunk
12 driving when you're reading them their rights and when
13 you give them a DataMaster? You videotape them for that?

14 A. Because there is a statute in the state law that
15 requires that.

16 Q. I understand. But somebody charged -- potentially
17 being charged with murder, with armed robbery, there's
18 not a procedure for the videotaping of an interrogation?

19 MR. CAMPBELL: Your Honor, I'm going to object.
20 This has already been asked and answered.

21 THE COURT: I'll allow him to ask the question.
22 Overruled.

23 A. No, there is no procedure. There is no common
24 practice for that with this agency.

25 Q. An interrogation that's being videotaped, a jury

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Klm Gebing, Jr. - Cross Examination by Mr. Potter

270

1 would be able to determine the nature of that
2 interrogation, how the officer reacted to the Defendant
3 or the suspect and how the Defendant reacted to the
4 officer; isn't that true?

5 A. True.

6 Q. They'd be able to see the tone of voice and be able
7 to hear the tone of voice used between the people
8 involved in the interrogation; isn't that true?

9 A. That is correct.

10 Q. That would be beneficial and helpful for a jury,
11 wouldn't it?

12 A. I would imagine so, yes.

13 Q. You typed out the statement that was shown to the
14 jury, correct?

15 A. I did.

16 Q. Okay. And the Defendant, he could read. You knew
17 that?

18 A. Yes.

19 Q. And he could write. At the very least he could
20 write his name; isn't that correct?

21 A. That is correct.

22 Q. Okay. Why didn't you just hand him a yellow pad of
23 paper and pen and say, write out your statement?

24 A. Because it is common practice with this agency for
25 the officer to prepare the statement unless the Defendant

1 just outrightly objects to it.

2 Q. Okay. So again, these are your words because you're
3 doing the typing as he's talking, correct?

4 A. I am typing and typing his words as he is speaking
5 them to me, yes.

6 Q. Okay. Why not just have him write it out on his
7 own?

8 A. Because it is common practice with this agency for
9 the officer to type or write -- I mean, I handwrite these
10 as well.

11 Q. I understand. But that's you interpreting what he's
12 saying, correct?

13 A. No. Those are either his words as just randomly
14 stated to me or as he is answering questions.)

15 Q. You don't indicate the questions that were asked and
16 the result -- the response to that question, do you?

17 A. I'm sorry?

18 Q. In the statement there's nothing that indicates the
19 question you had asked and the response you got from the
20 Defendant ...

21 A. That's correct.

22 Q. ... in the interrogation?

23 A. That's right.

24 Q. So we don't know what particular question elicited
25 what particular response, correct?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Kim Gebing, Jr. - Cross Examination by Mr. Potter

272

1 A. Correct.

2 Q. And again, if we had a videotape or an audio, we'd
3 be able to see that?

4 A. Correct.

5 Q. Was the Defendant intoxicated or under any narcotics
6 or drugs?

7 A. Based on my experience, no, he was not.

8 Q. So he wasn't under the influence of anything?

9 A. Based on my experience, he did not appear to be.

10 Q. But again, a videotape would be able to tell us ---

11 MR. CAMPBELL: Objection. We've already gone
12 over this and beat it into the ground.

13 THE COURT: Yeah, sustained.

14 Q. Just a few more questions, Detective. The blood on
15 the shirt tested positive for blood. You had no idea
16 who's blood that was; is that correct?

17 A. At the time of the presumptive test, no, I did not.

18 Q. Okay. And that turned out not to be the victim's
19 blood, correct?

20 A. That -- I think they were saying that was the one
21 ---

22 Q. That particular sample ---

23 A. --- that she stated did not contain enough DNA to
24 make a determination on that particular sample.

25 Q. Well, actually the report said an unidentified

1 individual. That's what the report said.

2 A. You might be mistaken, Counselor. I think the one
3 on the sweatshirt was the one from the unidentified
4 individual. It's my recollection that the one from the
5 tee shirt is the one that did not contain enough DNA for
6 a test.

7 Q. And there was -- was there a -- did you see blood on
8 the sweatshirt?

9 A. I did not.

10 Q. Did you see any blood on the pants when you
11 submitted them?

12 A. I didn't examine the pants which was an oversight on
13 my part.

14 Q. Okay. And that spot on the tee shirt indicated that
15 there was no DNA material found there?

16 A. According to the SLED report.

17 Q. Okay. So the spot that you tested positive for
18 blood, actually there was no DNA, no human DNA?

19 A. Again, it tested for the blood, but yeah, it didn't
20 contain enough DNA for a test.

21 MR. POTTER: Nothing further, Your Honor.

22 THE COURT: Any redirect?

23 MR. CAMPBELL: Just a couple of follow-ups,
24 Your Honor.

25 REDIRECT EXAMINATION

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Klm Gebing, Jr. - Redirect Examination by Mr. Campbell

274

1 BY MR. CAMPBELL:

2 Q. Now, Detective Gebing, before February the 12th,
3 2009, did you know James Anthony Tucker?

4 A. No. I've never met this man before this case in my
5 life.

6 Q. That was the first time you ever met him?

7 A. Correct.

8 Q. Now, when you met him to talk to him, you had
9 someone else in the room with you; is that correct?

10 A. That's correct.

11 Q. That was Detective Todd Owens?

12 A. Detective Owens, yeah.

13 Q. And what was the purpose or why did you have another
14 detective with you?

15 A. We very commonly will bring another detective for an
16 interview just on the occurrence that maybe they confess
17 something and then decide, I'm not giving you a
18 statement. I want an attorney. Two sets of ears is
19 better than one.

20 Q. Now, as you were talking to James Anthony Tucker,
21 was this an interview or was this an interrogation like
22 Mr. Potter's trying to describe it as?

23 A. It was more casual. It was an interview. I mean,
24 it was directed. He knew what we were questioning him
25 about, but I would call it an interview.

1 Q. And you didn't threaten him or force him or promise
2 him anything in order to get him to tell you his side or
3 his version of the events?

4 MR. POTTER: Judge, for the record I'm going to
5 object. I think that goes outside the scope of my cross
6 examination.

7 THE COURT: It probably does. Sustained.

8 Q. And this statement that you took, which is State's
9 Exhibit Number 2, is that your interpretation of what he
10 is telling you, or is that his exact words as he is
11 speaking them to you?

12 A. Those are his words as he is speaking to me, either
13 spontaneously speaking something to me or in response to
14 a question, most often than not what happened next, what
15 next, what next? Things of that nature. But those are
16 his words as he is relaying them to me, and I'm at a
17 keyboard typing them.

18 Q. And you gave him an opportunity to change it, alter
19 or fix any mistakes that you might have done while
20 typing; is that right?

21 A. Yes. Prior to asking -- prior to having him sign
22 the form, he has an opportunity to review that in its
23 entirety. And I will ask them, let me know if there is
24 anything you want to add, change or delete. He did not
25 indicate that he wanted anything added, changed or

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Kim Gebing, Jr. - Redirect Examination by Mr. Campbell

276

1 deleted.

2 Q. And he signed it after that?

3 A. Correct.

4 Q. And based upon your investigation, your follow-up
5 and the comparison of the statements, did you feel you
6 needed to get a search warrant for the house that he was
7 living in or staying at?

8 A. I did not based on, again, the strength of Tony's
9 statement. I was under the impression the money was
10 gone, the hammer would not be found at the house, the
11 clothing that we had was the clothing that was worn. I
12 didn't see what else we could hope to gain by going to
13 the house.

14 Q. Right. This is the clothing that he indicated he
15 wore the night of the attack; is that right?

16 A. This is the clothing that he surrendered to Deputy
17 Pridemore and signed the receipt indicating that these
18 were his items.

19 MR. CAMPBELL: I have no further questions.

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

21 MR. POTTER: Judge, I do have one brief
22 question ---

23 THE COURT: All right. One brief one.

24 MR. POTTER: --- in regards to what was on
25 redirect.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Robert Kim Gebing, Jr. - Recross Examination by Mr. Potter
Robert Kim Gebing, Jr. - Re-redirect Examination by Mr. Campbell

277

1 RECROSS EXAMINATION

2 BY MR. POTTER:

3 Q. The Advisory of Rights form doesn't have Detective
4 Owens' name as a witness; isn't that correct?

5 A. That's correct.

6 Q. And the statement that was taken and submitted into
7 evidence, the statement doesn't have Detective Owens'
8 signature on that either?

9 A. Correct.

10 Q. It has your signature on both as a witness but not
11 Detective Owens', correct?

12 A. Correct.

13 Q. Thank you. Nothing further.

14 THE COURT: Anything?

15 MR. CAMPBELL: Yes, sir.

16 RE-REDIRECT EXAMINATION

17 BY MR. CAMPBELL:

18 Q. And why is that?

19 A. Oversight on my part. It's my habit that when I
20 have them sign the Advice of Rights, I put it in the file
21 that it pertains to. And it's just bad habit, but it
22 happens.

23 MR. CAMPBELL: No further questions.

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

25 THE WITNESS: Thank you, Your Honor.

1 MR. CAMPBELL: Your Honor, may we approach?

2 THE COURT: Yeah.

3 (WHEREUPON, a bench conference was held off the
4 record.)

5 THE COURT: All right. Ladies and gentlemen,
6 I'm going to give you about a fifteen-minute break. I
7 know you've been sitting cooped up for an hour and a
8 half. If anybody needs to smoke, they can take them out
9 to smoke. We'll bring you back in in about fifteen
10 minutes. Please don't discuss the case.

11 (WHEREUPON, the jury panel exited the courtroom at
12 approximately 11:24 a.m.)

13 THE COURT: Okay. Y'all check on that and let
14 me know when you're ready.

15 (WHEREUPON, court stood at recess for a short
16 break.)

17 THE COURT: All right. The State's rested; is
18 that right?

19 MR. CAMPBELL: Not on the record, Your Honor.

20 THE COURT: Are you ready to rest?

21 MR. CAMPBELL: The State is going to rest.

22 THE COURT: All right. Any motions or anything
23 like that we need to take up before I bring the jury
24 back?

25 MR. POTTER: Not before we bring the jury back.

1 I'll have a brief motion after they rest.

2 THE COURT: Okay. All right. What I intend to
3 do then, I'm going to let you rest officially. Then I'm
4 going to send them to lunch now rather than break it up
5 because I think the only other way to do that is to do
6 the charge -- do the closing arguments, send them to
7 lunch and do the charge. So I'm going to send them to
8 lunch from twelve to one thirty, and then we'll come back
9 and argue and charge. And while y'all are at lunch, I'll
10 look at that statement and make a decision about
11 intoxication not being a defense.

12 MR. CAMPBELL: And just for the record, I made
13 a motion to amend the date from the 10th to the 9th on the
14 indictments.

15 THE COURT: Yeah, and that's granted.
16 Okay. I'm going to bring them in, I'll let you
17 rest, I'll send them out. Then I'll go through your
18 Fifth Amendment -- client's Fifth Amendment rights, then
19 we'll break for lunch. Is that all right?

20 MR. POTTER: Yes, sir.

21 THE COURT: You can bring them in.

22 (WHEREUPON, the jury entered the courtroom at
23 approximately 11:58 a.m.)

24 THE COURT: All right. Any further witnesses
25 for the State?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Defense Motions at End of State's Case

280

1 MR. CAMPBELL: No, Your Honor. At this time
2 the State rests its case.

3 THE COURT: All right.

4 Ladies and gentlemen, the State has rested. What
5 I'm going to do now is I'm going to send you to lunch
6 rather than wait. I'm going to ask you to be back in the
7 jury room at one thirty. You'll hear any testimony that
8 you're going to hear from the Defense. You may not hear
9 any testimony. I'm going to explain that to you when you
10 come back. We will -- this afternoon, the way this thing
11 is moving, we're going to get to arguing and charging
12 when you get back from lunch.

13 So please don't discuss the case with anybody.
14 Please don't talk to anybody else about it. Don't talk
15 among yourselves about it, and I will see you at one
16 thirty. Don't eat too much lunch because you're going to
17 have to stay awake while I read to you.

18 (WHEREUPON, the jury exited the courtroom at
19 approximately 11:59 a.m.)

20 THE COURT: Okay. Mr. Potter, my understanding
21 is your client has decided not to testify?

22 MR. POTTER: Yes, Your Honor. If it pleases
23 the Court, just for the record I would make a motion for
24 a directed verdict at this time, arguing the State has
25 not met the essential elements set forth in the armed

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Defense Motions at End of State's Case

281

1 robbery and the assault and battery with intent to kill.
2 Viewing the evidence in the light most favorable to the
3 State, we would submit that they haven't met their burden
4 and the elements. And as a result, we ask for dismissal
5 of both the indictments.

6 THE COURT: All right. That motion is denied.
7 If you would, come up with your client and we'll swear
8 him in.

9 (WHEREUPON, the Defendant was duly sworn.)

10 THE COURT: All right. Mr. Tucker, we've
11 reached that point in the trial where it's time for you
12 to put up your defense. And I want to advise you of your
13 Fifth Amendment rights. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Have you had a chance
16 to talk to your lawyer about your Fifth Amendment rights
17 and about whether or not you can be forced to testify?

18 THE DEFENDANT: No, but I understand it.

19 THE COURT: All right. Do you understand that
20 the Fifth Amendment gives you certain protections and you
21 cannot be forced to testify under any circumstances. Do
22 you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you have the right to claim the
25 protections of the Fifth Amendment. Do you understand

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Defense Motions at End of State's Case

282

1 that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And basically it means that you
4 cannot be required to testify in this case. Do you
5 understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand that if you
8 decided to testify, you'd be subjected to cross
9 examination on any elements that were allowable by law.
10 Do you understand that?

11 THE DEFENDANT: Yes, I do..

12 THE COURT: Do you have any questions for me
13 now about whether or not you should or shouldn't testify
14 or about your decision?

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. Do you understand that
17 your decision not to testify has to be freely and
18 voluntarily made and you have to make it knowing your
19 rights that you have under the Fifth Amendment. Do you
20 understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you have any questions for your
23 lawyer now about whether or not you should testify?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you understand that if you don't

1 testify that I'm going to explain to the jury that they
2 cannot hold that against you, that you have no obligation
3 to testify, that they can't even discuss the fact that
4 you haven't testified when they begin their
5 deliberations? Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. Do you understand these
8 rights as I've explained them to you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you have any questions for me
11 now?

12 THE DEFENDANT: No, sir, I don't.

13 THE COURT: Do you have any questions for your
14 lawyer? Do you need to discuss it with him any further?

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. Do you want to testify
17 in this case?

18 THE DEFENDANT: No, sir, I don't.

19 THE COURT: All right. Thank you.

20 MR. POTTER: Thank you.

21 THE COURT: Thank you.

22 All right. She's going to print out the charge, and
23 I'll let you look at it during lunch. And then when we
24 come back, I'll just tell the jury that they've heard all
25 the testimony they're going to hear. And then we'll

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Defense Motions at End of State's Case

284

1 begin closing arguments and I'll do the charge. Okay?

2 MR. POTTER: Thank you, Judge.

3 THE COURT: All right. See you at one thirty.

4 (WHEREUPON, court stood at recess for the lunch
5 break.)

6 THE COURT: Okay. So you said you found the
7 circumstantial twice in here?

8 MR. POTTER: The direct and circumstantial
9 charge was twice in there, one at the beginning and one
10 at the very end. I think it was in a different font
11 also.

12 THE COURT: Okay. And obviously I'm not going
13 to let them have it in the jury room. Let me see. I've
14 got the failure of the defendant to testify,
15 identification, intent, voluntariness of the statement.
16 And then armed robbery, I just got that charge straight
17 from the statute. And also the assault and battery with
18 intent to kill. And I've got voluntary intoxication in
19 there. Intoxication is not a defense. So ...

20 (Off record discussion)

21 THE COURT: Okay. Y'all ready?

22 MR. POTTER: Yes, Judge.

23 MR. CAMPBELL: Ready.

24 THE COURT: All right. You can bring them in.

25 MR. POTTER: Judge, do you need me to close on

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Defense Motions at End of State's Case

285

1 the record?

2 THE COURT: Pardon?

3 MR. POTTER: Do you need me to close on the
4 record?

5 THE COURT: No, you don't have to.

6 (WHEREUPON, the jury panel entered the courtroom at
7 approximately 1:54 p.m.)

8 THE COURT: All right. Ladies and gentlemen,
9 thank you for your patience. And as I said, I hope you
10 had sort of a light lunch. You've heard all the
11 testimony that you're going to hear in this case. The
12 Defendant has rested. What you'll hear now are the
13 closing arguments from the parties' attorneys. I want to
14 remind you that the closing arguments are not evidence
15 and shouldn't be considered evidence. But it is an
16 opportunity for the lawyers to argue their position.

17 Once they have completed their closing arguments,
18 I'll have to read to you verbatim -- and I hate to do it.
19 Every judge hates to do it. But I'll have to read this
20 to you. And while I don't want to go too slow, I don't
21 want to go so fast that you can't understand it. But I
22 will read you the charge on the law.

23 Then at that point we'll send you out. We'll have a
24 short delay while we -- while I give the lawyers the
25 opportunity to ask me to change my charge. But then

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Closing Argument by Mr. Campbell

286

1 assuming I don't change my charge, we'll get this case to
2 you with all of the evidence and let you begin your
3 deliberations.

4 Again, if you need to take a break for any reason
5 during any portion of this portion of the trial, just
6 raise your hand. It won't be a problem.

7 All right. Yes, sir?

8 MR. CAMPBELL: May it please the Court. Mr. Potter.

9 THE COURT: Yes, sir.

10 CLOSING ARGUMENT

11 BY MR. CAMPBELL:

12 Ladies and gentlemen of the jury, in thinking about
13 this case, what do you say? Well, for one thing you all
14 know through your life experiences you can learn a lot
15 about people through their actions. And you can learn a
16 lot about James Anthony Tucker, what type of person he
17 is, through his own actions. Let me give you an example.

18 First of all, what he told Officer Fridemore and
19 also put in his statement was that he went down to
20 George's Café. And what was the purpose of going down
21 there? To collect money from a collection jar. And
22 y'all -- you all know what that is. Playing on people's
23 generosities. You go to a counter, you go to the cash
24 register, you check out and they give you change.
25 There's a jar sitting there. They'll have a picture of

1 something for a school fund-raiser, a church fund-raiser,
2 some donation for somebody's hurt or had a serious
3 misfortune in life. And you throw your change in there.
4 Well, he goes down there. As he told Officer Pridemore,
5 I went to George's Café. As he stated in is statement, I
6 collected that money. And all of those people that had
7 dropped money in there, what did he do with that? Did it
8 go for whoever it was intended to? No. What does he do?
9 He spends it on beer and crack cocaine.

10 The other part of his actions is why we're here
11 today, the generosity of his dad, the victim in this
12 case, James Marshall Tucker. Here's a man who opened his
13 home -- it's a small little house -- and said, hey, you
14 can come in and live here. You're down and out. You've
15 lost your job. When he needed money that day, he gave
16 him twenty bucks. When he came back, he said, I need
17 some more money. I lost it. He didn't lose it; he spent
18 it on dope. What does he say? I'll give you some more
19 money. This is the type of person and how he repays
20 people back.

21 What did he do? He attacked him. He assaulted him.
22 Hit him in the back of the head with a hammer, bashed his
23 head in with a steel headed hammer. For what? Money.
24 To steal the money to go get the dope.

25 And after he left George's and he went and bought

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Closing Argument by Mr. Campbell

288

1 his dope and he's sitting here smoking it, he's driving
2 around on our roads in Anderson County smoking crack
3 cocaine. Is he concerned about anybody else on the road?
4 No. Yet after that high wears off, he starts thinking
5 and starts planning where he's going to get more money.
6 And the one mistake James Anthony Tucker [sic] did was
7 give him money that day. So he reached in his pocket and
8 he pulled out his money clip. The Defendant saw how much
9 money was in his pocket. And that got him thinking as
10 he's driving around smoking his crack cocaine. I need
11 more money. I need to get my high, keep it going. Where
12 can I find a quick hit? I know. Daddy.

13 So when he forms this plan, he had already had it.
14 And he went over that second time. He knew exactly what
15 he was going to do. This ruse of going in and saying,
16 hey, I need to go in and get some CDs. They're in my
17 car. It's out in back. Well, there's the key, the one
18 with the yellow tag on it. You know, it seemed
19 insignificant at first about that yellow tag, but it came
20 out to be very important later because that puts him
21 there at the time of this attack.

22 And he goes in the back yard, and he wouldn't there
23 long and he comes back. And he knows where that hammer
24 is, and he grabs it. And when he walks in that back
25 door, his back is to him. And what has James Anthony

1 Tucker [sic] done to his son? He's sitting there minding
2 his own business in his own house.

3 And yes, there's been testimony he may have had a
4 beer or two that day. But as all the officers testified,
5 as the victim testified, I wasn't drunk. I knew exactly
6 what was going on. And as I sat there and watched my
7 T.V. show and listened to the police scanner, I got hit
8 upside the back of the head. Not once, twice, three or
9 four times. You saw the wound. It's still there, it's
10 scared over, on his arm. Twenty-six stitches and six
11 staples is what he gets out of this. Lucky to be here.
12 Any harder and he could have been killed. That's why he
13 got charged with assault and battery with intent to kill.

14 Now, we don't have to prove the specific intent that
15 he meant to kill him. All the State has to prove is
16 there is a general intent, that he intended to commit a
17 general bodily harm to this individual in order to get
18 that money is what he did. It's a reckless disregard for
19 his safety, his health, his welfare. He got his money
20 and he left. And one of the things is -- want to say is
21 that, hey, it wasn't me. I didn't do this.

22 You know, when the officer went over there on the
23 10th that night in early morning hours, Officer Holbrooks,
24 as he told you from the stand, when he gave us those pair
25 of pants -- you'll have them here in evidence. I think

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Closing Argument by Mr. Campbell

290

1 it's number 34. When he gave them this pair of pants,
2 the ones he indicated himself he was wearing that night,
3 when he pulled it out, there was a key ring in there.
4 And it had a yellow tag. That puts him right back --
5 that's what the dad said. That car key had a yellow tag.
6 And as Officer -- Deputy Gebing stated, we didn't
7 understand or know the importance of it until later.
8 Now, that's one thing that puts him there.

9 Another thing is -- now, they wanted to make an
10 issue as well, said people can -- street walkers coming
11 by, they're going to the track behind the church. You
12 know, this guy lives in a house that's fenced in, his
13 back yard. He thinks someone jumped this back fence,
14 come in the back yard -- come in the back door, grabbed a
15 hammer and beat his head in on the way out.

16 Now, think about it. While he's sitting there
17 assaulting him with that hammer -- you know, how do you
18 know it was him? How do you know it was the right pants?
19 How do you know that blood got on there at that time
20 through this? Well, think about it. The victim stated
21 he is in a roll-around chair. Something similar to this.
22 And you can see the photographs. You see the black
23 chair. He's sitting in here, just normal height, at a
24 kitchen table with his head -- it comes up to just about
25 right there, waist level on a pair of pants. And that's

1 where the chemist showed you there's a two-by-two little
2 cutout. And she held them up. It was right there.

3 It also goes with that shirt where they talked about
4 the blood stain being in this little area right here.
5 That corresponds -- she had it inside out there. When
6 you flip it over, that's exactly where it matches up.
7 And as he's attacking him, that's what happened. He got
8 blood on him. The victim's blood got his -- the chemist
9 stated that is James Marshall Tucker's blood on the
10 Defendant's clothes. And the Defendant is the one who
11 provided this. The deputies -- the road deputies, when
12 they went to that house -- had no idea what he was
13 wearing that night. I'm sure he looked over those
14 clothes and said, oh, there ain't nothing there. They'll
15 never find anything. But he forgot about science, you
16 know, DNA. And there might have been a small amount, but
17 it still showed that those pair of pants were worn when
18 his blood got on them.

19 Other things that he can't get around is, as the
20 victim told you, the reason why he wouldn't let him up,
21 he said, I'll cut you -- you'll cut me. And that was
22 also in his statement. And that is something only the
23 person who committed the crime would know. Two people,
24 him and him, (pointing) are the ones that heard it. And
25 as he ran out of the house, he asked him, you know, why

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Closing Argument by Mr. Campbell

292

1 would you do something, you know, to me. Dope was his
2 response. He took that hammer with him, threw it away.

3 He has been charged with assault and battery with
4 intent to kill and armed robbery. Assault and battery
5 with intent to kill is assault on a person to commit an
6 egregious bodily injury to that person or an attempt to
7 do so which he did in this case. I think twenty-six
8 stitches and six staples and several lacerations to your
9 body counts for that. This is a violent injury. That's
10 what he we have here. Getting hit upside the head with a
11 hammer is not stubbing your toe here.

12 Another thing is he got charged with armed robbery,
13 carrying away property of another person by force with
14 intent to do so. And it's obvious he intended to do it
15 because he was going to get that money basically come
16 hell or high water and get that cash and go smoke it up.
17 The reason why the officers didn't see any cash when he
18 emptied out his pockets is because he already smoked it,
19 he spent it. Drug dealers have that money. That's where
20 that money is.

21 Now, as the judge told you in the beginning, that
22 he's cloaked or robed in a cloak of innocence. Another
23 thing I state to you is that the State through it's
24 victim who was absolutely clear who did this, had a clear
25 conscious mind when this happened, through the witnesses;

1 through the officers' testimony, through the scientific
2 evidence by the scientist, all go to one thing. It
3 proves our case beyond a reasonable doubt.

4 And if you have any lingering doubts of his
5 innocence, all you have to do is look at his own words,
6 what he stated. That puts him there. He admits it. He
7 acknowledges it. That removes any doubt that he
8 committed these crimes.

9 Now, when you go back there, you take this statement
10 and you go through it. I've just written down a few
11 things that match up. He states he lived at
12 at the time. That's with the victim. Went over there
13 earlier with a girlfriend. The victim told you that. It
14 was in the Defendant's statement. Officer Pridemore
15 talked to both of them. Borrowed twenty dollars or was
16 given twenty dollars by the victim. And the Defendant,
17 his statement. CDs from the car. He mentions that and
18 the victim told you that. The Defendant's statement.

19 The clothing, the socks and the shirts. All you
20 have to do is see the pictures where they went back the
21 next day. You will see in there that those shirts and
22 pants are sitting on that table. I can't find it right
23 now. Right there is a closeup. There's another picture
24 that's a closeup. But that's right there. The crime
25 scene hadn't been cleaned up. Then he went to George's

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Closing Argument by Mr. Campbell

294

1 Café.

2 You know, the dad had the money, the key to the car,
3 the hammer on the back porch and four hundred dollars.
4 As he told you, one thing about it is that I had
5 approximately five hundred dollars, four hundred-dollar
6 bills and some odd and ends twenties and tens. How would
7 he know that unless he had it? And he was about right on
8 the money. Four hundred dollars. It was close to it.

9 The other things that show besides the clothing --
10 you know, he signed for those clothes. He gave them up.
11 So he called the hospital that night. His dad was there,
12 you know. And it wasn't checking on him to say, hey,
13 how's Pop doing? Probably more feeling out, is he going
14 to live or die, do I need to get out of here? You know?
15 And after that, what did he tell you, the victim? I
16 started receiving threatening phone calls. Drop this
17 case. Why would he do that? Because beforehand he
18 testified he never had any problems.

19 You know, this has had an impact upon his life. Not
20 only does he carry the physical scars, he was scared to
21 even sleep in his own house for three weeks, scared of
22 his son. Locks the front door now. Puts boards
23 underneath it so nobody can come in. When he walks out
24 into his back yard, he carries a gun. Now, this has had
25 a traumatic effect on him.

1 One of the big issues the Defense tries to make is
2 our officers rushed to judgement in this case. There was
3 no rush to judgement. It was good police work. They did
4 a great job. And they didn't rush because of several
5 things. First of all, if they would have rushed to
6 judgement, Officer Pridemore and Holbrooks would have
7 arrested him that night at where
8 they went over there and first spoke to him if that was
9 the case. The victim had already told them who assaulted
10 him. That's how they knew to go over there. But they
11 didn't arrest him then. They didn't arrest him on the
12 11th. They didn't arrest him on the 12th after he already
13 talked to Detective Gebing and he gave a statement.

14 When he gave that written statement, he still wasn't
15 arrested because he wanted to make sure things matched
16 up. The physical evidence, the crime scene, what the
17 victim stated compared to what the Defendant states.
18 Everything else combined. He looked -- and he told you,
19 I had that shirt tested for blood. And that Q-tip came
20 back, that phenylethylene test came back positive, read
21 for blood, human blood. Now, as the chemist told you
22 that's the test they use. And he had a positive result
23 on that shirt. Even then, he still didn't arrest him.
24 It wasn't until only after he started comparing and
25 looking at making sure everything was sound and proper

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Closing Argument by Mr. Campbell

296

1 that he took out a warrant on the 13th.

2 There was no rush to judgement in this. There was
3 no other leads or suspects in this case. The victim was
4 adamantly clear on who attacked him. And the Defendant
5 in his own words acknowledges he was the person who
6 committed these crimes. He was the one who assaulted
7 him. He was the one who stole the money.

8 Ladies and gentlemen, y'all are the judges of the
9 facts in this case. Y'all have heard everything that
10 come from the witness stand. You'll have an opportunity
11 to review the evidence, see the pictures up close and
12 read his statement thoroughly. It's your decision. When
13 y'all go back in that room to deliberate, think about
14 everything that's been stated since Monday and since
15 yesterday morning when we started this trial about this
16 case. Look at both sides. Give it a fair shake. Look
17 at his version of the facts and look at the State's
18 version of the facts, and you sift through it and you
19 decide. Not the judge, not the attorneys. Y'all decide
20 his innocence or guilt. And I'll say to you, it's the
21 State's opinion that we have given you everything you
22 need to make a decision in this case.

23 Now you will come back with a verdict that speaks
24 the truth and justice demands. And that is a verdict of
25 guilty on the charge of assault and battery with intent

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Closing Argument by Mr. Potter

297

1 to kill and the charge of armed robbery.

2 Thank you.

3 THE COURT: Yes, sir?

4 MR. POTTER: Thank you. May it please the
5 Court.

6 CLOSING ARGUMENT

7 BY MR. POTTER:

8 Wow, it seems pretty clear cut to me, doesn't it?
9 The Judge is going to instruct you on what reasonable
10 doubt is. It's that hesitation to act. Okay? What is
11 that? We're sitting on the -- standing on the corner of
12 a street looking both ways, you see a car a ways down,
13 you almost take a step, oh, I better not do that and you
14 wait. That's what we're talking about. Things that
15 cause you to take that hesitation.

16 There's questions that are unanswered that shows
17 that the State hasn't proved their case. Mr. Marshall
18 Tucker testified that he didn't get one cashed check --
19 or one of his checks cashed. And he told that to the
20 Defendant. So why go back there if the money hasn't been
21 cashed? If there's no money there, why go back?

22 What happened to all this money? Did he spend it on
23 drugs? Four hundred and some odd dollars on drugs in a
24 two-hour period? The alleged assault happened around
25 nine forty-five. The police roll up to the

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Closing Argument by Mr. Potter

298

1 address where my client is at twelve thirty, one o'clock.
2 He spends over four hundred dollars on drugs and consumes
3 it and then has no effects. He's not intoxicated, not
4 under the influence. The deputies that came to the scene
5 said he was fine, a little nervous. Who isn't when
6 they're talking to police officers?. But he's not
7 intoxicated. Four hundred and some odd dollars in drugs,
8 and you have no effects.

9 You saw the pictures of the kitchen. There was
10 blood there. We're not sitting here saying he wasn't
11 assaulted. He was. You saw the blood on the counter.
12 You saw the blood on the floor. There's one little small
13 piece of blood on the pants. We don't know when that got
14 there, how long it's been there. All we know is there's
15 a little spot of blood on the pants. Out of all that
16 blood in that crime scene, only one spot of blood was
17 found. Nothing on his hands, nothing in the car that he
18 was driving, nothing on the steering wheel. They checked
19 that night. They didn't find any blood. Where's all the
20 blood? If you're attacking somebody with a hammer, and
21 you get one small spot of blood there?

22 And let's be correct on the shirt, the shirt that
23 was shown by the Government. The SLED result dealt with
24 three things. Pants, that came back positive as blood
25 from the victim. A small little spot. Cutting from the

1 sweatshirt. We don't know who's blood that is. Cutting
2 from the tee shirt that matches with the blood of Mr.
3 Marshall, no human DNA. No human DNA.

4 When Deputy Pridemore and Holbrooks went to the
5 scene of where the Defendant was at, they didn't find a
6 hammer, they didn't find blood. When they went to the
7 scene where this assault took place, they saw several
8 empty beer cans. The victim also testified he'd been
9 drinking that night. These are things that cause you to
10 hesitate. Hesitate before you cross that street.

11 You know, it's 19 -- excuse me. It's 2009. I
12 videotape every baseball game my son is in. I videotape
13 every dance recital. I videotape them playing out back.
14 And in 2009 in South Carolina you are required to
15 videotape *Miranda* for somebody who's accused of drunk
16 driving. Thirty-day offense. You have to have that on
17 video. You have to have a video of that person giving
18 what's called a DataMaster test, blowing in to see what
19 his blood alcohol is. You have to have that on video.
20 State troopers have to have videotape recording, video
21 cameras on their dashes. And we've seen that on the
22 news. They have to have that. And when you're talking
23 about a DUI offense, you're talking about thirty days in
24 jail maximum.

25 Somebody gets charged or is suspected for murder,

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Closing Argument by Mr. Potter

300

1 armed robbery, ABWIK, and he doesn't get those
2 protections. Because if we had that video, we would be
3 able to tell how the interrogation went. That was an
4 interrogation, ladies and gentlemen. When you're sitting
5 face to face across a desk with a police officer, you're
6 being interrogated. It's semantics. But you are.
7 What's the rapport between the two? Is the officer being
8 belligerent, accusatory? Is the officer being his best
9 friend? What's the disposition of the Defendant or the
10 suspect? Was there any undue coercion? Was the
11 statement accurately typed out by that officer? How hard
12 is it to get a yellow pad and a pen? We know, according
13 to the detective's testimony, that he can read and write.
14 Write it out for me and it's in his own handwriting. No,
15 we don't do that. I type it for him. Why is that? Why
16 don't we have a videotape? Do they not to see who's
17 behind the curtain?

18 These are things that you have to consider. The
19 voluntariness of that statement, whether that's a
20 truthful statement, whether that's a statement you can
21 rely upon. You have to make those decisions.

22 Hesitate to act. That's y'all's decision. I
23 appreciate your time in listening and watching the
24 witnesses and hearing the testimony. I trust that you'll
25 do the right thing. Has the Government proven their case

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Charge by the Court

301

1 beyond a reasonable doubt? I submit that they haven't
2 because there are those hesitations. Those hesitations,
3 those hiccups. Step into the street, step back, let the
4 car go by and then go. That's what reasonable doubt is.

5 Thank you.

6

CHARGE

7 BY THE COURT:

8 All right. Ladies and gentlemen, you've heard all
9 of the testimony. You've now heard the closing
10 arguments. As I told you earlier during this trial, one
11 of my main roles is to put together the law and charge
12 you on the law in this case. Quite frankly, as I said
13 before lunch, I'm required to read it to you verbatim. I
14 don't like doing that. And I've told juries before, the
15 last time I read to anybody verbatim it was to try and
16 make my children go to sleep. So I'm going to do my best
17 not to put you to sleep.

18 It's very important that you listen to me because,
19 as I said earlier, you and I have very different roles
20 during the course of this trial. Your job is now to
21 determine what the facts are based upon the testimony
22 from the witness stand and based upon your review of the
23 evidence. My job is to determine what the law is. And
24 obviously we've had to send you out numerous times during
25 this trial. While you were gone I was making rulings on

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Charge by the Court

302

1 legal matters. But as I said, our roles don't cross.
2 And if for any reason I've given you an indication that I
3 believed a witness or didn't believe a witness, disregard
4 that. My opinion about the truth or the falsity of a
5 fact should mean nothing to you.

6 Likewise, what I'm getting ready to charge to you,
7 you have to take as the law in South Carolina. You can't
8 go back and say that you wish the law were different or
9 you think the law is different or you hope the law is
10 different. You have to take this law as I'm applying it
11 to you and apply it to the facts -- as I'm giving it to
12 you, apply it to the facts and then come up with your
13 verdict.

14 Now, ladies and gentlemen, as I told you earlier,
15 the two indictments in this case charge the Defendant
16 with armed robbery and with assault and battery with
17 intent to kill. As I said, you'll have these indictments
18 with you in jury room. Please disregard the fact that
19 Mr. Tucker has been indicted. You can't take that into
20 account when you're trying to determine guilt or
21 innocence. These are merely pieces of paper. As you'll
22 see they set forth the charges. And the Defendant has
23 pled not guilty in this case, so the fact that he's
24 indicted should not be considered by you at all when you
25 begin your deliberations.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Charge by the Court

303

1 Ladies and gentlemen, I charge you that the
2 indictments in this case allege several different
3 offenses against the Defendant. The charges, as I said,
4 are assault and battery with intent to kill and armed
5 robbery. Each indictment charges a separate and distinct
6 offense. You must decide each indictment separately on
7 the evidence and the law applicable to it uninfluenced by
8 your decision as to the other indictment. In other
9 words, the Defendant may be convicted or acquitted on any
10 one or both of the offenses charged.

11 You'll be asked to write, Mr. Foreman -- on the back
12 of the indictment, there's a place that says verdict --
13 your verdict, guilty or not guilty and sign it. And I'll
14 explain that to you. But you have to take each
15 indictment separately, and you have to be uninfluenced by
16 the decision you made on the previous indictment. And
17 you'll have both of them back there.

18 Ladies and gentlemen, there's a presumption of
19 innocence in this country. And as you've heard from me
20 now twice and from some of the lawyers, the Defendant has
21 pled not guilty to these two indictments, the charges in
22 these indictments. And that plea puts the burden on the
23 State to prove the Defendant guilty.

24 A person charged with committing a criminal offense
25 in South Carolina is never required to prove himself

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Charge by the Court

304

1 innocent. I charge you that this is an important rule of
2 law that the defendant in a criminal trial, no matter
3 what the seriousness of the charge may be, will always be
4 presumed to be innocent of the crime for which the
5 indictment was issued unless guilt has been proven by
6 evidence satisfying you of that guilt beyond a reasonable
7 doubt.

8 Presumption of innocence does not end when you begin
9 your deliberations, but it accompanies the Defendant
10 throughout the trial until you reach a verdict of guilt
11 based on the evidence satisfying you of that guilt beyond
12 a reasonable doubt. The evidence -- or the presumption
13 of innocence, as I told you earlier, is not a mere legal
14 theory. It's not just a legal phrase. It's a
15 substantial right to which every defendant is entitled to
16 unless you, the jury, are satisfied from the evidence
17 that the Defendant's guilt -- is guilty beyond a
18 reasonable doubt. Ladies and gentlemen, I charge you
19 that a reasonable doubt is the kind of doubt that would
20 cause a reasonable person to hesitate to act. The State
21 has the burden of proving the Defendant guilty beyond a
22 reasonable doubt.

23 Some of you may have served as jurors in civil cases
24 where you were told that it's only necessary to prove
25 that a fact is more likely true than not true such as by

1 a greater weight or preponderance of the evidence. In
2 criminal cases the State's burden must be more powerful
3 than that. It must be beyond a reasonable doubt. Proof
4 beyond a reasonable doubt is proof that leaves you firmly
5 convinced of the Defendant's guilt.

6 There are very few things in this world that we know
7 with absolute certainty. And in criminal cases the law
8 does not require proof that overcomes every possible
9 doubt. If, based on your consideration of the evidence,
10 you're firmly convinced that the Defendant is guilty of
11 the crime charged, you must find the Defendant guilty.
12 If, on the other hand, you think there's a real
13 possibility that the Defendant is not guilty, you must
14 give the Defendant the benefit of the doubt and find him
15 not guilty.

16 Ladies and gentlemen, I charge you -- excuse me --
17 there are two types of evidence which are generally
18 presented during a trial. There's direct evidence and
19 there's circumstantial evidence. Direct evidence is the
20 testimony of a person who claims to have actual knowledge
21 of a facts such as an eyewitness. It is evidence which
22 immediately establishes the main fact to be proved.

23 Circumstantial evidence is proof of a chain of facts
24 and circumstances indicating the existence of a fact. It
25 is evidence which immediately establishes collateral

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Charge by the Court

306

1 facts from which the main fact may be inferred.
2 Circumstantial evidence is based on inference and not on
3 personal knowledge or observation.

4 The law makes absolutely no distinction between the
5 weight or value to be given either direct or
6 circumstantial evidence, nor is a greater degree of
7 certainty required of circumstantial evidence than of
8 direct evidence. You should weigh all the evidence in
9 this case. And after weighing all the evidence, if
10 you're not convinced of the guilt of the Defendant beyond
11 a reasonable doubt, you must find the Defendant not
12 guilty.

13 And necessarily, as I told you earlier, you have to
14 determine the credibility of the witnesses. And as I
15 also told you earlier, credibility under the law
16 basically means believability. You've had a chance to
17 sit here and listen and watch their demeanor. You have
18 to determine whether or not you believe them. You can --
19 as I said in my opening charge, you can believe
20 everything that a witness testified to from the stand or
21 you can believe nothing that a witness testified to. You
22 can take a portion of a witness' testimony and believe it
23 and disregard the remainder of it. Again, that's
24 something you have to do in your deliberations to
25 determine whether or not you believe a witness was

1 credible.

2 Now, ladies and gentlemen, I charge you that the
3 rules of evidence ordinarily do not permit witnesses to
4 testify to opinions or conclusions. An exception to this
5 rule exists for witnesses that we call in the law expert
6 witnesses. A witness who by education and experience has
7 become expert in some art, science or fashion or calling
8 may state an opinion as to relevant and material matter
9 in which the witness claims to be an expert and may also
10 state the reasons for that opinion.

11 You should consider any expert opinion received in
12 evidence in this case and, like the other evidence, give
13 it the weight that you think that it deserves. If you
14 decide that the opinion of the witness is not based on
15 sufficient education and experience or if you conclude
16 that the reasons given in support of the opinion are not
17 sound or that the opinion is outweighed by other
18 evidence, you may disregard the expert opinion in its
19 entirety.

20 An expert witness' testimony is to be given no
21 greater weight than that of other witnesses simply
22 because the witness is an expert. Further, you're not
23 required to accept an expert's opinion even though it's
24 been uncontradicted.

25 Now, ladies and gentlemen, I want to instruct you

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Charge by the Court

308

1 and emphasize that the fact that the Defendant did not
2 testify is not a factor to be considered by you in any
3 way in your deliberations and in your consideration on
4 the question of the guilt or innocence of the Defendant.
5 It must not be considered by you in any manner
6 whatsoever.

7 A defendant has a constitutional right to remain
8 silent, and the assertion of this right must not be
9 considered by you in your deliberations. You cannot
10 bring it up. I repeat, under your oath you're not to
11 draw any conclusion whatsoever from the fact the
12 Defendant in this case did not testify. The fact that
13 the Defendant did not testify should not even be
14 discussed in the jury room. The burden of proof, as I
15 stated to you, is on the State. The Defendant is not
16 required to prove himself innocent. The burden of proof
17 remains on the State to prove guilt beyond a reasonable
18 doubt.

19 Now, ladies and gentlemen, I charge you an issue in
20 this case is the identification of the Defendant as the
21 person who committed the crime charged. The State has
22 the burden of proving identity beyond a reasonable doubt.
23 You must be satisfied beyond a reasonable doubt of the
24 accuracy of the identification of the Defendant before
25 you may convict the Defendant. Identification testimony

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Charge by the Court

309

1 is an expression of belief or impression by a witness.
2 You must determine the accuracy of the identification of
3 the Defendant.

4 You must consider the believability of each
5 identification witness in the same way as you consider
6 the testimony of the other witnesses. You may consider
7 whether the witness had an adequate opportunity to
8 observe the Defendant at the time of the offense. This
9 will be affected by things like how long or short a time
10 was available, how far or how close the witness was, the
11 lighting conditions and whether the witness had the
12 chance to see or know the person in the past.

13 Once again, I instruct you that the burden of proof
14 on the State extends to every element of the crime
15 charged. And this specifically includes the burden of
16 proving beyond a reasonable doubt the Defendant's
17 identity as the person who committed the crime. If,
18 after examining the testimony, you have a reasonable
19 doubt as to the accuracy of the identification, you must
20 find the Defendant not guilty.

21 Ladies and gentlemen, I charge you that in order to
22 establish criminal liability, criminal intent is
23 required. For example, the mental state required to be
24 proven by the State for a particular crime might be
25 purpose, intent, knowledge, recklessness, or criminal

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Charge by the Court

310

1 negligence. Criminal intent must be proven by the State
2 beyond a reasonable doubt.

3 Criminal intent is always a matter that must be
4 determined by the jury from the circumstances surrounding
5 the situation. There's no way to prove criminal intent
6 to a mathematical certainty. And there's no way that we
7 can know what goes on in a person's brain and determine
8 what that person had in mind. So the law says, and I
9 charge you, that criminal intent may be inferred from the
10 circumstances shown to have existed. This is how you
11 make a determination of whether or not the element
12 requiring intent was present. It's not necessary to
13 establish intent by direct and positive evidence, but
14 intent may be established by inference in the same way as
15 other facts by taking into consideration the acts of the
16 parties and all of the facts and circumstances of the
17 case.

18 Criminal intent is a mental state, a conscious
19 wrongdoing. It is up to you to determine what the
20 Defendant intended to do based on the circumstances shown
21 to have existed. Criminal intent -- excuse me -- can
22 arise from action or can arise from failure to act. It
23 may arise from negligence, recklessness or an
24 indifference to duty or to the consequences that is
25 considered by the law to be the equivalent of criminal

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Charge by the Court

311

1 intent.

2 Now, ladies and gentlemen, I charge you that a
3 statement is alleged to have been made by the Defendant.
4 And it has been admitted into evidence in this case.
5 While I have determined that the statement is admissible,
6 I instruct you that you make the ultimate decision of
7 whether or not the Defendant made the statement. If the
8 Defendant did make the statement, you must determine
9 whether the statement was made by the Defendant
10 voluntarily and of his own free will. This means that
11 the statement was not caused by pressure, force, fear,
12 threats, coercion, or other intimidation or by hope or
13 promise of leniency or a reward of any kind.

14 In determining whether the statement was voluntary
15 you should consider both the characteristics of the
16 Defendant and the details of the question. Some of the
17 factors that you must consider are one, the age of the
18 Defendant, two, the Defendant's education or the
19 Defendant's lack of education, three, the Defendant's
20 mental ability or capacity, four, the Defendant's IQ or
21 intelligence level, five, the Defendant's background and
22 environment, six, the place and length of the detention,
23 seven, the nature of the questioning, and eight, the
24 advice or lack thereof to the Defendant of his
25 constitutional rights including but not limited to the

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Charge by the Court

312

1 right to remain silent, that any statement could be used
2 against him in a court of law, the right to have a lawyer
3 present, and that if he could not afford a lawyer, a
4 lawyer would be appointed to represent him without any
5 cost and that he could stop making a statement at any
6 time. You must carefully consider all the surrounding
7 circumstances before you give any weight to an alleged
8 statement.

9 The State has the burden of proving beyond a
10 reasonable doubt that the alleged statement was
11 voluntary. If you determine it was, you may give the
12 statement and further consideration that you deem -- any
13 further consideration that you deem proper. You must
14 decide what weight, if any, should be given to the
15 alleged statement. If you determine that the alleged
16 statement was not the free and voluntary statement of the
17 Defendant, you should not consider the statement at all.

18 Now, ladies and gentlemen, I charge you that the
19 Defendant is charged with armed robbery. In order to
20 prove this offense, the State must first prove beyond a
21 reasonable doubt that the Defendant took personal
22 property from the person or presence of another person.
23 Property is in the presence of the person if it's within
24 the person's reach, inspection, observation or control so
25 that the person could, if not overcome with violence or

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Charge by the Court

313

1 prevented by fear, keep possession of that property.

2 The State must also prove beyond a reasonable doubt
3 that the Defendant carried the property away intending to
4 permanently deprive the owner of the property and to keep
5 the property for the Defendant's own use. The slightest
6 removal of the property or the complete possession of the
7 property, even for an instant, by the Defendant is
8 sufficient to show a taking and carrying away of the
9 property. Ladies and gentlemen, I charge you that taking
10 away of the property must have been done with violence or
11 putting the owner of the property in fear of violence.

12 Finally, the State must prove beyond a reasonable
13 doubt that the Defendant was armed with a deadly weapon
14 during the robbery. A deadly weapon in this State is any
15 article, instrument or substance which is likely to cause
16 death or great bodily harm. Whether or not an instrument
17 has been used as a deadly weapon depends on the facts and
18 circumstances of each case. Ordinary objects may become
19 deadly weapons when the facts show that they have been
20 used to inflict serious bodily harm or damage.

21 Ladies and gentlemen, I also charge you the
22 Defendant has been charged with assault and battery with
23 intent to kill. In order to prove assault and battery
24 with intent to kill, the State must prove beyond a
25 reasonable doubt that the Defendant committed an unlawful

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Charge by the Court

314

1 act of a violent nature to the person of another with
2 malice aforethought. An assault occurs when a person
3 unlawfully attempts or offers to commit a violent injury
4 upon another person and had the present ability to
5 complete the attempted injury.

6 An assault is the intentional creation of a
7 reasonable fear of immediate bodily harm. It's not
8 necessary that the attempted injury or harm actually take
9 place. For example, if I walk up to you and when we are
10 within arm's reach, I draw back to hit you, that's an
11 assault.

12 A battery is the unlawful touching of another person
13 by a person who's committed the assault. An unlawful
14 touching can be caused by a part of the accused's body or
15 by any object that the accused puts in motion. A battery
16 is the completion of the assault by using or applying
17 force to another person, however slight, in a rude, angry
18 or resentful manner without legal justification for doing
19 so. Using my earlier example, if I actually carry out
20 the punch, that's a battery.

21 Malice is hatred, ill will or hostility toward
22 another person. It's the intentional doing of a wrongful
23 act without just cause or excuse and with an intent to
24 inflict an injury or under circumstances that the law
25 will infer an evil intent.

1 Malice aforethought does not require that malice
2 exist for any particular time before the act is
3 committed, but malice must exist in the mind of the
4 Defendant just before and at the time the act is
5 committed. Therefore, there must be a combination of the
6 previous evil intent and the act.

7 Malice aforethought may be expressed or it may be
8 inferred. These terms, expressed and inferred, do not
9 mean different kinds of malice but merely mean the manner
10 in which malice may be shown to exist. That is either by
11 direct evidence or by inference from the facts and
12 circumstances which are proved.

13 Expressed malice is shown when a person speaks words
14 which express hatred or ill will for another or when the
15 person prepared beforehand to do the act which was later
16 accomplished. For example, lying in wait for a person or
17 any other acts of preparation going to show that the deed
18 was within the Defendant's mind would be expressed
19 malice.

20 Malice may be inferred by conduct showing a total
21 disregard for human life. Inferred malice may also arise
22 when the deed is done with a deadly weapon. A deadly
23 weapon is any article, instrument or substance which is
24 likely to cause death or great bodily harm.

25 Whether an instrument has been used as a deadly

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Charge by the Court

316

1 weapon depends on the facts and circumstances of each
2 case. If the facts are proved beyond a reasonable doubt
3 sufficient to raise an inference of malice to your
4 satisfaction, this inference would be simply an
5 evidentiary fact to be considered by you along with other
6 evidence in the case, and you may give it the weight that
7 you decide it should receive.

8 A specific intent to kill is not an element of
9 assault and battery with intent to kill, but there must
10 be a general intent to commit serious bodily injury.
11 Intent means intending the result which actually occurs,
12 not accidentally or involuntarily occurs. Intent may be
13 shown by acts and conduct of the Defendant and other
14 circumstances from which you may naturally and reasonably
15 infer intent. Evidence of the character of the assault,
16 the character of the instrument used, the manner in which
17 it was used, the purpose to be accomplished, and the
18 resulting wounds or injuries may be considered in
19 determining the intent with which the assault was
20 committed. Intent may be inferred when it is
21 demonstrated that the Defendant voluntarily or willfully
22 commits an attack, the natural tendency of which is to
23 destroy another's life.

24 Ladies and gentlemen, I charge you that intoxication
25 in this State is not a defense. A person who voluntarily

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Charge by the Court

317

1 becomes intoxicated is just as responsible for the acts
2 committed while intoxicated as when the person is not
3 intoxicated.

4 Now, ladies and gentlemen, you'll have in the jury
5 room all of the evidence that's been admitted into this
6 case. You'll have some documents. You'll also have the
7 clothes. I would remind you to keep the clothes in their
8 packages, but you can review the packages.

9 What I'm going to do now is send you back and ask
10 the lawyers if they want me to change or alter or amend
11 my charge. If I'm going alter or amend the charge, I'll
12 bring you back in and do it. If I don't, we'll send all
13 the evidence back and let you begin your deliberations.

14 You need to understand that your decision and your
15 verdict has to be unanimous. Each of you have to agree
16 to it. Once you've agreed, Madam Foreman -- Mr. Foreman,
17 you'll see on the back, lower left-hand there's a place
18 for verdict. And that's, as I said, where you write
19 guilty or not guilty, then sign your name and put the
20 date.

21 If for any reason if you have a question while
22 you're back there, write the question out, sign it and
23 bring it out to me. You will not have my jury charge
24 with you back there. If you need me to recharge or re-
25 read any or all of my charge on the law, I'll be happy to

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Charge by the Court

318

1 do it. If you want a portion of the law recharged, just
2 write that portion, and I'll come out -- bring you out
3 and do it. But if you have any problem or other
4 concerns, just write it out and let us know.

5 As I said, what I'm going to do now is send you
6 back. Don't begin talking about the case until we
7 deliver everything to you along with the indictments.
8 And at that point, you can begin your deliberations.

9 Make sure you keep the alternates out in the hall.
10 (WHEREUPON, the jury exited the courtroom at
11 approximately 2:41 p.m.)

12 THE COURT: Okay. Any objections, alterations
13 or amendments to the charge?

14 MR. CAMPBELL: Nothing from the State.

15 MR. POTTER: Judge, in regards to the
16 involuntary intoxication, we'd ask that that be removed.

17 THE COURT: Okay. And you're protected for the
18 record, but I thought that was required based upon the
19 facts.

20 MR. POTTER: Yes, sir.

21 THE COURT: Okay. Make sure you got all of the
22 evidence. Here's the indictments.

23 MR. POTTER: Judge, the only other thing is if
24 I need to, I want to renew my objections to Exhibit 9
25 through 27 and 1 and 2. I know I made those objections

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Charge by the Court

319

1 before they were placed into evidence.

2 THE COURT: What?

3 MR. POTTER: Sorry.

4 THE COURT: Yeah.

5 MR. POTTER: Again, I wanted to renew my
6 objections to exhibits 9 through 27 as well as exhibits 1
7 and 2 of the State. I know they've been already put into
8 evidence; however, I want to renew those objections to
9 make sure that the Court is aware of my position and ---

10 THE COURT: Sure.

11 MR. POTTER: --- our arguments related to that.
12 And I would incorporate my previous arguments related to
13 those particular items.

14 THE COURT: All right. So incorporated and
15 denied. Okay.

16 MR. CAMPBELL: May I ask one thing? In my
17 motion to change the indictments ---

18 THE COURT: Yeah. Do you want me to just
19 change this date?

20 MR. CAMPBELL: Yeah, that's fine.

21 MR. POTTER: Sir?

22 THE COURT: Do you want me to just change this
23 date on here on the indictment?

24 MR. CAMPBELL: Yes, yes.

25 THE COURT: Which one were you doing?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Verdicts and Sentencing

320

1 MR. CAMPBELL: Both of them from the 10th to the
2 9th.

3 THE COURT: All right. And I just put my
4 initials beside it. Okay. Is that it?

5 MR. CAMPBELL: Yes, sir.

6 THE COURT: All right. I'll go out and let the
7 alternates go, and we'll let you know.

8 (WHEREUPON, the exhibits in evidence were delivered
9 to the jury to begin their deliberations at
10 approximately 2:46 p.m. after which court stood at
11 recess awaiting the verdicts of the jury.)

12 THE COURT: Thanks. Have a seat. Okay. We've
13 got a verdict.

14 You can bring them in.

15 (WHEREUPON, the jury entered the courtroom at
16 approximately 3:24 p.m.)

17 THE COURT: All right. Mr. Foreman, I
18 understand you have a verdict?

19 JURY FOREMAN: We have, Your Honor.

20 THE COURT: If you will, hand it to the
21 bailiff.

22 (WHEREUPON, the verdict form was handed up to the
23 Court.)

24 THE COURT: All right. You can publish it.

25 MADAM CLERK: Thank you, Your Honor.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Verdicts and Sentencing

321

1 This is case 2009-GS-04-1023, the State versus James
2 Anthony Tucker, indictment for assault and battery with
3 intent to kill, the verdict of the jury is guilty. Case
4 2009-GS-04-1024, the State versus James Anthony Tucker,
5 indictment for armed robbery, robbery while armed or
6 allegedly armed, the verdict of the jury is guilty.

7 Mr. Foreman and ladies and gentlemen of the jury, if
8 these are your verdicts, would you please indicate by
9 raising your right hand?

10 (WHEREUPON, all jurors hands were raised.)

11 MADAM CLERK: All hands raised, verdicts of the
12 jury, Your Honor.

13 THE COURT: All right. Thank you.

14 Ladies and gentlemen, I have to send you back one
15 last time. I'll be back to speak with you in just a few
16 minutes. But if you would, retire to the jury room for
17 the last time. Give me about two minutes.

18 (WHEREUPON the jury exited the courtroom at
19 approximately 3:26 p.m.)

20 THE COURT: Okay. What I'm going to do is go
21 back and talk to them and release them from back there,
22 and then I'll come back. You got the sentencing sheet?

23 MR. CAMPBELL: Yes, sir.

24 THE COURT: You got them filled out and
25 everything?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Verdicts and Sentencing

322

1 MR. CAMPBELL: Yes, sir.

2 THE COURT: Any objection to me speaking to
3 them? I usually answer any questions they have, and then
4 I'll let them go.

5 MR. CAMPBELL: None from the State.

6 MR. POTTER: Nothing.

7 THE COURT: Anything, motions or anything we
8 need to take up?

9 MR. CAMPBELL: Nothing from the State.

10 MR. POTTER: Nothing, Your Honor.

11 THE COURT: All right. Get all of the
12 sentencing sheets ready. I'll be back in just a second.

13 (WHEREUPON, court stood at recess for a short break
14 during which Court's Exhibits Number 4 through 7
15 were marked for identification only.)

16 THE COURT: Thanks. Have a seat.

17 All right. Mr. Tucker, y'all come on up to the
18 bench.

19 Yes, sir?

20 MR. CAMPBELL: Your Honor, I have the plea
21 sheets. And when you want me to speak, I'll go ahead.

22 THE COURT: All right. Let me fill them in.

23 (Pause)

24 THE COURT: All right. Yes, sir?

25 MR. CAMPBELL: Your Honor, in this case the

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Verdicts and Sentencing

323

1 State has served a life without parole notice which we
2 have made an exhibit as Court's Exhibit Number 4. It was
3 filed August 18th, '09. It was served upon Mr. Tucker at
4 the Anderson County Detention Center by Tammy Kerlee with
5 the Anderson County Solicitor's Office on the -- August
6 the 18th, '09 -- which is going to be Court's Exhibit 5 --
7 as well as Mr. Potter's office on August 18th, '09, by
8 Tammy Kerlee with our office.

9 THE COURT: And that's on both of them, right?

10 MR. CAMPBELL: Yes, sir.

11 THE COURT: Okay.

12 MR. CAMPBELL: And then his previous record,
13 '84, interfering with the operation of a school bus, '89,
14 a burglary second conviction, a grand larceny conviction,
15 a burglary third conviction, a grand larceny conviction.
16 Then in '99 he was convicted in indictment number 99-GS-
17 04-1730 for armed robbery which is the most serious
18 offense which is what we've based the life without parole
19 notice on. I'm making that a Court Exhibit Number 7.

20 MR. CAMPBELL: I'll hand that up as a Court
21 Exhibit. He also has from '99 a petit larceny, a
22 burglary third conviction, another burglary third
23 conviction, petit larceny, burglary second conviction,
24 and a grand larceny conviction. And the victim in the
25 case does not wish to address the Court.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Verdicts and Sentencing

324

1 THE COURT: All right. So that's it from the
2 State?

3 MR. CAMPBELL: Yes, sir.

4 THE COURT: The victims don't want to speak?

5 MR. CAMPBELL: That's correct.

6 THE COURT: Yes, sir?

7 MR. POTTER: Judge, thank you. If it pleases
8 the Court. I'm well aware of the L-WOP statute and the
9 fact that he had been noticed. I had notified my client
10 of that notice as well.

11 Your Honor, for the record we would submit that that
12 particular statute is unconstitutional under the Eighth
13 Amendment of the United States Constitutional as well as
14 Article I, Section 15 of the South Carolina Constitution.
15 It does, in our opinion, result in cruel and unusual
16 punishment in regards to a life without parole-type
17 sentence on this particular case.

18 Judge, I know we've had a bond hearing on this
19 matter. I believe it was in August. If I could hand up
20 a doctor's letter just to refresh your recollection
21 related to his conditions or condition. Through his
22 incarceration at the detention center, he has not
23 received any treatment regarding his condition, but for
24 some basic stuff. It is my understanding that the
25 medication that he was required ...

1 Excuse me, Your Honor. If I could have a moment?

2 THE COURT: Sure. I do remember the bond
3 hearing. I do remember that.

4 MR. POTTER: Right. The medication required
5 was about a thousand dollars a month ---

6 THE COURT: Eighteen hundred dollars a month.

7 MR. POTTER: Yeah. And the detention center
8 refused to do that. But Your Honor, he is forty-three
9 years old. I honestly think the reason for the nature of
10 his record is mainly substance abuse. I think that's --
11 I think when you boil it right down, that's what we're
12 dealing with here. And ultimately we're giving somebody
13 who's an addict a life sentence because he's an addict
14 and he can't handle it. I think it's pretty draconian in
15 it's application and it's thinking. And again, that's
16 why we believe that particular statute is
17 unconstitutional under those particular amendments.

18 THE COURT: All right.

19 MR. POTTER: And we respectfully ask Your Honor
20 to make that finding and fashion an appropriate
21 reasonable sentence related to what's going on and what
22 he did and what's appropriate.

23 THE COURT: All right. Mr. Tucker, anything
24 that you want to tell me?

25 DEFENDANT TUCKER: No, sir.

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Verdicts and Sentencing

326

1 THE COURT: Nothing?

2 DEFENDANT TUCKER: No, sir.

3 THE COURT: All right. Are you getting any
4 kind treatment out there? Because I know we had that
5 issue at the bond hearing.

6 DEFENDANT TUCKER: No, sir, I'm not. Not for
7 that.

8 THE COURT: Okay. All right. Well, the jury,
9 having found you guilty of assault and battery with
10 intent to kill and armed robbery -- I think the statute
11 is pretty clear -- the sentence on each to run concurrent
12 is life without the possibility of parole. I think
13 that's what the statute requires. I am going to put down
14 on here that they need to provide medical care for his
15 condition to the extent that that has any influence with
16 the Department of Corrections. And in fact, the
17 Department of Corrections may end up appealing this
18 sentence because I am putting down here that they are to
19 provide medical care while incarcerated. And if they
20 want to appeal this sentence, I'll be happy to have a
21 hearing, just to let you know. And they probably
22 shouldn't, but I'll be happy to bring them up here.

23 Okay. Good luck to you.

24 MR. POTTER: Thank you, Judge.

25 THE COURT: Do you need this?

State v. John Anthony Tucker 2009-GS-04-1023, 1024
Verdicts and Sentencing

327

1 MR. POTTER: Yes, sir.

2 (WHEREUPON, the trial ended at approximately 3:45

3 p.m.)

4 (END OF REQUESTED TRANSCRIPT OF RECORD)

State v. John Anthony Tucker 2009-GS-04-1023, 1024

328

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Anderson County, South Carolina,
9 on the 14th through 16th days of September 2009.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 February 10, 2010

15 Renee H. Tollison
16

17 Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Anderson)

Full name and prison number (if any) of Applicant.
James Anthony Tucker 200993)

v.)

State of South Carolina)

FILED-CLERK'S OFFICE
ANDERSON SC
IN THE COURT OF COMMON PLEAS
2012 FEB 21 A 9:43COMMON PLEAS AND
GENERAL SESSIONS

APPLICATION FOR

POST-CONVICTION RELIEF

2012-CP-04-00505

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River C.I., Columbia, S.C
2. Name and location of Court which imposed sentence Anderson County General Sessions, 100 S. Main St, And. S.C 29621
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-C3-04-1023, Assault and Battery with Intent To Kill
 - (b) 2009-C3-04-1024, Armed Robbery
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Sept. 16th, 2009, Life Without Parole
 - (b) Sept. 16th, 2009, Life Without Parole

A TRUE COPY

Revised 3/2003

FEB 21 2012


 CLERK OF COURT

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Dec. 5, 2011
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
- (b) Prosecutorial Misconduct
- (c) Conflict of Interest

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) I Wish To Amend This Part of Application, After
Receiving Complete Discovery
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? N

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Ineffective Assistance of Counsel - Not Allowed In Appeals
- (b) Prosecutorial Misconduct - Not Allowed In Appeals Court
- (c) Conflict of Interest - Not Allowed In Appeals Court
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? There Was No Arraignment
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Andrew Potter - 301 Camson Rd, Anderson, SC 29625
 - ii. Elizabeth Franklin-Best, PO Box 11589, Columbia S.C 29211
 - iii.
 - (b) the proceedings at which each such attorney represented you:
 - i. Trial - Sentencing (Potter)
 - ii. Appeal (Franklin-Best)
 - iii.
19. State clearly the relief you seek in filing this application:
- I Respectfully Ask This Court To Reverse Conviction
And Remand This Case For Trial
20. Are you now under sentence from any other court that you have not challenged?
- No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Anderson)

I, J.A.T, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James Anthony Tucker
James Anthony Tucker

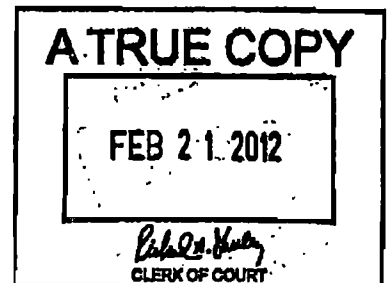
SWORN to and subscribed before me this 15
day of Feb, 2012.

Eugene Keith (L.S.)
Notary Public

My Commission Expires April 4, 2016

My Commission Expires: _____

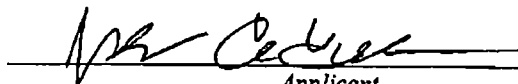
FILED-CLERK'S OFFICE
ANDERSON SC
2012 FEB 21 A 9 43
COMMON PLEAS AND
GENERAL SESSIONS



**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

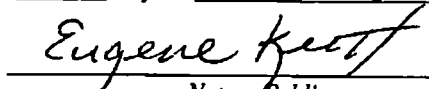
I, J.A.T., hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant
James Anthony Tucker

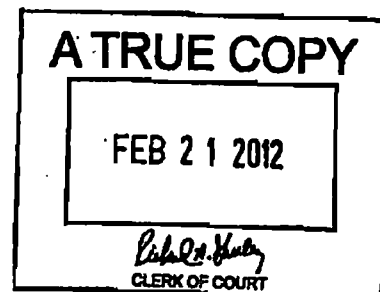
SWORN or affirmed to and subscribed before me this
15 day of Feb, 2012.



Notary Public

My Commission Expires. My Commission Expires April 4, 2018

FILED-CLERK'S OFFICE
ANDERSON SC
2012 FEB 21 A 9 43
COMMON PLEAS AND
GENERAL SESSIONS



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-04-0505
COUNTY OF ANDERSON	)	
	)	
James Anthony Tucker,	)	
S.C.D.C. No. 260993,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed February 21, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Anderson County Clerk of Court's orders of commitment. The Applicant was indicted at the April 2009 term of the Anderson County Grand Jury for assault and battery with intent to kill (2009-GS-04-1023) and armed robbery (2009-GS-04-1024). Andrew Potter, Esquire represented the Applicant.

The State took the case to trial, and on September 16, 2009 the Applicant was found guilty. The Honorable J. Cordell Maddox, Jr. sentenced the Applicant to life imprisonment without parole for both charges.

A notice of appeal was filed at the South Carolina Court of Appeals. Elizabeth A. Franklin-Best, Esquire of the South Carolina Commission on Indigent Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. James Anthony Tucker, Op. No. 2011-UP-537 (S.C. Ct. App. filed December 5, 2011). The Remittitur

was sent on December 21, 2011.

Attached herewith and incorporated herein by reference are the records of the Anderson County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
2. "Prosecutorial misconduct."
3. "Conflict of interest."

III.

For purposes of this Return, Respondent interprets all allegations as claims of ineffective assistance of counsel.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation

within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

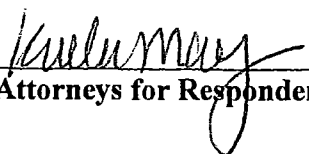
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAELOM MAY
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

May 22, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
	)	
	)	2012-CP-04-0505
	)	
JAMES ANTHONY TUCKER, #260993,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James B. King, Esquire
Post Office Box 5036
Anderson, SC 29623

DATED this 22nd day of May, 2012.



 Lena Pelishenko, Legal Assistant
 For Respondent

James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 State of South Carolina

In the Court of Common Pleas

2 County of Anderson

3

4 James A. Tucker,

5 Applicant,

6 -vs-

7 The State of South Carolina,

8 Respondent.

9

2012-CP-04-00505

June 10, 2016

Transcript of Record

10

11

B E F O R E:

12

The Honorable R. Scott Sprouse, Judge

13

14 A P P E A R A N C E S:

15 Hugh W. Welborn, Esquire
Attorney for Applicant

16

17 Johanna C. Valenzuela, Esquire
Attorney for Respondent

18

19

20

21

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

22

23

24

25

James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

I N D E XWitnessesPage

JAMES ANTHONY TUCKER

Direct Examination By Mr. Welborn

6

Cross-Examination By Ms. Valenzuela

20

ANDREW POTTER

Direct Examination By Ms. Valenzuela

26

Cross-Examination By Mr. Welborn

47

Redirect Examination By Ms. Valenzuela

52

Reporter's Certificate

55

E x h i b i t s

For the Applicant:

Marked	Description	I.D.	Admitted

1	Serology report and property report		15

2	Investigator's report		51

For the Respondent:

Marked	Description	I.D.	Admitted

1	ACSO property report		38

James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 9:07 a.m.)

4 MS. VALENZUELA: The next case is James Anthony
5 Tucker vs. The State of South Carolina, case number
6 2012-CP-04-505. Applicant filed this application on
7 February 21, 2012. He is currently incarcerated in the
8 Department of Corrections pursuant to an indictment
9 from the April 2009 Anderson Grand Jury for assault and
10 battery with intent to kill and armed robbery.

11 And, actually, Your Honor, before I proceed with
12 the procedural history, I was making a phone call to
13 try to track down my witness when you came in, and I
14 did notice that my legal assistant tried to call me
15 back. May I have time to see if she has information on
16 where he is?

17 THE COURT: Yes, ma'am. Take a minute and we'll
18 see what the status is.

19 MS. VALENZUELA: Okay. I have a text message from
20 my legal assistant saying that his calendar,
21 unfortunately, showed that he needed to be here at 9:30
22 so his assistant is trying to track him down to get him
23 here as soon as possible.

24 If opposing counsel has no objection, I would ask
25 for the court to allow for my witness to get here by

James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 9:30, if possible.

2 THE COURT: All right. We'll take a break.

3 MS. VALENZUELA: I apologize to the court for this
4 delay.

5 THE COURT: Okay.

6 (WHEREUPON, a recess was taken from 9:08 a.m.
7 to 9:21 a.m.)

8 THE COURT: All right. Ready to go on the record?

9 MS. VALENZUELA: We don't have a clerk in the
10 courtroom. Is that okay?

11 THE COURT: I can swear the witnesses. That's
12 fine.

13 MS. VALENZUELA: Your Honor, so this is the case
14 of James Anthony Tucker vs. The State of South
15 Carolina, 2012-CP-04-505. Mr. Tucker filed his
16 application on February 21st of 2012. He is currently
17 incarcerated. He is incarcerated through an indictment
18 that the Anderson Grand Jury true billed for assault
19 and battery with intent to kill and armed robbery.
20 Those indictments served for him to go to trial on
21 September 16, 2009.

22 He was represented at trial by Andrew Potter, and
23 after the trial -- he was found guilty at trial, and
24 Judge Maddox -- by a jury, and Judge Maddox sentenced
25 the applicant to life in prison without parole for both

1 charges.

2 A notice of appeal was filed at the South Carolina
3 Court of Appeals. The applicant was represented by
4 Ms. Franklin-Best at the time. The court of appeals
5 affirmed the applicant's conviction and sentence. The
6 remittitur was sent down September 21, 2011.

7 The applicant in his application alleged
8 ineffective assistance of counsel, prosecutorial
9 misconduct, conflict of interest, and provided no
10 further information on those claims.

11 The applicant is represented by Hugh Welborn, and
12 Mr. Welborn did send us a letter on February 15th of
13 this year asking that we amend his application to
14 include that trial counsel erred by not filing a motion
15 for psychological evaluation and the ability to
16 understand proceedings due to prescribed medications.

17 THE COURT: Mr. Welborn.

18 MR. WELBORN: May it please the court. May I call
19 my first witness?

20 THE COURT: Yes, sir.

21 MR. WELBORN: We call James Anthony Tucker.

22 THE COURT: Mr. Tucker, would you raise your right
23 hand.

24 JAMES ANTHONY TUCKER,

25 BEING FIRST DULY SWORN IN BY THE COURT, TESTIFIED

James A. Tucker - Direct
James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 AS FOLLOWS:

2 THE COURT: All right. Mr. Tucker, come around
3 and have a seat in the witness chair, please, sir.

4 DIRECT EXAMINATION

5 BY MR. WELBORN:

6 Q Mr. Tucker, can you hear me from here, sir?

7 A Yes, I can.

8 Q If you can't or if I talk too fast, tell me so I
9 can slow down and the court can hear you. Okay?

10 A Yes, sir.

11 Q You're James Anthony Tucker?

12 A Yes, sir.

13 Q Mr. Tucker, you heard the opposing counsel state
14 the facts of this case and what you're incarcerated for
15 and your application and what you have requested. Are
16 those facts correct?

17 A Yes, sir.

18 Q I'm going to ask you some questions about your
19 application, Mr. Tucker. You allege in your
20 application, in a very general term, you say that your
21 lawyer was ineffective. Now, your lawyer was
22 Mr. Potter, who is seated beside opposing counsel here
23 at the table; is that correct, sir?

24 A Yes, sir.

25 Q How is he ineffective besides the psychological

1 evaluation that you asked to amend? Tell the court.

2 A Well, the reason that I asked that it be
3 considered about the psychological evaluation --

4 Q We'll go into that later. In addition to that,
5 how was he ineffective?

6 A There was a question asked by the jury. The jury
7 foreman sent a note to the judge. And I quote the
8 question, "Can jurors ask a question for clarification?
9 Two examples: Need more information or don't
10 understand something." The judge answered, "No, you
11 can't." Mr. Potter never objected. We don't know what
12 the question was or who the question was for, what
13 did -- you know, but it was clear that they needed some
14 understanding on something. It was some clarification
15 that they needed. And that's critical, I mean, because
16 the jury makes the decision of guilt or innocence.

17 Q Okay. Anything else besides the allegation you
18 didn't have a psychological evaluation? We'll talk
19 about that in a little bit.

20 A Yes, sir, there is. There was a statement given
21 by Jeanie Durham.

22 Q Who is Jeanie Duran?

23 A Jeanie Durham was the lady I was living with at
24 the time. The statement was very much in my favor. In
25 fact, the statement briefly told of my whereabouts at

James A. Tucker - Direct

James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 the time of the alleged crime, and -- but he never --
2 he didn't present the statement, nor did he call her as
3 a witness.

4 Q That's your attorney, Mr. Potter, didn't do those
5 things?

6 A Yes, sir.

7 Q Now, and you're saying it would have showed you
8 were not at the crime, the scene of the crime, at the
9 time it happened; is that your testimony, Mr. Tucker?

10 A Say again, sir.

11 Q Her testimony would have shown you were not at the
12 scene of the crime?

13 A Absolutely. Absolutely.

14 Q You told Mr. Potter that?

15 A Absolutely.

16 Q And he didn't call her?

17 A Mr. Potter said he was not putting any of my
18 witnesses on the stand.

19 Q Did he tell you why?

20 A No, he did not.

21 Q Did you ask?

22 A I didn't. I didn't have a chance. We went to a
23 conference room across the hall. He said that. He
24 turned around and he went back to the courtroom.

25 Q Mr. Tucker, what else besides the psychological

1 evaluation do you want to tell the court about? And
2 then we'll get to prosecutorial misconduct. What, on
3 the ineffective assistance of counsel, do you want to
4 tell the court about?

5 A There was adequate reports that the alleged victim
6 was inebriated on the night in question.

7 Q That was your father?

8 A Yes.

9 Q Yes, sir. Go ahead.

10 A And -- but the trial counsel never requested his
11 toxicology report.

12 Q Now, what effect would your father's inebriation
13 have on this? He got everything wrong and didn't know
14 what is going on? What was the alleged effect?

15 MS. VALENZUELA: Your Honor, I'm going to object
16 here. The application was so broad that there's no way
17 the State was on notice for what the applicant is going
18 into, what he's about to go into. The time to bring
19 those amendments was prior to this hearing, and so we
20 would strike not that allegation, the allegation
21 involved with the toxicology report and ask to move
22 forward in his testimony.

23 THE COURT: Mr. Welborn.

24 MR. WELBORN: Well, Your Honor, technically she's
25 correct. I'm just trying to go over what he alleges as

James A. Tucker - Direct

James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 ineffective assistance of counsel. I know that it's a
2 very broad topic and you have to be more specific, but
3 that's what we have.

4 THE COURT: All right. I'm going to overrule the
5 objection.

6 BY MR. WELBORN:

7 Q Go ahead, sir.

8 A Without a doubt, a positive blood alcohol reading
9 would have, at the very least, questioned his
10 credibility in his ability to remember exactly what he
11 says took place or what he thought took place.

12 Q Did you tell your lawyer about that?

13 A In fact, I asked him for the toxicology report.
14 He said he didn't have it.

15 Q All right. Now, let's go to prosecutorial
16 misconduct. What happened there that you have alleged?

17 A I'm not sure if this -- this is what I have, and
18 this is what I perceived. Of course, I'm not a lawyer,
19 but there was a piece of physical evidence that was in
20 question, a pair of blue jeans that was from the -- on
21 the chain of custody that was recorded coming from the
22 victim's brother-in-law's house.

23 During trial, the prosecution said that the piece
24 of clothing came from my address, and they presented it
25 to the jury as it being my piece of clothing, my pants.

James A. Tucker - Direct
James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 And, in fact, it was the only piece of clothing that
2 had the victim's DNA on it. And I have a copy of the
3 chain of custody. And the piece of clothing that they
4 tested, and that being the one piece of clothing that
5 tested positive for the victim's DNA, did not come from
6 my address, but it was presented to the jury that it
7 did come from my address.

8 Q You're saying there should have been an issue
9 regarding DNA, being your DNA; is that what you're
10 trying to tell the court?

11 A The victim's DNA was on those clothing, on that
12 pair of pants. During the trial, the prosecution said
13 those pants came from my address, they were my pants.
14 But their records prove that those pants came from the
15 victim's brother-in-law's address.

16 Q Okay. Could that have been a typographical error?

17 A Don't you think that's a pretty major typo?

18 Q Well, I can't answer your questions. I'm just
19 asking you, could that have been a --

20 A I don't -- I don't -- I don't think so because
21 was mentioned one time and
22 was mentioned one time. There was the two different
23 law officers. In fact, one spelled it differently from
24 another one, and one acknowledged it as Drive and one
25 acknowledged it as Circle. So I think that it was just

James A. Tucker - Direct

James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 recorded from their records from where they actually
2 took the clothing.

3 Q We'll come back down there.

4 THE COURT: Mr. Welborn, let me just interject
5 here. I'm trying to follow along in the transcript
6 when you're asking the questions. Do you know what
7 witness that was that introduced the piece of evidence
8 that he's mentioned?

9 MR. WELBORN: I do not.

10 THE COURT: Ms. Valenzuela, can you help me out?

11 MS. VALENZUELA: I can. I know it was one of the
12 deputies, but let me see.

13 I believe it's like you would be on page -- near
14 page 152 dealing with Detective Pridemore. There
15 was -- I think I can say this with permission -- there
16 was pretrial motions discussing this same issue as
17 well, but if you wanted to know the portion of the
18 transcript dealing with the jeans, I think that's the
19 admission of the jeans.

20 THE WITNESS: If I may, I have the two pages.

21 THE COURT: Hold on.

22 MS. VALENZUELA: And page 75 also is the pretrial
23 motion that I was talking to you about where they have
24 a discussion on the addresses.

25 MR. WELBORN: That's correct, Your Honor,

James A. Tucker - Direct
James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 according to line 13 on page 75.

2 THE COURT: Okay. I've got it. All right. Thank
3 you. I'm good now. Thank you.

4 BY MR. WELBORN:

5 Q All right. Now, page 75 and 76 discusses that
6 particular issue, and I believe your lawyer, on page 76
7 on line four, was sort of objecting to it being
8 admitted into evidence. Would you agree with that on
9 page 76, or do you have a transcript in front of you?

10 A I don't have a transcript in front of me.

11 Q Have you read the transcript at some point?

12 A I have, but it's a lot of pages.

13 Q I understand.

14 A Yeah, it's a lot of pages.

15 Q I'm going to hand this to you and let you look and
16 see if you can clarify what you're referring to.

17 MR. WELBORN: May I approach the witness, Judge?

18 THE COURT: Yes, sir.

19 BY MR. WELBORN:

20 Q And on page 76, line four, it's your attorney,
21 Mr. Potter, over here talking about how they're not
22 going to -- they were asking the court not to allow the
23 jeans to be in evidence for some kind of reason. Are
24 you familiar with this particular explanation?

25 A Yes, I am.

James A. Tucker - Direct

James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 Q Anything you want to say about that to clarify
2 what you're trying to tell the court?

3 A Absolutely. Page 173, lines five through 11, and
4 page 191, lines seven through ten in the transcript are
5 pertaining to the jeans, and the court, as you say,
6 trying to determine whether it was a typo or not. But
7 the deputy said that they could not confirm where those
8 pants came from. I believe if you will read through
9 that, those pages, I can't remember verbatim, but 173,
10 lines five through 11, 191, seven through ten.

11 Q So perhaps it was covered in some kind of detail,
12 Mr. Tucker. Would that be fair to say, it was
13 addressed by some -- in detail by your attorney?

14 A Well, the point whether it was addressed or not,
15 the pants didn't belong to me. They came from the
16 defendant's -- or, excuse me, the victim's
17 brother-in-law's address. They -- I never had
18 possession of those clothes. They wasn't mine. And
19 that's the issue that I'm trying to get across. It's
20 just not fair that the prosecution can present those as
21 physical evidence and say that they came from me when
22 the evidence, the proof, their records show that they
23 did not come from me.

24 Q Fine. We'll move on to another issue.

25 MR. WELBORN: I move to admit four pages -- five

1 pages as one exhibit. It's got some highlighting on it
2 on this particular issue without objection to it.

3 THE COURT: This will be Applicant's Exhibit 1.
4 Any objection?

5 MS. VALENZUELA: None.

6 THE COURT: It will be admitted without objection.
7 (WHEREUPON, Applicant's Exhibit Number 1 was
8 admitted into evidence.)

9 BY MR. WELBORN:

10 Q All right. Let's go to your next issue. You
11 allege a conflict of interest. Tell me about that.

12 A I'm going to drop that issue. I don't think I
13 have enough on record to --

14 Q Okay. Now, let's go to this last issue, then,
15 that we've submitted as an amendment. You stated that
16 your lawyer was ineffective for failing to file a
17 motion for a psychological evaluation. And that is on
18 page 70 of the transcript, lines one and two, where
19 your lawyer is stating, obviously referring to you,
20 that you're in a precarious mental state at the very
21 least when you attempted to commit suicide.

22 So are you asking -- did you ask your court --
23 your attorney, excuse me, to move for you to have a
24 competency evaluation and he didn't do that?

25 A I don't remember asking him. I don't remember

James A. Tucker - Direct
James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 whether I did or not, but by the attorney making that
2 statement, isn't it his responsibility to do so?

3 Q Now, let me ask you some more questions about
4 that. You also allege you were taking some medication;
5 is that correct?

6 A Yes, sir.

7 Q You're taking -- what medications were you taking
8 at that time?

9 A Elavil and Neurontin.

10 Q Gabapentin?

11 A Yes, sir.

12 Q What are those?

13 A One is -- actually, both of them were being used
14 for antidepressants.

15 Q What kind of effect did it have on you and your
16 ability to think clearly and know what was going on?

17 A I had a hard time really comprehending everything
18 that was going on around me, to be honest. When I read
19 back through the transcript, there was a lot of things
20 that I didn't remember during the trial. And one of
21 the adverse reactions to the medication is amnesia,
22 abnormal thinking, disorientation.

23 Q Were these things taking place during the trial or
24 prior to the trial?

25 A Those were taking place during the trial.

1 Q You were on those medications even then?

2 A Yes, sir.

3 Q Did you tell your lawyer about it?

4 A Not sure, but --

5 Q How would he have known you were taking those, is
6 my question, sir.

7 A Well, it would have seemed like a simple issue for
8 him to request my medical records from the Anderson
9 County Detention Center. In fact, he didn't do any
10 investigation as far as I'm concerned. I don't see any
11 evidence that he did do any investigation from start to
12 finish other than he says, "I have a page from Jody
13 McCurley," the investigator, and trying to make a
14 couple phone calls concerning some witnesses, but that
15 was the in-depth of the investigation. There was no
16 investigation.

17 Q All right. Now, I'm going to ask you one more
18 question with the understanding opposing counsel might
19 object to it understandably. What else do you want to
20 tell this court that I haven't asked you that you think
21 is very important in this case? This is your day in
22 court.

23 MS. VALENZUELA: Objection. That calls for a
24 narrative, Your Honor.

25 THE COURT: Limit your questions to specific

James A. Tucker - Direct
James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 questions about his application, Mr. Welborn.

2 BY MR. WELBORN:

3 Q Is there anything regarding the allegations that
4 you made in your application that you have not given
5 more information to the court that you still have
6 regarding those allegations?

7 A The thing about the allegations, especially with
8 the witnesses, the jury only heard one side of the
9 case. They never heard from any witnesses that I asked
10 to be presented, so, I mean, they only heard one side.
11 So what do you expect a jury to do when they only hear
12 one side of a story?

13 And then the thing that perpetuated the confusion
14 of the jury was when they asked -- they said they had a
15 question, and we are yet to know what that question was
16 or who that question was for. The judge just simply
17 said, "No, you can't ask a question," but he had just
18 received a note asking a question. But when they told
19 him that they were confused, they needed some
20 understanding, and I believe that Mr. Potter should
21 have objected.

22 Q All right. Just for the court's edification, that
23 would be on page 230 of the transcript; would that be
24 correct, starting at the very top of the page on line
25 three?

1 A Just a second. Yes, sir.

2 Q And on page 229, I'll read it to the court.

3 "Good morning, ladies and gentlemen. We've been
4 out here dealing with a couple of issues including your
5 question. Let me make sure I've got the question
6 right. The question is: 'Can jurors ask a question
7 for clarification? Two examples: Need more
8 information or don't understand something.' Is that
9 the question?

10 "JURY FOREMAN: Yes, it is, Your Honor.

11 "THE COURT: The answer is sort of a short -- the
12 answer is no, you can't. You have to basically take
13 the testimony as it's elicited from the witness stand
14 by the attorneys and, quite frankly, just so you
15 understand, there are reasons for that. There may be
16 reasons that even I don't know that a question is not
17 asked. So, basically, the lawyers fashion their case
18 and ask the questions, and then you're, unfortunately,
19 limited to those answers in forming your decision about
20 the facts. But, again, this is exactly the way to do
21 it.

22 "JURY FOREMAN: Thank you."

23 That's the area you're talking about; is that
24 correct?

25 A Yes, sir.

James A. Tucker - Cross

James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 Q Anything else you want to tell the court about
2 these issues you've raised in your application
3 specifically?

4 A Just that I don't realize -- I really don't
5 understand why my attorney, if he is really committed
6 to representing me, to defending me, why he would not
7 call any of my witnesses.

8 Q I imagine you'll hear from him in a few minutes
9 regarding that. Anything else?

10 A No, sir.

11 Q Thank you. Answer anything opposing counsel or
12 the court may have.

13 THE COURT: Ms. Valenzuela.

14 MS. VALENZUELA: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. VALENZUELA:

17 Q Now, Mr. Tucker, regarding the note that came from
18 the jury, that note was sent out when the State was
19 still proving its case, correct?

20 A Yes, ma'am.

21 Q In fact, it came out in the middle of the State
22 continuing to prove its case, correct?

23 A Actually, it came out the second day of the trial.
24 The second day of the trial didn't last but a couple
25 hours. I think so.

James A. Tucker - Cross

James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 Q But the State continued to call witnesses after
2 the jury sent that note?

3 A I'm not sure.

4 Q Okay. And after this, the court gave that jury
5 instruction?

6 A Not sure.

7 MS. VALENZUELA: And that's clear from the
8 transcript, Your Honor, reading past page 230 which was
9 pointed out by opposing counsel. That's where that
10 was.

11 Q Now, if the jury had questions that they needed
12 clarified, did the jury -- did you have any indication
13 that the jury wanted clarification on your attorney's
14 questions versus the State's questions?

15 A We don't know that. They wasn't allowed to ask
16 the question.

17 Q And if further clarity had been given to make the
18 State's point to the jury, that would have hurt your
19 case, correct?

20 A Pardon me?

21 Q If further clarity had been given to support the
22 State's case against you, that would have hurt your
23 case, correct?

24 A I don't agree.

25 Q Now, Jenny Durham -- Jeanie Durham, you say that

James A. Tucker - Cross

James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 you gave the information to your attorney on her?

2 A He had the statement.

3 Q And you talked to your attorney about Jeanie
4 Durham?

5 A Yes, I did.

6 Q Okay. And is Ms. Durham here in the courtroom?

7 A Not this morning, no.

8 Q Okay. You claim that you had given him other
9 information about where you were the day of the crime?

10 A I never said that.

11 Q Okay. So the only information you gave him was
12 that Jeanie Durham could have served as a witness for
13 where you were at the time of the crime?

14 A Exactly. And I asked for my mother, not as far as
15 the whereabouts, but my mother could be allowed to
16 testify as a witness.

17 Q But as to your whereabouts is limited to Jeanie
18 Durham?

19 A Yes, ma'am.

20 Q Now, as to your father, the victim of this crime,
21 being intoxicated at the time that you attacked him,
22 that came out in the trial, correct?

23 A That he -- about him being inebriated?

24 Q Yes.

25 A Not exactly. They danced around that subject

1 pretty good.

2 Q And your attorney made a point of pointing out
3 photographs of the crime scene that showed beer cans
4 throughout the --

5 A They never showed the pictures of the beer cans.

6 Q And your attorney made a point of asking the
7 officers about -- or the victim, your father, when he
8 testified, about whether he had had beers that night
9 and he indicated that he had?

10 A But still yet if he had medical proof, the
11 toxicology report, that would have been the proof that
12 we needed.

13 Q And do you have that toxicology report today?

14 A No, I don't.

15 Q Now, in the prosecutorial misconduct, you point
16 out on page 173 and 191, do you remember that there was
17 an evidence technician named Tony Clamp who testified
18 about the jeans as well? On page 203, Tony Clamp
19 testifies that it was a scrivener's error in that he
20 had mistyped it into the computer?

21 A So does that mean there might be a lot more typos
22 in this case?

23 THE COURT: Mr. Tucker, answer the question that
24 has been asked.

25 THE WITNESS: I don't recall his testimony.

James A. Tucker - Cross
James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 BY MS. VALENZUELA:

2 Q Okay. That's found on page 203 of the transcript.

3 And as to competency, you said that you were on
4 Neurontin at the time?

5 A Yes, ma'am.

6 Q And what other medication were you on?

7 A Elavil.

8 Q I'm sorry?

9 A Elavil.

10 Q And do you have medical records to show that you
11 were on that medication at the time?

12 A I do.

13 Q Are they here?

14 A Yes, ma'am.

15 Q Okay. And -- I'd like to see those.

16 And do you -- at the time of the -- when the trial
17 was going on, do you remember talking to your attorney
18 about what witnesses you might want him to have
19 testify?

20 A I remember specifically asking him to be sure that
21 Jeanie was allowed to testify.

22 Q During the trial, you were talking to your
23 attorney about that?

24 A Yes, ma'am.

25 Q So you were actively talking to your attorney

1 about the strategy of your case during the trial?

2 A Just that if she could testify.

3 Q And were you listening to the testimony that was
4 being given by the different witnesses?

5 A Specifically?

6 Q Like your father, when the victim was testifying.

7 A I mean, what's the question exactly? I was here
8 listening, yes.

9 Q Okay. Were you interacting with your attorney
10 throughout the trial?

11 A I don't recall.

12 Q Okay. Do you remember that there was an
13 investigator assigned to this case on behalf -- that
14 was hired by your attorney, that worked for your
15 attorney?

16 A I know that because I received that in my
17 discovery after I was sentenced.

18 Q Okay. So there was an investigator on your case,
19 on your side?

20 A Apparently.

21 MS. VALENZUELA: No further questions from the
22 State.

23 THE COURT: Any redirect?

24 MR. WELBORN: No, Your Honor.

25 THE COURT: All right. Thank you, Mr. Tucker.

Andrew Potter - Direct
James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 You can step down.

2 MR. WELBORN: That's our case, Your Honor.

3 THE COURT: The applicant has rested.

4 Ms. Valenzuela.

5 MS. VALENZUELA: Your Honor, the State calls Andy
6 Potter to the stand.

7 ANDREW POTTER,

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 THE CLERK: Please have a seat around on the
10 witness stand.

11 MS. VALENZUELA: Your Honor, may we have a moment
12 to look at the plaintiff's exhibit briefly?

13 THE COURT: Yes. Take a moment.

14 DIRECT EXAMINATION

15 BY MS. VALENZUELA:

16 Q Okay. Mr. Potter, how long have you been
17 practicing law?

18 A I've been practicing law since 1993.

19 Q Okay. And where have you been -- where have you
20 worked since that time?

21 A During law school, I was an intern with the
22 Hamilton County Public Defender's Office, which is in
23 Cincinnati, Ohio. Graduated law school, practiced with
24 a plaintiffs firm for maybe about six months and then
25 got hired full-time as a public defender in Cincinnati

1 with the Hamilton County Public Defender's Office.

2 While working as an assistant public defender in
3 Cincinnati, took the South Carolina bar, passed it, and
4 then came down here and worked for Mr. Lane Chapman
5 here in Anderson, worked for Mr. Chapman for about two
6 years. During that time, I was a contract public
7 defender for -- at the time it was the Anderson County
8 Public Defender's Office. I also did private criminal
9 work as well with Bruce Byrholdt, who was a partner of
10 that firm.

11 From there, went on to Foster & Foster law firm up
12 in Greenville, was there for about 18 months again
13 doing criminal work. And after that, went -- came back
14 to the Anderson County Public Defender's Office and
15 opened up a side solo practice dealing with subrogation
16 and worked full-time as an assistant public defender.

17 Around 2008, I think it was, the new public
18 defender reorganization happened. We became the Tenth
19 Judicial Circuit. Stayed with that office until
20 recently. My tenure with the public defender's office
21 will end on June 30th of this year, and I will be
22 practicing solo.

23 Q So is it fair to say that you've been doing
24 criminal defense for over 20 years?

25 A I have been. I am licensed in multiple

Andrew Potter - Direct
James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 jurisdictions, including the district courts, Sixth
2 Circuit Court of Appeals, Fourth Circuit Court of
3 Appeals, and the United States Supreme Court.

4 Q And for Mr. Tucker's case, were you appointed or
5 retained at that time?

6 A Appointed.

7 Q And you were with the public defender's office at
8 the time?

9 A Yes, ma'am.

10 Q How many times did you meet with Mr. Tucker prior
11 to trial?

12 A The exact number, I can't tell you offhand. I've
13 got notes from meetings with him, notes from meetings
14 with myself, and notes from meeting with Jody McCurley,
15 who was an investigator retained on this case. So
16 numerous times. I can't pin it down to a specific
17 number. More than five.

18 Q So at least five times or more than five times you
19 met with the applicant in person prior to trial?

20 A Yes, ma'am.

21 Q And then I think you just touched on this, but
22 Jody McCurley, you said that -- he or she?

23 A It's a he.

24 Q -- he was an investigator assigned to this case?

25 A We retained Jody to track down witness statements

1 from a list of witnesses that my client gave to me as
2 well as to track down the ex-girlfriend, Ms. Durham,
3 Jeanie Durham, to get -- do investigation related to
4 what they could or could not present for us for the
5 trial of the case.

6 Q And I'm going to circle back to Jody McCurley's
7 involvement in the case in just a moment. Did you file
8 Brady or Rule 5 motions in this case?

9 A Yes, ma'am.

10 Q And did you -- did you review the discovery with
11 the applicant prior to trial?

12 A Yes, ma'am.

13 Q Did you find that he was understanding and -- he
14 was understanding and also involved in his defense
15 whenever you talked to him about his discovery?

16 A He was. And, actually, he was the one who pointed
17 out the issue with the addresses that was brought up at
18 pretrial and brought up during the trial. He was the
19 one who alerted me to that issue.

20 Q Thank you.

21 You discussed the versions of the facts that he
22 had with him prior to trial?

23 A Yes, ma'am.

24 Q Okay. And you discussed possible defenses with
25 him?

Andrew Potter - Direct
James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 A Yes, ma'am.

2 Q Now, could you briefly describe for the court the
3 evidence that the State had against the applicant?

4 A Again, this was a trial that happened back in 2009
5 so my memory is not a hundred percent.

6 Q Did you -- and the victim in this case was the
7 defendant's father, correct?

8 A Correct. And I believe there was also a
9 confession that was -- or a written statement that was
10 given by the defendant to Rob Gebing and essentially
11 admitting to the situation and admitting to it. And
12 that's when we had the *Jackson v. Denno* hearing. I
13 think that statement was taken two to three days after
14 the incident allegedly had occurred.

15 Q And, additionally, there was evidence that the
16 victim had attempted -- or, excuse me, the defendant
17 had attempted to commit suicide shortly after he
18 attacked his father?

19 A Yes.

20 Q And then the father of the defendant was able to
21 identify that it was his son who was his attacker?

22 A Yes.

23 Q He had actually been able to see him whenever his
24 son was attacking him with a hammer?

25 A Apparently so.

Andrew Potter - Direct
James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 Q And the son was the applicant in this case?

2 A Yes.

3 Q And then there was clothing that was collected
4 that had at least some blood on it and testimony
5 presented at trial that, although they couldn't
6 identify who that blood belonged to, they could
7 identify that it belonged to either a parent or a son
8 of the victim?

9 A I believe so. Again, I'd have to confirm that by
10 looking at the records. I just don't have an
11 independent recollection of that.

12 MS. VALENZUELA: If you will give me a second,
13 Your Honor, since the witness doesn't remember.

14 May I have a moment?

15 THE COURT: Yes, ma'am.

16 MS. VALENZUELA: Your Honor, I cannot -- of
17 course, it's the one area I don't have a specific page
18 number. It's the forensic pathologist. We would
19 direct the court's attention to the forensic
20 pathologist's testimony. Okay. So look at -- so it
21 would be from pages 218 to 220.

22 May I approach the witness?

23 THE COURT: Yes, ma'am.

24 BY MS. VALENZUELA:

25 Q Okay.

Andrew Potter - Direct
James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 A Apparently, if I'm reading this correctly, it was
2 a question I asked. "And in your report you provided
3 to the government's attorney which is dated August 26,
4 2009, you indicate that the cutting from the T-shirt
5 involves a -- your finding was a partial DNA profile
6 developed from item 3.1 -- excuse me, the sweatshirt
7 from an unidentified individual, correct?"

8 And the response was, "That is correct."

9 Q And if you will read through when your cross ends
10 and the prosecution begins, does the prosecution have
11 her clarify anything?

12 A He does. It appears, upon a question by
13 Mr. Campbell explaining the answer, when I asked
14 specifically, "You don't know whose blood that is," the
15 answer was, "However, I can say that upon comparing the
16 profile from the sweatshirt to Mr. James Marshall
17 Tucker's DNA that the profile from the sweatshirt is
18 consistent with being an offspring, a child, or a
19 parent to James Marshall Tucker."

20 Q Of course, you objected, you challenged the
21 forensic pathologist on that issue, but that was part
22 of the State's evidence against your client?

23 A Correct.

24 Q Now, going back to Jody -- and is it McCurley?

25 A McCurley.

1 Q McCurley. What kind of investigation did
2 Investigator McCurley do on your client's behalf?

3 A It's my understanding he went and tried to track
4 down the witnesses that Mr. Tucker gave to me, get the
5 statements from them, see if they could cooperate, find
6 out what type of information they knew or didn't know.
7 And that was something that we relied upon him to do
8 for us.

9 Q Did you have any conversations with Investigator
10 McCurley about what work he had done?

11 A According to my notes, September 11, 2009, I had a
12 meeting with him at my office, talked about his report.
13 It was his opinion that there was nothing out there.
14 My understanding is that it looks like he met with the
15 girlfriend, felt that she wasn't a credible enough
16 witness that we could have relied upon.

17 He also spoke with the father. The father said
18 that he was afraid that the defendant was going to kill
19 him if he gets out. And his comment was, my notes say,
20 "PW was cold heart on a statement," which means
21 prosecuting witness is cold heart on a statement, and
22 even told Jody how the defendant kept him from getting
23 his knife out of his pocket, are what my notes
24 indicated, so.

25 Q And the issue of the knife, the getting the knife

Andrew Potter - Direct

James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 out of the pocket, the victim testified that as the
2 applicant hit him, he said he didn't want him to reach
3 for his knife, and then that ended up matching the
4 written statement that applicant gave police where he
5 said that he was scared the victim was going to pull
6 out his knife?

7 A Right.

8 Q And the State ended up using those two
9 corresponding statements that only -- and then
10 asserting to the jury in closing that only a person who
11 was there at the crime would have known that detail
12 about the knife?

13 A Yes.

14 Q So going through the applicant's allegations,
15 let's start with the Jeanie Durham allegation since
16 we've just talked about the investigator. After you
17 met with the investigator, and your notes indicated
18 that you met with the investigator, you came away from
19 that discussion understanding that Ms. Durham would not
20 be a credible alibi witness?

21 A Yes. We -- I had a meeting with the client, told
22 him pretty much all alibi witnesses turned out to be
23 dead ends.

24 Q So you did communicate that to your client prior
25 to trial?

1 A Yes.

2 Q And do you have a strategy or did you have a
3 strategy at this time with your client to try to
4 preserve last argument?

5 A That was -- when I met with him right before
6 trial, I explained to him the problems with the case,
7 issues with regards to, namely, the confession he gave.
8 And I explained to him that in order to preserve last
9 argument, we would not be putting up witnesses. He
10 would have the opportunity to testify and give his side
11 of the story to the jury. And my understanding is that
12 the court did advise him of his right and he chose not
13 to exercise that right and he chose not to testify.
14 But that is one of the main strategies we have, and
15 it's worked numerous times.

16 Q When you say that is one of the main strategies
17 you have, it's to not present a case so that you can
18 preserve last argument?

19 A Correct. And it gives me an opportunity to attack
20 the State's case after the State has put everything up
21 and be the last word the jury remembers when they go
22 back there. And when I mean "go back there," go back
23 to the jury room.

24 Q Okay. And then addressing the victim's toxicology
25 report, to your knowledge, was there a toxicology

Andrew Potter - Direct
James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 report for the victim?

2 A I don't recall a toxicology report.

3 Q Do you remember part of your strategy being to
4 address -- being to bring it to the court's attention
5 that the victim could have been inebriated the night of
6 his attack?

7 A That was something we tried to get across to the
8 jury.

9 Q Okay. And then turning to the prosecutorial
10 misconduct allegation regarding the address on the
11 search warrant, do you remember having a pretrial
12 discussion with the court with the prosecutor present
13 where you challenged the jeans coming in based on the
14 evidence? And I think I said "search warrant" earlier,
15 but based on the evidence tech having the wrong address
16 listed for those jeans?

17 A I didn't recall it, but I read about it in the
18 transcript.

19 Q You did read about it?

20 A Yes.

21 Q And did that refresh your memory on that?

22 A Yes, it did.

23 Q And do you remember at that same pretrial
24 conference that, as an officer of the court, you had a
25 duty to let the court know about anything that you had

1 before you, so you informed the court that, in candor,
2 you had to tell them that you did have a separate
3 evidence sheet that did have the correct address listed
4 that noted the jeans?

5 A Yes.

6 Q Okay.

7 MS. VALENZUELA: Your Honor, may I approach the
8 witness?

9 THE COURT: Yes, ma'am.

10 BY MS. VALENZUELA:

11 Q And then I've just handed you up something. Can
12 you tell the court what it is that you have in your
13 hand?

14 A This is a photocopy of an Anderson County
15 Sheriff's Office property report. This was provided to
16 me by the government's attorney, Rame Campbell, as part
17 of discovery. It was also provided to Mr. Tucker, the
18 applicant, when he -- when I sent him his discovery
19 during the pendency of this case. The date is
20 February 10, 2009, it looks like at 1:57 a.m., is
21 referencing a case type ABWIK, I think. Yeah. Armed
22 robbery. Name is James Anthony Tucker. Address,
23 location property was found or impounded. The address
24 was , Anderson, South Carolina
25 . It indicates from that particular address, the

James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 , two shirts were taken, a white
2 long-sleeved sweatshirt, white/gray short-sleeved
3 shirt, and one pair of blue jeans. And under it says
4 "Clothing worn by suspect during ABWIK. May contain
5 blood." And it's signed by Chris Pridemore who is the
6 one who took it into evidence.

7 Q Okay. Thank you. And was that -- is the sheet
8 that you have in your hand a photocopy that you have
9 part of -- would it come as part of the Plaintiff's
10 Exhibit 1 that was submitted earlier?

11 A It should have been part -- or part of -- the SLED
12 report and everything related to that should be.

13 MS. VALENZUELA: Your Honor, we would move to
14 admit this as the State's Exhibit 1.

15 MR. WELBORN: No objection.

16 MS. VALENZUELA: I mean, I'm sorry. I said
17 State's but I meant Petitioner's Exhibit 1.

18 THE COURT: It would be admitted without
19 objection.

20 (WHEREUPON, Respondent's Exhibit Number 1 was
21 admitted into evidence.)

22 MS. VALENZUELA: Thank you.

23 Q And so on there, that handwritten note filled out
24 by the officer, states that the jeans were collected
25 from the same address as the other shirts and that

1 address being linked to the applicant versus the
2 unrelated address that was listed on the computer
3 printout?

4 A Yes, ma'am.

5 Q And it was part of the court's discussion. The
6 prosecutor asserted that that was a scrivener's error,
7 correct?

8 A Yes, ma'am.

9 Q And do you recall how there was testimony elicited
10 from the evidence technician on page 203 from Tony
11 Clamp?

12 A Actually, it's Tommy Clamp.

13 Q Tommy.

14 A Yes. And I do recall.

15 Q And where Tommy Clamp testified that it was a
16 scrivener's error?

17 A Yes, ma'am.

18 Q Do you remember the -- let's talk about the jury
19 that you had throughout this trial.

20 A Okay.

21 Q Do you remember this jury sending, before the
22 trial had started or early on in the trial, sending an
23 extensive note to the court talking about how to pay
24 for parking and other miscellaneous questions that they
25 had?

Andrew Potter - Direct
James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 A I don't have independent recollection of that, but
2 that -- I don't have any reason to believe that didn't
3 happen.

4 Q It would be early on in the transcript, but let's
5 move on from that.

6 Do you remember the jury sending out a question or
7 a note to the court saying that it needed clarification
8 on some of its questions?

9 A If I remember correctly, and again, my memory has
10 been refreshed by reading through the transcript, it
11 was specifically asking kind of a generic can we ask
12 questions, can we -- that type of thing. It wasn't --
13 the question that was asked to the judge didn't make me
14 think that there was a specific question that needed to
15 be answered. It gave the impression that it was just a
16 jury who really wanted to take part in the proceedings.
17 And that was the way I understood the question to be,
18 and I think that's the way the judge took the question
19 to be. I didn't object to it because I didn't
20 necessarily find it objectionable. I guess the reason
21 being is I want to be able to control the courtroom as
22 best as I can in regards to the case, and I don't
23 necessarily want jurors asking questions that may hurt
24 my case. And I think it's pretty common procedure that
25 the jury ought not ask questions of witnesses.

1 Q And thank you. You've covered a lot of points
2 there..

3 I will just turn your attention to page 82, which
4 would have been -- and if you can read through there
5 where it talks about Court's Exhibit 1. Are you there?
6 Line nine?

7 A On page 82?

8 Q Yes. Oh, wait. No. He talks about it there.

9 A He talks about the parking. And at the time Cathy
10 Phillips, who was our clerk of court at the time, was
11 going to call, actually, Judge Frankie McClain at the
12 city and send this to him. Apparently -- I do remember
13 this now. There were issues about where the jurors
14 could park. Jurors were parking in the parking lot
15 behind -- I guess it's the Palmetto Building next door,
16 and they were hooking the jurors' cars and towing them.
17 And there were questions of whether the jurors could
18 park -- were getting tickets when they parked in the
19 slots on the street in front of the businesses and
20 things like that. And I think that was those issues
21 there.

22 Q And it wasn't the only question that the jury had.
23 The jury had sent out a note where the response from
24 the court is, "Lord have mercy," because it's, "What do
25 you do if you lost your juror slip? Can we bring a

Andrew Potter - Direct

James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 bottle of water into the jury box? If we pay for
2 parking, can we be reimbursed? Can we have smoke
3 breaks," and other questions, correct?

4 A Right.

5 Q And this would have been your -- does this give
6 you any sort of insight as to what kind of jury you
7 might have had at that point in terms of willingness to
8 ask questions?

9 A Honestly, it would kind of give me the feeling
10 that I've got a jury who may not necessarily cooperate
11 with one another, may have some strong-willed
12 individuals on that jury that want their smoke breaks
13 and that want answers to their questions. And maybe if
14 their questions aren't answered, that would be
15 beneficial to my case, my client. And if I've got a
16 jury back there who's dysfunctional, you know, the
17 chances of a mistrial happening or something of that
18 sort I think is better for me. I don't necessarily
19 want a jury who likes one another. I want a jury who
20 are arguing with one another. I want a jury who's
21 dysfunctional. And in all honesty and candor on the
22 defense side, I don't want a jury coming together to
23 convict my client.

24 Q Right. So you were pleased with the jury that you
25 had selected. And then moving on when the question --

1 A I'm never pleased with a jury because in Ohio, I
2 got a chance to ask jurors questions in voir dire and I
3 can't do that here and that drives me crazy. You know,
4 I probably was happier than usual with some of the
5 juries that I have had in the past.

6 Q But when the question came out, and I think that's
7 what you were indicating earlier, you felt that if they
8 were able to ask specific questions, you wouldn't be
9 able to control what they were focused on getting on
10 and it could be hurtful questions. And, additionally,
11 it's common procedure not to allow the jury to ask
12 questions during the trial?

13 A Right. It's my goal to direct the narrative as
14 best as I can towards my client, to the benefit of my
15 client, and that's my goal.

16 Q And this question came out in the middle -- maybe
17 not right in the middle, but while the State was still
18 presenting its case?

19 A Correct.

20 Q Do you think you made a good strategic decision in
21 terms of not highlighting or not requesting a jury
22 instruction?

23 A I think so.

24 Q Or not providing further answers at that point?

25 A Again, at that point in time, it was just a

Andrew Potter - Direct

James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 generic question to the court, Can we ask questions?
2 Can we, in essence, participate in the trial? And I
3 did not want them doing that. Absolutely did not want
4 them doing that.

5 Q So moving on to applicant's last issue, he claims
6 that he had psychological issues at the time. And so
7 let me ask you: Did you feel that you had -- that your
8 client had the sufficient present ability to consult
9 with you throughout the trial?

10 A Absolutely. He was competent. Again, as I noted
11 earlier, he was the one that pointed out the
12 scrivener's error or the issues with the address
13 related to the chain of custody. Again, he's the one
14 who highlighted that issue for me. Additionally, he
15 gave me names and contact information of witnesses he
16 wanted my investigator to contact, which my
17 investigator did. He sent me numerous letters asking
18 me to file a motion to dismiss for whatever, you know,
19 particular reasons. And so there was nothing in my
20 daily interaction with him or my interaction with him
21 in prepping for this trial that would indicate there
22 were any competency issues. He fully understood what
23 was going on. He fully understood what he was charged
24 with. He was able to assist me. He was able to review
25 the discovery. At no point in time did he look at me

1 and say, "I don't understand what's going on. Andy,
2 why am I being charged?" And you understand competency
3 is a low threshold to make. There was nothing
4 indicating to me that he had no grasp of the
5 ramifications and the consequences that he was facing
6 related to this particular case, and he chose to go to
7 trial.

8 Q And then at trial did you feel he was interacting
9 with you and asking questions and participating in his
10 defense during the trial?

11 A Yes. Now, typically, it is my practice, when I
12 have a trial, that I will hand a defendant a notepad
13 and a pen and ask them to relay to me any questions or
14 observations or anything like that. I don't have any
15 independent recollection whether I did this with him or
16 not. I may have. I did have my paralegal there at the
17 time helping me with the trial, and I'm sure she
18 interacted with him as well while I was busy conducting
19 direct or cross or in evaluating a witness' testimony.
20 So there was nothing that was happening during trial
21 that would make me think that there was a competency
22 issue. And my recollection was he was locked up at the
23 detention center, so there was no indication that he
24 would be under any illegal narcotics or any medication
25 or anything like that or any drugs or alcohol or

Andrew Potter - Direct
James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 anything like that that would prevent him from
2 understanding what was going on.

3 Q In fact, early on in the trial there is a
4 discussion, as usual with trials, on whether an
5 applicant or whether a defendant at the time was out on
6 bond or not. And it was indicated that he was not out
7 on bond, correct?

8 A Correct.

9 Q Was there anything that indicated to you, that
10 gave you any sort of concern that he was on medication
11 that was affecting him at all? Was there any slurred
12 speech that you observed?

13 A There was -- again, there was nothing during the
14 trial of the case that would indicate to me that he was
15 intoxicated or he was having side effects to medication
16 he was taking. He wasn't overly sleepy, he wasn't
17 yawning or doing anything of that sort during the
18 trial. And there was -- obviously, I didn't think
19 there would be a need to ask him that question due to
20 the fact that he was answering my questions
21 appropriately and responding in an appropriate manner.
22 If I didn't think he was responding in an appropriate
23 manner, then I would have explored that further.

24 Q And the court ended up giving an advisement of
25 your client's rights after the State or around the time

1 the State rested its case to determine if the client
2 wanted to testify, correct?

3 A Correct.

4 MS. VALENZUELA: Your Honor, may I just have one
5 moment?

6 THE COURT: Yes, ma'am.

7 MS. VALENZUELA: Please answer any questions that
8 opposing counsel may have.

9 THE COURT: Mr. Welborn.

10 CROSS-EXAMINATION

11 BY MR. WELBORN:

12 Q Mr. Potter, you testified earlier about you had
13 Mr. McCurley do an investigation; is that correct?

14 A That's correct.

15 Q Do you have your file of this case with you today?

16 A I do.

17 Q And do you have that report of Mr. McCurley with
18 you today?

19 A I'm not finding it right now.

20 Q Are you familiar with what his reports generally
21 look like?

22 A It's usually a typed, written report. I know I
23 met with him, looking at my notes from the file, as I
24 mentioned, on September 11th. At that point in time we
25 met and discussed his report, and I don't know where

Andrew Potter - Cross
James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 it's at.

2 Q That's okay. I've got a copy, I think. I'll ask
3 to approach in just a moment.

4 A Okay. If you've got the copy.

5 Q I think I do. I'm going to hand it to you in a
6 moment and see if you agree.

7 A Okay. I can't seem to find it. Typically, I will
8 have things separated when I have a trial in regards to
9 everything -- in regards to getting discovery after
10 trial. It may have been lost. I don't know.

11 MR. WELBORN: May I approach the witness, Your
12 Honor?

13 THE COURT: Yes, sir.

14 BY MR. WELBORN:

15 Q Mr. Potter, I'm going to hand you what I think is
16 a report by McCurley and let you look over that for a
17 couple minutes, and I'll ask you some questions when
18 you're through.

19 A Okay.

20 Q Does that appear to be the report on that
21 particular -- on this particular case, Mr. Potter?

22 A I believe so.

23 Q Does it -- now, I don't have anything in that
24 report that says "end of report." I just see that it
25 ends on page five at the top of that page. Is that

1 what you see?

2 A Yes.

3 Q And would that be typical of an ending from
4 Mr. McCurley where it doesn't really say "the end," it
5 just ends?

6 A I guess, you know.

7 Q Possibly?

8 A Possibly. I mean, sometimes I'll have
9 investigators -- sometimes I have investigators give me
10 an oral report and not produce anything written for
11 fear that it may be something that I have to disclose
12 to the defense -- or, excuse me, the State.

13 Q But that appears to be the report from him based
14 on your past dealings?

15 A Yes.

16 Q Now, can you tell me where in that report that
17 Jeanie Durham has been interviewed by Mr. McCurley?

18 A All right. It says that Mr. McCurley interviewed
19 Marshall Tucker, Ricky Powell, a person who said she
20 was Tony Scott's mother, Tony Scott, Sam Duncan, Tammy
21 Cross, Robin Moore, Robin Moore's mother -- excuse me,
22 Robin Moore was attempted to locate but no one was at
23 residence. Spoke with Robin Moore. And Mike Walters.
24 Tried to locate a Tony Tilley, looks like. So -- and
25 those are dated from September 1st through

Andrew Potter - Cross
James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 September 2nd.

2 Q And nowhere in there did it ever -- I tried to
3 find Jeanie Durham or anything about her. Did it?

4 A No.

5 Q And you testified a while ago that, I think you
6 said -- correct me if I'm wrong -- that he did find
7 that her testimony -- he being Mr. McCurley talked to
8 her and didn't believe her testimony would help; is
9 that fair to say?

10 A My notes indicate, "Defendant's ex-girlfriend, she
11 would lie for him." And Jody told me that. He said,
12 "No way. Absolutely not," were my notes.

13 Q Okay. That's what Jody said, but yet it's not in
14 his report; is that correct?

15 A Right. And that's my notes from my meeting
16 September 11, 2009.

17 Q Do you know whether or not Mrs. Durham had given a
18 statement to anyone at the Anderson County Sheriff's
19 Office about this case?

20 A I'd have to look through my file. Give me a
21 second here. All right. Looking at an incident
22 report, "Upon arrival, I spoke to complainant, James
23 Tucker. Stated his son assaulted him. Further
24 statements by Mr. Tucker." Looks like statements
25 referencing Ms. Durham or a stepdaughter, Anna Durham.

1 Looks like she did -- was interviewed by Chris
2 Pridemore, if I'm reading this correctly.

3 Q You don't have her statement, do you?

4 A Just what was told to Chris Pridemore in his
5 incident report, what was indicated in the incident
6 report. Got a handwritten note in here written to
7 Jeanie. Don't know if I have an actual written report
8 from Jeanie Durham that I can find.

9 Q That's okay.

10 MR. WELBORN: May I approach the bench and get the
11 investigator report back?

12 THE COURT: Yes, sir.

13 BY MR. WELBORN:

14 Q Nowhere in that report does Mr. McCurley say he
15 interviewed a Jeanie Durham?

16 A Correct.

17 MR. WELBORN: Your Honor, I'd move to admit this
18 into evidence.

19 MS. VALENZUELA: Your Honor, our objection would
20 be hearsay. This is -- all the statements that are in
21 there are from an out-of-court witness.

22 THE COURT: I'll overrule the objection. This
23 will be, what, Number 2?

24 MR. WELBORN: Exhibit Number 2, Your Honor.

25 (WHEREUPON, Applicant's Exhibit Number 2 was

Andrew Potter - Redirect
James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 admitted into evidence.)

2 BY MR. WELBORN:

3 Q Would it be fair to say, Mr. Potter, that with all
4 due respect, you don't know really what Mrs. Durham's
5 testimony could have been?

6 A All I know is I asked Jody to go talk with her.
7 The report which indicates he met with witnesses on
8 September 1st and September 2nd, whether he met with
9 her after that report was done or after September 2nd
10 and before he met with me, I don't know. All I know is
11 my discussions with Mr. McCurley and my impression that
12 she was not going to be a credible witness and not
13 useful.

14 MR. WELBORN: Thank you. Thank you, sir. That's
15 all I have. Answer anything opposing counsel has.

16 THE COURT: Ms. Valenzuela.

17 REDIRECT EXAMINATION

18 BY MS. VALENZUELA:

19 Q Do you know for sure that Exhibit 2 is the full
20 and complete report that the investigator would have
21 given you on September 1st or 2nd?

22 A I presume it is. Again, I had the report before I
23 met with Jody on September 11th, so I presume it is.
24 Whether there was a supplement done, his supplement may
25 have been when he met on the 11th.

1 Q So there may have been a supplement that you don't
2 have here today, but you do recall a conversation where
3 you came away from that conversation understanding that
4 the advice would be that the ex-girlfriend would not be
5 credible, no way?

6 A Correct. That was my impression. Now, again, I
7 know he wrote a written report on people he met on
8 September 1st and September 2nd. If he met with
9 anybody else after that and just did a verbal report to
10 me, you know, he probably did that. If he did a
11 written report, I don't have it. I don't think he did
12 a written report, quite honestly. I think it was just
13 a sit-down, "Andy, this is what you've got." The main
14 concern I had with the case, honestly, was the
15 confession that he gave.

16 Q And that was the conversation that you had with
17 the investigator, was about nine days after the report
18 you said 9/11 of the same year?

19 A Yes. Yes.

20 MS. VALENZUELA: No further questions.

21 THE COURT: Anything further from this witness?

22 MR. WELBORN: No, Your Honor.

23 MS. VALENZUELA: No, sir.

24 THE COURT: Thank you, Mr. Potter. You can step
25 down.

James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

1 THE WITNESS: May I be released, Your Honor?

2 THE COURT: Any objection to this witness being
3 excused?

4 MR. WELBORN: No objection.

5 MS. VALENZUELA: May I talk to him briefly?

6 THE COURT: Yes, ma'am. I know he's got to get
7 back to preliminary hearings.

8 MS. VALENZUELA: Your Honor, the State rests. I'm
9 sorry I keep doing that. We have no further questions
10 on our side.

11 THE COURT: Any reply?

12 MR. WELBORN: No, Your Honor.

13 THE COURT: Okay. Thank you. All right. Well, I
14 want to read the transcript and look at the exhibits in
15 a little more detail. I'm going to take this under
16 advisement, and I will inform the attorneys of my
17 decision.

18 MR. WELBORN: Thank you, Your Honor.

19 MS. VALENZUELA: Thank you, Your Honor.

20 THE COURT: Thank you, all of you.

21 (WHEREUPON, the hearing ended at 10:36 a.m.)

22 ***END OF REQUESTED TRANSCRIPT OF RECORD***
23
24
25

James A. Tucker vs. The State of South Carolina 2012-CP-04-00505

Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 10th day of June 2016.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 8, 2016

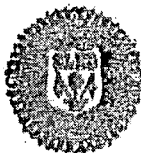

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

"Page A"

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

Dep. Robert Gehrig
Anderson County Sheriff's Office
P.O. Box 5497
Anderson, SC 29623-5497

DNA ANALYSIS
August 26, 2009
SLID LAB: LOP-07390
Your Case No: 0907796
Incident Date: 2/9/2009
[S] James Anthony Tucker
[V] James Marshall Tucker

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

SEROLOGY ANALYSIS

Items Submitted:

- 1.1 Cutting from t-shirt
- 2.1 Cutting from jeans
- 3.1 Cutting from sweat shirt
- 4 Buccal swabs from James Marshall Tucker

Results of Examinations:

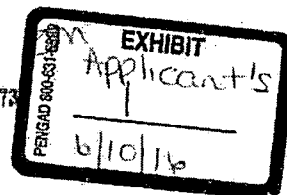
- 1.1 Blood indicated. See DNA analysis.
- 2.1 Blood indicated. See DNA analysis.
- 3.1 Blood indicated. See DNA analysis.
- 4 See DNA analysis.



FILED-CLERK'S OFFICE
ANDERSON SC
2009 AUG 10 AM 10:51
COMMON PLEAS AND
GENERAL SESSIONS



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7300



"Page B"

SLED LAB No. L09-07390
August 25, 2009

Page 2 of 3

DNA ANALYSIS

ITEMS ANALYZED:

- 4 Buccal swabs from James Marshall Tucker
- 1.1 Cutting from t-shirt
- 2.1 Cutting from jeans
- 3.1 Cutting from sweat shirt

EXAMINATIONS

DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.

RESULTS

The partial DNA profile developed from item 2.1 matches the DNA profile of James Marshall Tucker. The probability of randomly selecting an unrelated individual having a DNA profile matching this item is approximately 1 in 4.9 quadrillion.

The partial DNA profile developed from item 3.1 is from an unidentified individual.

No human DNA was obtained from item 1.1.

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.

Amanda C. Webb
Amanda C. Webb
Forensic Scientist

cc: Anderson County Solicitor's Office



"Page C"

SLED LAB No. L09-07390
August 26, 2009

Page 3 of 3

Table 1 - Identifier

Name	DISE179	DISE11	DISE23	CEFLPO	DISE154	THQ1	DISE117	DISE39	DISE138	DISE43	TWA	TPOZ	DISE31	DISE13	PGA	Auto- path
4 James Marshall Tucker	14,15	30,231	10,12	10	15,18	7,9,3	10,11	9	18,19	14	17,18	8,11	14,15	11,12	22	XY
2.1 James	14,15	30,231	10,(12)	10	15,18	7,9,3	(10,11)	9	(18)	14	17,18	8,11	(14,15)	11,12	22	XY
3.1 Robert Clark	-	(31)	-	-	(15,16)	(7,3)	-	-	(18,19)	(12)	-	-	-	(12)	-	(20)

() = values between 75 and 149 dfu - = no results



396

ANDERSON COUNTY SHERIFF

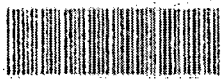
303 Camson Road
Anderson, SC 29625
(864) 260-4717

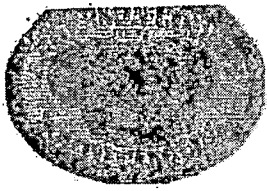
PROPERTY REPORT

Page 1 of 3

"Page D"

CASE NO. :
200907796

VICTIM: NAME: james marshall tucker ADDRESS: anderson south PH: (					
OWNER: NAME: JAMES ANTHONY TUCKER ADDRESS: carolina PH:					
ARREST(S): NAME: JAMES ANTHONY TUCKER NAME: NAME: south carolina					
TYPE Evidence	QTY. 1	BRAND	MODEL	SERIAL NO.	VALUE
 1092876		COLOR(S)	GENERAL DESCRIPTION Clothes - WHITE LONG SLEEVE SWEAT SHIRT		
Notes: disposition on 08/19/2009 by Turner requesting evidence be retained (clamp). ***** picked up from sled on 07/29/2009 and returned to storage (clamp) *****					
LOCATION TAKEN FROM ANDERSON, SC			WHERE PROPERTY IS NOW BIN112 - BIN 112		STATUS
REPORTING OFFICER Pridemore, Chris		ID# 578	DATE 09/15/2009	REVIEWED BY	DATE
TYPE Evidence	QTY. 1	BRAND	MODEL	SERIAL NO.	VALUE
 1092877		COLOR(S)	GENERAL DESCRIPTION Clothes - GRAY SHORT SLEEVE SHIRT		
Notes: disposition on 08/19/2009 by Turner requesting evidence be retained (clamp). ***** picked up from sled on 07/29/2009 and returned to storage (clamp) *****					
LOCATION TAKEN FROM ANDERSON, SC			WHERE PROPERTY IS NOW BIN112 - BIN 112		STATUS
REPORTING OFFICER Pridemore, Chris		ID# 578	DATE 09/15/2009	REVIEWED BY	DATE



ANDERSON COUNTY SHERIFF

303 Camson Road
Anderson, SC 29625
(864) 260-4717

PROPERTY REPORT

397

Page 2 of 3

"Page E"

CASE NO. :
200907796

VICTIM: NAME: James Marshal Tucker ADDRESS: anderson south PH: (					
OWNER: NAME: JAMES ANTHONY TUCKER ADDRESS: carolina anderson PH:					
ARREST(S): NAME: JAMES ANTHONY TUCKER NAME: NAME:					
TYPE Evidence	QTY. 1	BRAND	MODEL	SERIAL NO.	VALUE
		COLOR(S) *	GENERAL DESCRIPTION Clothes - pair of blue jeans		
Notes: disposition on 08/19/2009 by Turner requesting evidence be retained (clamp). ***** picked up from sled on 07/29/2009 and returned to storage (clamp) *****					
LOCATION TAKEN FROM Anderson			WHERE PROPERTY IS NOW BIN112 - BIN 112		STATUS
REPORTING OFFICER Pridemore, Chris		ID# 578	DATE 09/15/2009	REVIEWED BY	DATE
TYPE Evidence	QTY. 2	BRAND	MODEL	SERIAL NO.	VALUE
		COLOR(S)	GENERAL DESCRIPTION Clothes - 2 - BUTTON SHIRTS		
Notes: disposition on 08/19/2009 by Turner requesting evidence be retained (clamp). *****					
LOCATION TAKEN FROM ANDERSON, SC			WHERE PROPERTY IS NOW BIN112 - BIN 112		STATUS
REPORTING OFFICER GEBING, Rob		ID# 347	DATE 09/15/2009	REVIEWED BY	DATE
TYPE Evidence	QTY. 1	BRAND	MODEL	SERIAL NO.	VALUE
		COLOR(S)	GENERAL DESCRIPTION Miscellaneous - PLASTIC BAG		
Notes: disposition on 08/19/2009 by Turner requesting evidence be retained (clamp). *****					
LOCATION TAKEN FROM ANDERSON, SC			WHERE PROPERTY IS NOW BIN112 - BIN 112		STATUS
REPORTING OFFICER GEBING, Rob		ID# 347	DATE 09/15/2009	REVIEWED BY	DATE

398

ANDERSON COUNTY SHERIFF

303 Camson Road
Anderson, SC 29625
(864) 260-4717

PROPERTY REPORT

Page 3 of 3

CASE NO. :
200907796

VICTIM:

NAME: James Marshal Tucker

ADDRESS:

anderson south

PH: (

OWNER:

carolina

NAME: JAMES ANTHONY TUCKER

ADDRESS:

anderson

PH:

ARREST(S):

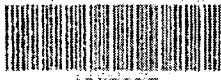
south carolina

NAME: JAMES ANTHONY TUCKER

NAME:

NAME:

TYPE	QTY.	BRAND	MODEL	SERIAL NO.	VALUE
Evidence	7				



1092935

COLOR(S)

GENERAL DESCRIPTION
Clothes - SOCKS

Notes: disposition on 08/19/2009 by Turner requesting evidence be retained (clamp).

LOCATION TAKEN FROM

ANDERSON, SC

WHERE PROPERTY IS NOW

BIN112 - BIN 112

STATUS

REPORTING OFFICER

GEBING, Rob

ID#

347

DATE

09/15/2009

REVIEWED BY

ID#

DATE

TYPE	QTY.	BRAND	MODEL	SERIAL NO.	VALUE
Evidence	1				



1092936

COLOR(S)

GENERAL DESCRIPTION

* Clothes - GRAY IN COLOR T-SHIRT W/BLOOD ON IT

Notes: disposition on 08/19/2009 by Turner requesting evidence be retained (clamp).

LOCATION TAKEN FROM

ANDERSON, SC

WHERE PROPERTY IS NOW

BIN112 - BIN 112

STATUS

REPORTING OFFICER

GEBING, Rob

ID#

347

DATE

09/15/2009

REVIEWED BY

ID#

DATE

TYPE	QTY.	BRAND	MODEL	SERIAL NO.	VALUE
Evidence	1				



1092953

COLOR(S)

GENERAL DESCRIPTION

* Buccal Swabs - Buccal Swab of James Marshall Tucker

Notes: disposition on 08/19/2009 by Turner requesting evidence be retained (clamp).

LOCATION TAKEN FROM

ANDERSON, SC

WHERE PROPERTY IS NOW

SLED - State Law Enforcement Division

STATUS

REPORTING OFFICER

CARON, Todd

ID#

238

DATE

09/15/2009

REVIEWED BY

ID#

DATE

McCurley Private Investigations
2315 North Main Street, Suite 209
Anderson, South Carolina 29621

6/10/16

6/10/16

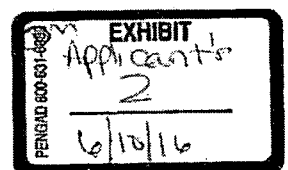
6/10/16

RE: James Anthony Tucker
a/k/a Tony Tucker

Charges: Armed Robbery
ABWIK

FILED-CLERK'S OFFICE
ANDERSON SC
JUN 10 10 51
COMMON PLEAS AND
GENERAL SESSIONS

FILED
JUN 10 2016



September 1, 2009

Marshall Tucker

Met with Marshall Tucker, the alleged victim on this case, at his residence, located at _____, Anderson, SC, and Mr. Tucker stated that his son, Tony Tucker, had been living with him on and off since he had been released from prison and that on 2-09-09 he had been staying with Jenny Lynn Durham. Mr. Tucker further stated that Tony had come by his residence and borrowed twenty (\$20) dollars from him and left without incident. He further stated that a while later on the same date, Tony had returned wanting more money. Mr. Tucker stated that he gave him five (\$5) dollars and that Tony wanted the keys to a vehicle parked in the back of the residence to get items out of the car. Mr. Tucker stated that after giving Tony the keys to the car that he, Mr. Tucker, sat down at the kitchen table and was drinking a beer. Mr. Tucker stated that Tony came in through the back door and attacked him with a hammer, striking him numerous times in the head and on his arms. Tony demanded money and took approximately five hundred (\$500) dollars from Mr. Tucker. Mr. Tucker stated that he asked Tony why he was doing this and Tony replied "Dope."

NOTE: Mr. Tucker stated to this investigator that he wished to prosecute Tony to fullest extent of the law because he was afraid that if Tony gets out of jail that he would kill him.

September 1, 2009

George's Drive-In
(Restaurant located on Murray Avenue, Anderson, SC)

Met with Ricky Powell who works as a cook at this location. He states that he has been employed at George's Drive-In as a cook for approximately eighteen (18) months. He states that he does not know Tony Tucker but recalls Candice Durham having a fund raising jar on the counter, but does not have any recollection of a man picking up the money. He further stated that Tony Scott no longer works at George's Drive-In but that he could possibly be found by talking with his mother, who works at the Nutty Sweet Shop.

Met with Christy Saxon who works as a waitress at this location. She states that she has been employed at George's Drive-in as a waitress for approximately one (1) year. She further states that she does not know Tony Tucker and stated that the only person she had seen picking up the fund raising money was Candice or her mother.

September 1, 2009

Nutty Sweet Shop
(Restaurant located on Belton Highway, Anderson, SC)

Met with a white female who worked at Nutty Sweet Shop whom stated that she was Tony Scott's mother and that he was living on _____, Anderson, SC and furnished me with a phone number of _____.

Interview with Tony Scott, 9-01-09, and he stated that during the time in question (2-9-09) that he was employed at George's Drive-In but stated that he doesn't know Tony Tucker and does not recall the date of 2-9-09 or of Tony Tucker picking up money from a fund raising jar at George's Drive-In.

September 1, 2009

Sam Duncan, Preacher

(, Anderson, SC, Phone)
Gethsemane Baptist Church, Highway 81 South, Starr, SC

Talked with a female subject and left message for Sam Duncan to call. She stated that he was unavailable at this time. As of this date, my phone calls have not been returned.

September 1, 2009

Tammy Cross

Number is disconnected and unable to locate

September 1, 2009

Robin Moore ()

Attempted to locate, no one at residence

September 2, 2009

Talked with Robin Moore's mother and left message for Robin Moore to call.

Finally located Robin Moore whom stated that she was an ex-girlfriend of Tony Tucker and that they had a child together. She stated that they had been together before he went to prison. She states that she has no direct knowledge of the incident that occurred on 2-9-09 but stated that she did not think that Tony would have attacked his father.

NOTE: This subject continuously gave excuses for Tony Tucker and other useless information not pertaining to the case and would probably not make a good witness.

September 2, 2009

Tony Tilley, APD

Met with Capt. Mike Walters of the Detective Division and he stated that Tony Tilley was no longer assigned to the Detective Division. He further stated that he did not recall Tony Tilley having anything to do with this case and that it was not within their jurisdiction. Tony Tilley was not on duty on this date.

NOTE: Capt. Walters states that Tony Tilley is a chaplain with APD and a part-time preacher and this may be the reason that Tony Tucker wanted him subpoenaed.

PROPERTY REPORT

PROPERTY REPORT				1. Status - Check One Only: ☒ Evidence ☒ Recovered ☐ Found ☐ Other _____		2. Case No. 2009-07796			
3. Date & Time 2-10-09 @ 0157		IT IS MANDATORY TO SUBMIT A LABORATORY ANALYSIS REQUEST FORM FOR ALL ARTICLES REQUIRING LABORATORY OR FORENSIC PROCESSING			4. P&E use only		5. Case Type ARMED ROBBERY		
6. Found or Recovered From: ☐ Location ☒ Suspect ☐ Complainant ☐ Employer ☐ Victim ☐ Person Reporting ☐ AKA ☐ Other _____				7. Location Property Was Found/Impounded (Give Exact Address/Location) 					
Name James Anthony Tucker									
Owner's Address James Anthony Tucker				owner's Phone # ---					
11. Item #	12. Quantity	13. Description			14. NCIC Hit Yes No				
A	2	shirts (white long sleeve sweat shirt, white)							
B	1	(gray short sleeve shirt)							
			1 pair blue jeans						
Clothing worn by suspect during ARROW may contain blood									
15. I hereby acknowledge that the above lists represent all property taken from my possession and that I have received a copy of this report.				16. Impounding Officer (Print Full Name) Chris Pademore		17. Corn No 578		18. Unit No C35	
Signature X [Signature]				19. Signature [Signature]		20. Investigating Officer [Signature]			
21. Received By Evidence drop box 0432				22. Reason		23. Date and Time Received			
Received By				Reason		Date and Time Received			
Received By B. Lee				Reason Storage		Date and Time Received 2/10/09			
Received By				Reason		Date and Time Received			
Received By				Reason		Date and Time Received			
Received By				Reason		Date and Time Received			
Received By				Reason		Date and Time Received			
Received By				Reason		Date and Time Received			
Received By				Reason		Date and Time Received			
Received By				Reason		Date and Time Received			
Received By				Reason		Date and Time Received			
Type of Disposition				AUTHORIZATION FOR DISPOSITION					
☐ Cleared for Disposal: Items _____				Person Authorizing:					
☐ Release To: Name _____				Name (print) _____					
I.D.# _____ Phone# _____				Signature _____					
Address _____				Date _____					
IT IS THE AUTHORIZING OFFICER'S RESPONSIBILITY TO NOTIFY OWNERS TO CLAIM PROPERTY.									

FILED-CLERK'S OFFICE
ANDERSON SC



STATE OF SOUTH CAROLINA SEP -6 AM 9:28 IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON COMMON PLEAS AND THE TENTH JUDICIAL CIRCUIT
GENERAL SESSIONS

James Anthony Tucker,
S.C.D.C. No. 260993,

Applicant,

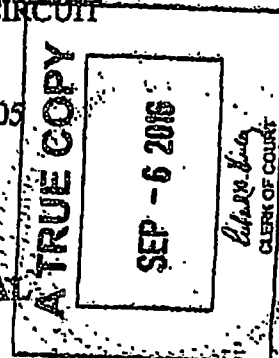
v.

State of South Carolina,

Respondent.

C.A. No. 2012-CP-04-0505

ORDER OF DISMISSAL



This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 21, 2012. Respondent made its return on or about May 22, 2012. An evidentiary hearing was held on June 10, 2016, at the Anderson County Courthouse. Applicant was present and represented by Hugh W. Welborn, Esquire. Senior Assistant Deputy Attorney General Johanna C. Valenzuela represented Respondent.

Applicant and his trial counsel, Andrew Potter, Esquire testified at the hearing. The Court had before it Applicant's trial transcript, the Anderson County Clerk of Court records, Applicant's appellate records, the South Carolina Department of Corrections records, the PCR application, and the Return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted by the April 2009 term of the Anderson County Grand Jury for assault and battery with intent to kill

RSS

(2009-GS-04-1023) and armed robbery (2009-GS-04-1024). Andrew Potter, Esq., represented Applicant. The State took the case to trial, and on September 16, 2009, Applicant was found guilty. The Honorable J. Cordell Maddox, Jr., sentenced Applicant to a term of life imprisonment without parole for both charges.

A timely notice of appeal was filed and perfected on Applicant's behalf. Elizabeth A. Franklin-Best, Esq., represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction. State v. James, Op. No. 2011-UP-537 (S.C. Ct. App. filed December 5, 2011). The Remittitur was sent on December 21, 2011.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the case law presented at the hearing, to review the record in its entirety, to hear the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing SCRPC 71.1(e)). 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 the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d

RSS

at 814.

First, the applicant must show that counsel's performance "fell below an objective standard of 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). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, Counsel's deficient performance must have prejudiced the 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; see Strickland v. Washington, 466 U.S. 668, 688, 692, 104 S. Ct. 2052, 2065, 2067 (1984) ("[T]he defendant must show that counsel's representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution."); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) ("PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case.").

And "where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Watson v. State, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006) (citing Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992)).

"Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting Strickland, 466 U.S. at 690, 104 S.Ct. 2052). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Id. (citing Caprod v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). "Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977)).

Applicant made two allegations in his PCR application: (1) prosecutorial misconduct and (2) conflict of interest. Additionally, counsel for Applicant notified Respondent of an additional allegation prior to the hearing: failure to file for a psychological examination and the ability to understand proceedings due to prescribed medications. During the hearing, Applicant also alleged his trial counsel should have provided information when the foreman sent a note to the Court during the trial, trial counsel should have called Jeannie Durham as an alibi witness, and that trial counsel should have had the victim's toxicology report to establish he was intoxicated. This Court will now address each allegation of ineffective assistance of counsel:

I. Prosecutorial Misconduct

Applicant argues there was prosecutorial misconduct because the search warrant return showed the only item that had his DNA evidence came from his brother in laws home but the State testified they found it at Applicant's home. Trial counsel testified the property report

showing the address changes was provided to him prior to trial and that he provided it to his client.

The trial transcript shows this exact issue was raised and addressed during the trial and explained as a scrivener's issue. (Trial Tr. p. 202, l. 8 – p. 206, l. 6; p. 170, l. 14 – p. 173, l. 10; p. 191, ll. 1-20.) Applicant had this information going to trial and was able to challenge it before the Court and the jury. As such, this allegation is denied as Applicant has failed to establish prosecutorial misconduct or any ineffective assistance of counsel related to this issue.

II. Conflict of Interest

No evidence was presented at the PCR Hearing regarding a conflict of interest. This Court finds Applicant has failed to meet his burden on establishing there was a conflict of interest.

III. Failure to file for a psychological examination and the ability to understand proceedings due to prescribed medications

Applicant claims he was on at least three anti-depressants during the trial and that those anti-depressants affected his memory and caused abnormal thinking and disorientation. Trial Counsel testified Applicant did not appear to have any trouble understanding him either before or during his trial. Trial Counsel pointed out that Applicant was active in his own defense; Applicant was the one to initially note the scrivener's error on the Search Warrant return and was able to provide names of potential witnesses. During trial, Applicant did not appear to have any trouble understanding the proceedings.

Aside from Applicant's own assertions, Applicant presented no evidence of how much of this medication he was taking, the effects of these medications, or that these medications had an effect on Applicant that prevented him from having the ability to consult with his lawyer and understand the proceedings. This Court finds Trial Counsel's testimony credible and finds Applicant has not met his burden of proving his incompetence by a preponderance of the evidence. See McLaughlin v. State, 352 S.C. 476, 481, 575 S.E.2d 841, 843 (2003) (finding the applicant did not meet his burden where a pharmacist testified at his PCR hearing and he produced prison records of his medications but neither related to the applicant's ability to consult with his counsel and understand the proceedings).

IV. *Failure to provided information when the foreman sent a note to the Court during the trial*

Applicant argues Trial Counsel should have objected and insisted information be provided to the jury when the foreman sent a question to the Court during the State's case asking "can jurors ask a question for clarification? Two examples, need more information or don't understand something." (Trial Tr. p. 223, ll. 20-22.) The Court explained to the parties that he was just going to tell the jurors, "no." (Trial Tr. p. 223, ll. 22-23.) Trial Counsel testified that he believed the jurors question to be in Applicant's favor. The question was raised during the state's case when the state had the burden of proof. Trial Counsel also testified that he preferred to control what questions were asked and what issues were clarified for the jury.

This Court finds Applicant has not established Trial Counsel was ineffective for failing to object to the Court's decision not to allow jurors to ask questions during the trial and finds Applicant has not established prejudice.

V. *Failure to call Jeannie Durham as an alibi witness*

Applicant argues Trial Counsel was ineffective for failing to call his girlfriend at the time as a witness. Applicant claims Ms. Durham would have provided him with an alibi for the time of the crime. Jeannie Durham did not testify or appear at the PCR hearing.

Trial Counsel testified his notes indicated his private investigator interviewed Ms. Durham and said she would in no way be a credible witness.

This Court finds Applicant has failed to prove how counsel's failure to call Applicant's girlfriend as a witness could have affected the case and has thus failed to meet his burden of proof on this issue.

VI. *Failure to enter victim's toxicology report to establish he was intoxicated*

Applicant argues Trial Counsel was ineffective for failing to enter the victim's toxicology report. No toxicology report was admitted as evidence at the PCR hearing. Trial Counsel testified that he did not recall there being a toxicology report for the victim.

This Court finds Applicant has failed to meet his burden of proof on this allegation.

VII. *Overwhelming Evidence of Guilt*

This Court further finds Applicant cannot meet his burden to show that he was prejudiced by any alleged deficiencies because there is overwhelming evidence of his guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of the defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt); cf.

Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt).

The victim in this case was Applicant's own father, who was able to identify Applicant. (Trial Tr. p. 121, ll. 1-18; p. 127, l. 17 – p. 130, l. 20.) Additionally, Applicant gave a confession in this case. (Trial Tr. p. 249, ll. 2-4; p. 256, l. 9 – p. 258, l. 1.) There was also DNA evidence linking Applicant to the crime. (Trial Tr. p. 216, ll. 2-14.)

All Other Allegations

As to any additional allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial or sentencing proceedings. Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 1 day of September, 2016.

R. Scott Sprouse
Presiding Judge
Tenth Judicial Circuit

Wallula, South Carolina.

FILED-CLERK'S OFFICE
ANDERSON SC
2016 SEP -6 AM 9:28
COMMON PLEAS AND
GENERAL SESSIONS

DOCKET NO. 2009GS04 01023

WITNESSES

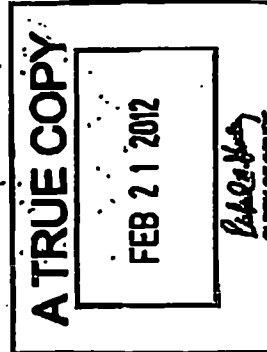
R Gebing, Anderson County Sheriff's Dept.

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

APR 21 2009

Term



ARREST WARRANT NUMBER

J877199

THE STATE

vs.

James Anthony Tucker

COMMITMENT

9-16-09/kmy

ACTION OF GRAND JURY

TRUE BILL

APR 21 2009

Foreperson of Grand Jury
Date: Foreperson

RLC

Indictment for

Assault and battery with Intent to Kill (ABWIK)

SC Code: 16-03-0620
CDR Code: 0014

VERDICT

Guilty

Foreperson of Petit Jury
Date: 9/16/09

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on Feb 21 2009, the Grand Jurors of Anderson County present upon their oath:

Assault and battery with Intent to Kill (ABWIK)

9146 That James Anthony Tucker did in Anderson County, on or about February 20, 2009, with malice aforethought, commit an assault and battery upon one James Tucker, by striking the victim in the head with a hammer with intent to kill the said victim. All in violation of Section 16-3-620, *Code of Laws of South Carolina (1976)*, as amended.

A TRUE COPY

FEB 21 2012

Robert H. Hays
CLERK OF COURT

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Ronell Campbell

ASSISTANT SOLICITOR

WITNESSES

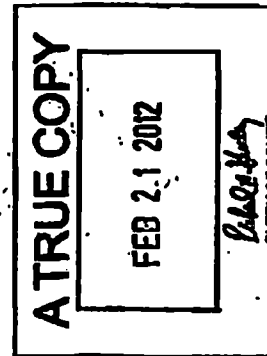
R. Gebing, Anderson County Sheriff's Dept.

DOCKET NO. 2009GS04 01024

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS
APR 21 2009

Term



ARREST WARRANT NUMBER

J877200

THE STATE

vs.

James Anthony Tucker

COMMITMENT

9-16-09/comp

ACTION OF GRAND JURY

TRUE BILL

APR 21 2009

Foreperson of Grand Jury

Date:

Foreperson

RLC

Indictment for

**Armed Robbery, robbery while armed or
allegedly armed**

SC Code: 16-11-0330(A)
CDR Code: 0139

VERDICT

Guilty

Foreperson of Petit Jury

Date: 9/16/09

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

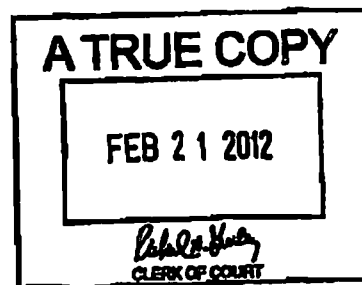
INDICTMENT

APR 21 2009

At a Court of General Sessions, convened on _____, the Grand Jurors of Anderson County present upon their oath:

Armed Robbery, robbery while armed or allegedly armed

That James Anthony Tucker did in Anderson County, on or about February 18, 9th 2009, while armed with a deadly weapon, to wit: a hammer, or while alleging either by (P) action or words he/she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as \$400.00 from the person or presence of James Tucker. This is in violation of §16-11-330(A) of the South Carolina Code of Laws (1976), as amended.



Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Ramel L. Campbell
ASSISTANT SOLICITOR