

VOLUME II OF II

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Sumter County

Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES L. GINTHER,

APPELLANT

APPELLATE CASE NO. 2019-000672

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT #60 (911 RECORDING); STATE’S EXHIBIT #61 (BODY CAM
VIDEO); STATE’S EXHIBIT #62 (BODY CAM VIDEO); STATE’S EXHIBIT #64
(VIDEO CD); STATE’S EXHIBITS #66, #67 (STILL PHOTOS OF VEHICLE); STATE’S
EXHIBIT #75 (CD/ LEXINGTON, KY); and STATE’S EXHIBIT #76 (PHOTO)**

1 to be near a tower in order to get that through.

2 Q. But it's just voice calls that actually can tell you
3 which towers?

4 A. That I can tell you exact. That's correct.

5 Q. Okay. So a lack of activity and the phone being
6 turned off would be indistinguishable for the towers
7 utilized?

8 A. I'm sorry. So a lack of activity saying that no
9 incoming, no outgoing ---

10 Q. Yeah. But the phone could be turned on still?

11 A. The phone could be turned on still. I'm not able to
12 determine except from by these transactions as to whether
13 not something came through.

14 Q. But that would also show the same pattern as if the
15 phone was turned off because it won't ---

16 A. That's right. Well, if there was no activity on the
17 phone whatsoever as far as text messages and voice calls
18 then it's not gonna be on a tower and won't be recorded on
19 the CDL.

20 MR. BRIDGES: Court's indulgence. Just briefly. A
21 few more questions.

22 BY MR. BRIDGES:

23 Q. You only analyzed those two phone numbers, correct?

24 A. Yes.

25 Q. For Suzette and James? There was no -- you've not

1 analyzed any other numbers?

2 A. No.

3 Q. And just to recap, the only towers that were utilized
4 by James' phone on November 15th and on November 16th was
5 the tower in Columbia?

6 A. There was a tower in Columbia on the 15th and on the
7 16th utilized the same tower. And I believe on the 16th
8 there was also towers on the evening in Lexington.

9 Q. In Lexington, yes. And is that out past the lake?
10 Is that in the Lake Murray area?

11 A. I guess you could say that is, yes. It's further
12 west of Columbia.

13 Q. And none of the towers utilized in the analysis of
14 his phone are in the Sumter area?

15 A. During that time frame?

16 Q. Yes. Or during any of the timeframe that you
17 analyzed?

18 A. Yes, I do believe I had some analysis on a previous
19 date that the phone was in the area of Sumter, if I
20 remember correctly. Yes, on the 3rd I have Tower 187
21 Sector 3, Tower 169, Sector 2 during the Cherryvale and
22 Sumter area. I believe there's another date as well. I
23 want to say it's the 9th. The 8th.

24 Q. Thank you. No further questions, Eric.

25 THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. FINNEY:

Q. You said he did have phone calls at the Cherryvale area on the 8th?

A. Yes.

Q. What time was that?

A. I had transactions at 8:34 a.m. Tower, 262, Sector 2, 11:38, 11:54, 11:56, and 12:36 p.m. on 262, Sector 2. At 9:31 a.m. it looks like it was on Tower 262, Sector 3. So that would be consistent with the phone either moving or being so close to that sector to provide that, you know, bouncing back and forth. At 12:05 p.m. it looks like there was also a transaction on Tower 187, Sector 3.

Q. And all those transactions were on November 8th?

A. Correct.

Q. In the afternoon hours? Morning ---

A. Morning.

Q. Morning going into afternoon?

A. Right. Morning to noon.

Q. So the phone was being used in the Sumter area in or near that Cherryvale for several hours?

A. Yes.

Q. And then on the 9th, the next day, did you have any phone activity in Cherry - Sumter?

A. In Sumter? On the 9th it looks like 2:05 p.m. I have

1 a tower on here 77 and I believe that 378.

2 Q. It looks like the device was traveling down 378 I
3 believe that's where it's located to?

4 A. Yes, sir.

5 Q. Okay.

6 A. And then it enters the Sumter area near that
7 Cherryvale address. It looks like at 2:41, I believe.
8 And that's a transaction. Two transactions at 2:41 and
9 Transaction 2:43 and 2:45 p.m.

10 Q. And so 2:30, 2:45 in the afternoon on the 9th which I
11 believe according to the map, can you tell me what day the
12 9th is?

13 A. It's Thursday.

14 Q. All right. So on Wednesday you had several
15 transactions and on Thursday you had transactions coming
16 from Columbia into Sumter?

17 A. Yes.

18 Q. And what time was the last transaction that day on
19 the 9th?

20 A. On the 9th it looks like 2:45 p.m.

21 Q. And after that?

22 A. It was either text messages or it was not connected
23 to the network. I didn't have any other voice calls after
24 that.

25 Q. So nothing showing you that the phone was on

1 connected to the network going back to Columbia Thursday
2 afternoon?

3 A. No. The next thing that I have is on November 10th
4 at 5:25 p.m. And again it's back on that Tower 157,
5 Sector 4 which would be consistent with device being in
6 the Beltline Boulevard area.

7 Q. So on November 9th you don't have him connected to
8 the network leaving Sumter or coming back to Columbia
9 until the 10th?

10 A. That's right. And any incoming or outgoing text
11 messages that were connected to the network weren't
12 recorded so I wouldn't be able to say a location they
13 would be if the device was connected to the network.

14 Q. All right. Very good. Thank you, sir.

15 MR. BRIDGES: Just very brief.

16 RECROSS-EXAMINATION

17 BY MR. BRIDGES:

18 Q. When a -- yeah, when a phone is turned off does that
19 activate a tower or would the tower be able to record that
20 kind of data?

21 A. The tower sees it, but the carriers don't show it.
22 I've never seen anything that says this is a transaction
23 when the phone, the device, is powered off. It's not a
24 voice or text message.

25 Q. And so you wouldn't be able to give a tower location

1 for ---

2 A. If they ---

3 Q. --- a mere event of the phone being turned off?

4 A. No.

5 Q. Thank you.

6 THE COURT: You can step down. Thank you.

7 MR. FINNEY: Thank you, Your Honor. Solomon. We're
8 calling him. Your Honor, we had items that he didn't
9 discuss. The one thing that was on the phone. I mean,
10 that was discuss ---

11 THE COURT: You're still sworn in. I want to remind
12 you.

13 DERON SOLOMON, after previously being duly
14 sworn, testified as follows:

15 THE WITNESS: Yes, sir.

16 DIRECT EXAMINATION

17 BY MR. FINNEY:

18 Q. Officer Solomon?

19 A. Yes, sir.

20 Q. You are the evidence custodian for Sumter County
21 Sheriff's Department?

22 A. Yes, sir.

23 Q. All right. The other day when you were here there
24 was an item we forgot to ask you about. You went to
25 S.L.E.D. and picked of the evidence after their lab had

1 processed it?

2 A. Yes, sir.

3 Q. Did you have the occasion to pick up a glove that was
4 found at the scene in Burnt Gin?

5 A. Yes, sir.

6 Q. All right. What did you do with the glove once you
7 picked it up from S.L.E.D.?

8 A. I inventoried in our evidence room and locked it.

9 Q. And has it been maintained there under your control
10 up until the time of this trial?

11 A. Yes, sir.

12 Q. All right. And do you have a sticker on here that
13 says this has been in your -- Sumter County property?

14 A. Yes, sir.

15 Q. All right.

16 MR. FINNEY: The glove, we would like to move into
17 evidence.

18 MR. BRIDGES: No objection, Your Honor.

19 THE COURT: Okay. The glove is in without objection.

20 THE COURT: State's Exhibit 74.

21 (WHEREUPON, State's Exhibit No. 74 was marked for
22 identification and received into evidence.)

23 MR. FINNEY: No further questions.

24 THE COURT: You gonna ask any questions?

25 MR. BRIDGES: I have no questions for this witness,

1 Your Honor.

2 THE COURT: Thank you, sir.

3 MR. FINNEY: Thank you for coming, sir. Next
4 witnesses is Chase Barnett.

5 THE BAILIFF: State your name.

6 THE WITNESS: Chase Barnett.

7 CHASE BARNETT, after being duly sworn,
8 testified as follows:

9 THE BAILIFF: Thank you very much. Step around.
10 State your name for the record and spell your last name.

11 THE WITNESS: My name is Chase Barnett. Last name is
12 spelled B-A-R-N-E-T-T.

13 (WHEREUPON, State's Exhibit No. 75 was marked for
14 identification only.)

15 DIRECT EXAMINATION

16 BY MR. FINNEY:

17 Q. Good morning, Officer.

18 A. Good morning.

19 Q. Tell the ladies and gentlemen where you are from?

20 A. From Louisville, Kentucky.

21 Q. And what you do for a living?

22 A. Police officer with Louisville Metro Police.

23 Q. Welcome to Sumter.

24 A. Thank you.

25 Q. How long have you been an officer?

1 A. Three and half years.

2 Q. All right, sir. And you are connected with
3 Louisville Metropolitan Police Department?

4 A. I am.

5 Q. All right, sir. Are you assigned to a particular
6 division?

7 A. I work in the First Division which is our urban area
8 of downtown.

9 Q. And are you a patrol officer?

10 A. I am.

11 Q. You have been an officer how long?

12 A. For three and half years.

13 Q. All right, sir. Do you -- were you -- three and half
14 -- so you were an officer on duty in November of 2017?

15 A. I was.

16 Q. Do you remember receiving a call that sent you out to
17 help a motorist?

18 A. I do, yes.

19 Q. All right. And as a result of that call did you meet
20 Mr. James Ginther?

21 A. I did.

22 Q. All right. Very good. When you received the call
23 who did the call come from?

24 A. It came from a passing motorist on Interstate 64.

25 Q. All right. And Interstate 64, does it run through

1 Louisville?

2 A. Yes, it does.

3 Q. In which direction?

4 A. It runs east to west.

5 Q. East to west. All right. And which way was the car
6 that that the motorist called you about? Which way was it
7 heading?

8 A. The vehicle?

9 Q. The disabled vehicle?

10 A. The disabled vehicle was at westbound.

11 Q. All right. Now, what time of day or night and what
12 day of the month, if you can recollect all of that?

13 A. I believe it was the morning of the 20th of November.

14 Q. Let me show you what we have. We've been using this
15 to help our memory. This is State's Exhibit 56. This is
16 November, 2017?

17 A. I believe it was the morning of the 20th.

18 Q. All right.

19 A. About 4:30 in the morning.

20 Q. About 4:30 in the morning?

21 A. Yes.

22 Q. It was still dark?

23 A. Yes.

24 Q. And, November, was it cold?

25 A. Yes, it was.

1 Q. All right. You received a call and you responded to
2 the call. How long did it take you to get to the disabled
3 vehicle?

4 A. Probably five or ten minutes.

5 Q. All right. And when you got there did you see the
6 vehicle?

7 A. I did.

8 Q. And how many occupants of the vehicle were there?

9 A. When we pulled up on scene there was one gentlemen
10 who we later identified as Mr. Ginther standing at the
11 front passenger side of the vehicle.

12 Q. All right. And when you say we got there, were you
13 the first one to arrive?

14 A. I was, yes.

15 Q. And were you there along with Mr. Ginther for a while
16 before other officers responded?

17 A. My backup officer was turning around on the
18 interstate.

19 Q. All right. Very good. And when you met Mr. Ginther
20 what was the conversation like between you all?

21 A. Kind of just out of it a little bit, and I walked up
22 and ask him, you know, what happened. And basically, he
23 told me he fell asleep and drifted off the interstate.

24 Q. All right. What damage did you note to the car?

25 A. It was missing the front left wheel. Had a lot of

1 damage to the front and the left side of the vehicle.

2 Q. So it was -- how would you characterize the accident?
3 Was it minor or major or somewhere in the middle?

4 A. No major injuries but, I mean, the vehicle was
5 disabled. It was done.

6 Q. All right. Do you know what kind of vehicle it was
7 he was driving?

8 A. It believe it was a Cube. I don't remember who make
9 it, but it was a box style SUV.

10 Q. All right. And after deciding that he was okay what
11 was your first protocol to do that morning?

12 A. So from that point forward, basically, we run the
13 tag, get the vehicle off the road, started a toe slip to
14 get the vehicle, and get Mr. Ginther for off the road.

15 Q. All right. And you had an officer assisting you, a
16 partner or another coworker, who came up. Did that
17 coworker operate a body camera at the time?

18 A. Yes, we did.

19 Q. And was a video of your interaction with him taken?

20 A. Yes, it was.

21 Q. All right. And did the Louisville Police Department
22 send that video down to South Carolina for us to have?

23 A. Yes, we did.

24 Q. All right. And is this a copy of that video?

25 A. It does appear to be, yes.

1 Q. All right.

2 MR. FINNEY: This is State's Exhibit Number 75, Your
3 Honor. We would like to enter it into evidence.

4 MR. BRIDGES: Subject to my pretrial objection, Your
5 Honor.

6 THE COURT: Okay. Come up here a minute.

7 (WHEREUPON, a bench conference was held off the
8 record in the presence of the jury, but out of the
9 hearing of the jury.)

10 (WHEREUPON, State's Exhibit No. 75 was admitted into
11 evidence.)

12 THE COURT: Okay. After a bench conference --
13 (Loud noise in courtroom).

14 MR. FINNEY: I apologize, Your Honor.

15 THE COURT: Defense counsel made a Jackson v. Denno
16 objection to this coming in. I have ruled on that. I
17 overrule your objection, and I will allow it to come in
18 under those circumstances for Jackson v. Denno.

19 MR. FINNEY: Thank you, Your Honor.

20 THE COURT: Okay.

21 MR. FINNEY: I do want to show a little bit of this
22 video, and then I went to get the officer who was
23 operating the camera to come in and take us through the
24 balance of the video.

25 THE WITNESS: Absolutely.

1 (WHEREUPON, a video was published to the jury).

2 Q. All right. Officer. in the screen is this you in the
3 picture?

4 A. Yes, it is.

5 Q. And the gentleman that you're looking at is Mr.
6 Ginther?

7 A. Yes, it is.

8 Q. All right. And the camera is being worn by Officer
9 Bishop?

10 A. Yes, sir.

11 Q. All right. He just came up?

12 A. Yes.

13 Q. All right. And you've been there a few minutes with
14 Mr. Ginther?

15 A. Probably about 30 seconds to a minute ---

16 Q. All right.

17 A. --- Before he arrived.

18 Q. All right. From here on Mr. Bishop does some talking
19 to Mr. Ginther?

20 A. Yes, sir.

21 MR. FINNEY: I'm going to ask Mr. Bishop to come in.

22 THE COURT: All right, sir.

23 MR. FINNEY: Any questions for this officer?

24 MR. BRIDGES: Just briefly.

25 MR. FINNEY: Okay. Go ahead.

CROSS-EXAMINATION

BY MR. BRIDGES:

Q. Thank you. Good morning. And I thank you for coming all the way from Kentucky. You were the first officer on the scene for this accident?

A. Yes, sir.

Q. Was this a one car accident?

A. It was. A single vehicle.

Q. And Mr. Ginther was identified as the driver?

A. Yes, he was.

Q. Did he have any injuries that you could see?

A. No, he did not.

Q. Did he appear -- you said he appeared kind of dazed or drowsy?

A. Yeah, just a little bit. He said he was sleeping.

Q. And he -- did he in any way disregard your directions or, you know, pose any of your questions to him?

A. No. I mean, he seemed a little, you know, trying to get away from us, but other than that, no.

Q. But I mean he -- I mean he didn't actually try to get away from you?

A. No.

Q. And you did not charge him for resisting or anything like that?

A. Absolutely not.

1 Q. Thank you.

2 MR. BRIDGES: No further questions.

3 MR. FINNEY: Thank you, Your Honor.

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

5 MR. FINNEY: We'd call Officer Jeff Bishop.

6 THE BAILIFF: Left hand on the bible, sir. Raise
7 your right hand. State your name.

8 THE WITNESS: Jeff Bishop.

9 JEFFERY BISHOP, after being duly sworn,
10 testified as follows:

11 THE BAILIFF: Thank you, sir. Step around. Watch
12 your step. State your name for the record and spell you
13 last name, please.

14 THE WITNESS: It's Officer Jeffrey Bishop.
15 B-I-S-H-O-P.

16 DIRECT EXAMINATION

17 BY MR. FINNEY:

18 Q. Good morning, officer.

19 A. Good morning.

20 Q. You also serve with the Louisville Metropolitan
21 Police Department?

22 A. Yes, sir.

23 Q. How long have you been an officer?

24 A. Five years.

25 Q. Q.All right, sir. And are you assigned to patrol?

1 A. Yes, sir. First Division Patrol.

2 Q. All right.

3 A. Covers our downtown area.

4 Q. All right. Did you have occasion to meet a Mr. James
5 Ginther in Louisville late November of 2017?

6 A. Yes, sir.

7 Q. All right. Were you on duty at the time?

8 A. Yes, sir.

9 Q. Were you're responding to a call?

10 A. Yes, sir.

11 Q. What was the call?

12 A. We had a call for a disabled motorist where another
13 passing motorist, a third party caller, has seen a car
14 that had drifted off the road and blew a tire.

15 Q. Okay.

16 A. So we went out for what they call motorist
17 assistance.

18 Q. All right. And, Officer Chase Barrett -- Barnett,
19 who we just met, he was out on duty in the same shift ---

20 A. Yes, sir.

21 Q. --- that morning? Do you remember what time it was
22 when you got to the disabled vehicle?

23 A. I believe it was a right around four o'clock in the
24 morning.

25 Q. In the morning. What were the conditions there as

1 you remember them?

2 A. The weather was cold and it was clear out, not
3 raining or anything. Because I remember it being really
4 chilly for late November, cold and wearing a jacket, see
5 your breath, weather.

6 Q. Dark? Light?

7 A. We were in part of the highway where it was fairly
8 dark.

9 Q. All right.

10 A. Kinda of between that.

11 Q. Were you wearing a body worn camera at the time?

12 A. Yes, sir.

13 Q. And based on your protocol did you engage and take a
14 video of your activity with the motorist?

15 A. Yes, sir.

16 Q. All right. We've entered it as State's Exhibit 75, I
17 believe. We're getting ready to play.

18 MR. BRIDGES: Yeah, subject to my earlier objection,
19 Your Honor.

20 THE COURT: And so noted.

21 (WHEREUPON, State's Exhibit Number 75 was played for
22 the jury.)

23 MR. FINNEY:

24 Q. First of all, Officer, what was the first question he
25 asked you that he was pointing in the woods?

1 A. Well, the very first question he asked was if he was
2 allowed to walk to the next exit?

3 Q. All right.

4 A. Which was strange because he hadn't asked what we
5 were doing with his car or kind of where he could go pick
6 it up after it was towed or anything. He just asked if he
7 could leave.

8 Q. He just wanted to leave?

9 A. And said he was meeting a friend at the next exit.

10 Q. All right.

11 A. As I explained to him, and I'm assuming South
12 Carolina probably has the same rules about, you know, on
13 an interstate you can't walk or take a moped or anything.
14 So we just, basically, said, one, it's a courtesy. We'll
15 just run you up there; and two, you know, I kinda can't
16 just let you go, just walk off because that's putting you
17 in a legal spot. So I don't want to do that.

18 Q. All right. And then he ask about pointing in the
19 woods?

20 A. Yeah. He said that that the car was smoking and that
21 he put a bag up in the woods. I guess was afraid the car
22 was going to catch fire.

23 Q. All right. And was he asking to go retrieve them?

24 A. Yes.

25 Q. All right. And did you -- this is where you ask him

1 his name?

2 A. Yes. It's a little -- you won't hear it in the
3 background. I wear an earpiece so I get my radio
4 transmissions in my ear rather than out. Therefore, you
5 don't really hear in the video. If you can kind of see
6 where I'm, while he's talking, I'd say, "Go ahead" and,
7 you know, confirming that's me talking to the dispatcher
8 through the radio.

9 At that time while I was talking to him the
10 dispatcher told us that the plate came back to a person
11 who was wanted out of South Carolina. So while I am in
12 this conversation I'm getting this information through my
13 earpiece. So that's when I kind of when I started moving
14 a little closer, and then I said what was your name
15 because I got the name through our radio traffic.

16 Okay. So I was asking his name to see whether or not
17 the name matched.

18 Q. What was the name he gave you?

19 A. He gave me Zach.

20 Q. Zach?

21 A. Yes.

22 (WHEREUPON, State's Exhibit Number 75 continues to be
23 played for the jury.)

24 BY MR. FINNEY:

25 Q. You asked him whether he had a weapon on him?

1 A. At this point I've ask him -- I guess that was
2 actually the third time I had asked him what he had on
3 him. Do you have any dangerous -- as far as the first
4 time, then he answered as you first heard.

5 The second time when I got more specific about if it
6 was dangerous he mentioned about the pocketknife. And
7 then the third time now we've asked him and still
8 indicating nothing.

9 Q. Nothing.

10 (WHEREUPON, State's Exhibit Number 75 continues to be
11 played for the jury.)

12 BY MR. FINNEY:

13 Q. Officer, at this point you've got him in the car?

14 A. Yes, sir.

15 Q. And what do you know from your dispatcher at this
16 point?

17 A. From this point, like I said, the initial call for us
18 was that the license plate had come back and it said that
19 the person in the vehicle was Mr. James Lee Ginther and
20 was armed and dangerous and such.

21 At this time I haven't actually had a chance to look
22 at any detail because I'm still getting it in my ear. At
23 that point, again, we -- he identified himself as Zach.
24 We ended up getting his wallet and his driver's license
25 that's when Officer Barnett had said, "Yes. Here. This

1 is his name." So that has now matched up to the name that
2 I've got on the radio.

3 At that time, usually, what our procedure is that
4 somebody will switch back over to their service channel
5 where we can kind of conduct more lengthy conversations
6 with our dispatchers, and then we'll actually have them to
7 go through and give all the information on the driver's
8 license. And they'll do the legwork as far as checking
9 through NCIC and confirming whether or not the warrant is,
10 you know, valid and correct and ready to be processed.

11 So at this point, we've got all the initial
12 identification that this is the person matching the
13 warrant, and so that's when Officer Barnett had taken it
14 and switched over to -- we kind of do a second check for
15 confirmation.

16 Q. All right.

17 (WHEREUPON, State's Exhibit Number 75 continues to be
18 played for the jury.)

19 BY MR. FINNEY:

20 Q. You hollered -- talked a little bit. Another officer
21 has joined you. The guy in the short-sleeves?

22 A. Yes.

23 Q. What's his name?

24 A. It's Thomas Franklin.

25 Q. Officer Franklin has arrived. Did Officer Franklin

1 ask you anything about the suspect in the backseat?

2 A. Yes. He asked me -- he said ---

3 MR. BRIDGES: This is hearsay, Mr. Finney.

4 MR. FINNEY: I apologize. I apologize.

5 BY MR. FINNEY:

6 Q. As a result of your conversation with Officer
7 Franklin did you want to do anything with Mr. Ginther at
8 that point?

9 A. Yes. One of the things that we try to do on my
10 platoon, and I kind of hope every officer does as far as
11 being objective, if we do a search on somebody especially
12 if we've maybe kind of gotten invested in it, you know,
13 I'm comfortable having a non-objective third-party doing
14 our search.

15 And in this case he'd indicated he had a pocketknife
16 to the rear -- in his back -- towards his back pocket. He
17 reached towards his back pocket. I secured that
18 pocketknife and so I kinda found what I was looking for.
19 And I done a quick pat down after that and post that,
20 basically, the other officer that showed up on the scene
21 kinda said, "He's moving around a bunch," you know, ---

22 MR. BRIDGES: This is directed at hearsay.

23 BY MR. FINNEY:

24 Q. Okay. You can't say what the officer said. But
25 based on what the officer said to you ---

1 A. I agreed with the officer that he was fidgeting in
2 the car and that I was okay if the officer did another
3 search.

4 Q. All right.

5 (WHEREUPON, State's Exhibit Number 75 continues to be
6 played for the jury.)

7 BY MR. FINNEY:

8 Q. All right, sir. At this point you all have taken Mr.
9 Ginther into custody?

10 A. Yes, sir.

11 Q. And what was that that you removed from him when you
12 are moving him from the backseat?

13 A. It was a Glock handgun and a holster.

14 Q. All right. If I show you what's been marked as
15 State's Exhibits 70, 69 and 68 would you be able to
16 identify those items?

17 A. Yes, sir. That would be the Glock in question and
18 the holster.

19 Q. This is the same kind of holster that the Glock was
20 in?

21 A. Yes, sir.

22 Q. All right. And as far as you know at that point Item
23 Number 69, which is the clip, was in the Glock?

24 A. Yes, sir.

25 Q. All right. After you got him in custody, you take

1 him back to the station and you're looking for the
2 information that has been sent on the NCIC?

3 A. At this time he was actually secured in Officer
4 Barnett's car. You know, at this point Officer Barnett
5 was going to transport to our jail, and I'd actually --
6 part of the NCIC warrant information was to contact the --
7 what we call the originating agency to notify them that we
8 had Mr. Ginther.

9 So at that point we kind of -- that's usually when
10 we'll start dividing work tasks. So one officer is going
11 to go process him, print the warrant, and do things to get
12 him into the correctional system while the other one will
13 start to follow up on notifications and such which is when
14 I called Detective Stewart.

15 Q. What time -- you called Detective Stewart about 4:30
16 in the morning?

17 A. About 4:30 a.m.

18 Q. All right. The car was towed off the highway?

19 A. Yes.

20 Q. Did you take it to a facility, police facility?

21 A. Yes. Normally, if a car is just towed for a motorist
22 assistant or an accident he gets taken to our tow lot for
23 you to have your insurance company or whatever process. If
24 it is possible evidence or such we want to go a different
25 route as far as making sure it gets a hold put on it so

1 that nothing gets compromised on the vehicle.

2 Q. All right.

3 A. So at that time we started to ask, okay, do we need
4 to make sure that were being more careful of how things
5 are going to be processed which is where we start asking
6 do we need to put the vehicle on hold? Does he need to be
7 contacted? So we started taking the extra steps to make
8 sure it was preserved as evidence and not just a damaged
9 car.

10 Q. All right. You have a coworker, Officer, Detective
11 Jacob Veto?

12 A. Yes, sir.

13 Q. Okay. Was he assigned to the case?

14 A. Yes.

15 Q. And was he put in charge, so to speak, of gathering
16 any information, items from the car, or any things like
17 that?

18 A. Yes. He's in our Homicide Office, and Detective Veto
19 served as liaison with Sumter County as far as kind of the
20 right processes and what needed to happen as far as what
21 they need for extradition and the processing of that
22 incident.

23 Q. All right.

24 MR. FINNEY: One moment, Your Honor.

25 BY MR. FINNEY:

1 Q. The personal effects that Mr. Ginther might have on
2 him at the time that he was taken in, how would those
3 items have been gathered?

4 A. They would've been collected out of his pockets and
5 depending on -- they would've either been taken --
6 typically, if somebody has something in their pockets and
7 they go to corrections, corrections will store them and,
8 you know, release them back to the person. Or they get
9 put into our evidence locker, and we'll either release
10 them to our agency or release it to the person so on, each
11 time.

12 Q. Would Detective Veto be the person to ask about that?

13 A. Yes.

14 Q. All right.

15 MR. FINNEY: Nothing further.

16 CROSS-EXAMINATION

17 BY MR. BRIDGES:

18 Q. Good morning, Officer Bishop.

19 A. Good morning.

20 Q. You arrived on scene, and we watched the video.

21 There is still some traffic going by. There are some
22 sounds from the road. And you testified that sometimes
23 with you mics there's an interference? You said you were
24 getting some radio chatter, too, from dispatch?

25 A. Are you asking about the sound of the body cam mic or

1 the radio or our ---

2 Q. Yeah, we're just -- what was going with you audibly
3 when you were there? Were you also getting dispatch in
4 your ear?

5 A. In one ear, yeah.

6 Q. Yeah, in one ear. And then there's sounds of the
7 road? Sounds of the traffic out there, too, as well?

8 A. There is. Unfortunately, the body cam sometimes
9 makes it sound louder than it is because we don't get that
10 distance in depth that we do in real life.

11 Q. Would it be possible that Mr. Ginther said something
12 else other than Zach as in 'what's that' in response to
13 your question about his name?

14 A. I'm not sure where James and Zach was sound anything
15 similar.

16 Q. Is it possible he said 'what's that' in response to
17 your question?

18 A. I heard Zach in the tape sounds very clear to me
19 also.

20 Q. But you don't ---

21 A. And again would further with the question, 'what was
22 your name', and some of the procedures as far as whether
23 or not I still have a doubt that this is the right person
24 because the name he told me was not the name I heard it in
25 my ear.

1 Q. But you don't ask him any other questions about that?

2 A. At that point there's a -- we're still in, I guess,
3 to give everybody the kind of mindset from where we're at
4 this is still a motorist assist. This is still something
5 where we're trying to do a nice thing for a person.

6 One of the last things that we want to do to somebody
7 that fell asleep and had a problem is treat them like a
8 criminal. So I'm trying to be conservative as far as not
9 being real accusatory, not, you know, jump around and
10 stuff, and still try to give him the benefit of the doubt.

11 Q. And in you didn't charge him with giving false
12 information, right, or anything like that?

13 A. No.

14 Q. You remark on the video a few times that you thought
15 he might have been motioning to the back of his pants.
16 You don't mention anything about him motioning to the
17 front of his pants at any time? Did you observe that at
18 all?

19 A. No.

20 Q. Okay And that was the location of the firearm was in
21 the front of his pants?

22 A. Yes. The initial -- watching the video afterwards as
23 far as what would be indications for us at the very
24 beginning of the video before we started interacting as
25 you can see him stand to the side. He's constantly

1 keeping his left hand in the pocket of his hoodie which
2 anybody that's ever trained for appendix draw, what they
3 call twelve o'clock draw, that holster, the first motion
4 would be to pull shirt up from front.

5 So keeping your non-gun hand in the pocket is the
6 absolute quickest way. Like I said watching the video
7 after we knew the gun was there scared the bejesus out of
8 myself and Officer Barnett.

9 Q. But he did not display or threaten to display or
10 attempted display at all, in any way, that firearm?

11 A. No. In fact, his entire actions about the firearm
12 were in all indications deceptive that he even had it.

13 Q. And he's -- you were able to verified that he had a
14 concealed weapons permit?

15 A. Yes.

16 Q. Yes. So you didn't charge him for illegal carry or
17 unlawful carrying?

18 A. No.

19 Q. And that gun is legally his as far as you can
20 determine?

21 A. At that point where we are at in our state it's --
22 we're gonna have the records to verify.

23 Q. And he mentions earlier about, you say, you know, he
24 had a bag in the woods he was going to try to retrieve?

25 A. Um hum.

1 Q. You ultimately retrieved a bag from the woods? Or I
2 know you if you did personally, but do you know if
3 somebody else went back there and recovered a bag?

4 A. Yes, there was.

5 Q. Okay.

6 A. We had actually gone back, and it was quite a ways
7 back in the woods.

8 Q. Okay.

9 A. If you've seen the video after we secured the car I'm
10 shining a flashlight because at the beginning of us doing
11 this him indicating that he wants to walk away and then
12 him indicating he wants to go up in the woods is something
13 that we typically experience when someone is doing
14 something wrong that they want to get away from police.

15 So at the time when he's indicating, basically, I
16 want to be away from you, I'm taking it as that. I'm
17 thinking that the bag is -- him remarking about the bag is
18 basically a distraction to get away from us.

19 Once he was secured that's when I went back, shined
20 my flashlight looking for the bag that he said which like
21 I said if you've seen the video as far as the amount of
22 light in the distance nothing was seen. No.

23 Q. But he did not attempt to get away from you? Once
24 you told him you can't go anywhere, he - we saw the video.
25 He did not -- you handcuffed him. He did not give you any

1 resistance? He did not try to walk away from the scene
2 once he was handcuffed? He complied with your
3 instructions?

4 A. Yes. The first time, like I said, when he
5 indicated -- in the video you see I changed my body
6 position because I was trying to block -- it's kind of a
7 subconscious thing. We try to keep people from, you
8 know -- I guess if someone is wanting to get away I just
9 may change my position where I can kind of keep an eye out
10 if he decides he's gonna run.

11 And then once I got that information then he
12 indicated a second time, I want to get away from you, and
13 that's when I moved in closer just to have more control
14 over the situation.

15 Q. What was the second time? What was your
16 interpretation of the second time? You said he indicated
17 he wanted to get away from you?

18 A. As far as asking to go up in the woods.

19 Q. Well, he ---

20 A. That's not what a reasonable, prudent person
21 wouldn't -- it seemed very alarming to me that someone
22 would want to go up in the woods.

23 Q. But he did not actually go into the woods?

24 A. No. Because, like I said, I moved in closer and
25 that's when I started asking him ---

1 Q. And he complied with your instructions?

2 A. Yes.

3 Q. Yes. And you did not charge him with any resisting
4 arrest? Failure to stop for blue light? Or anything of
5 that sort?

6 A. No.

7 Q. Did you read -- as part of taking someone into
8 custody is it often that you have to read somebody their
9 Miranda rights? If you briefly describe what those are.

10 A. The Miranda rights would be if -- they'd be if
11 putting somebody into custody and then interviewing them
12 relating to the crime. And if you even heard the way
13 Officer Franklin explains when he got him out the car, is
14 he says, "You're wanted under a warrant, and I'm not gonna
15 ask any questions."

16 At this time we don't have the information about
17 anything about what the warrant background is. Therefore,
18 the less we ask, you know, the less we get involved with
19 it, hopefully, the cleaner it is for the originating
20 agency to handle things. So we try to avoid getting into,
21 therefore, if I'm not asking questions about the crime I
22 see no need to Mirandized him.

23 Q. So you do not ask him -- once they say, it's in the
24 video, once he says, "I'm not going to ask you any
25 questions this is South Carolina."

1 A. Yes.

2 Q. You're not going to ask any more questions and at no
3 point read him his Miranda warnings?

4 A. No. Like I said, we weren't asking questions so we
5 had no need to.

6 MR. BRIDGES: No further questions.

7 REDIRECT EXAMINATION

8 BY MR. FINNEY:

9 Q. Officer, I want to take you back to the beginning of
10 your video where Mr. Ginther says something to you. He
11 pointed down the road. He said something about he was
12 going to meet a friend?

13 A. Yes. He said he called a friend that he was
14 gonna walk up to Exit 7 and meet him there.

15 Q. At any time did you find a cell phone?

16 A. No, I did not.

17 MR. FINNEY: Nothing further.

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

19 THE WITNESS: Thank you.

20 THE COURT: Okay. Ladies and gentlemen, we're gonna
21 take a ten minute break. I remind you don't discuss the
22 case.

23 (WHEREUPON, the jury panel was excused from the
24 courtroom at 11:35 a.m.)

25 (WHEREUPON, Court was in recess at 11:36 a.m. and

1 reconvened at 11:51 a.m.)

2 (WHEREUPON, State's Exhibit Nos. 76 THROUGH 88 were
3 marked for identification only.)

4 (WHEREUPON, the jury panel enters the courtroom at
5 12:12 p.m.)

6 THE COURT: Thank you. Mr. Solicitor.

7 MR. FINNEY: May it please the Court. We call
8 Detective Jacob Veto.

9 THE COURT: Mr. Veto, if you would come around,
10 please, sir.

11 JACOB VETO, after being duly sworn,
12 testified as follows:

13 THE BAILIFF: Step around. Watch your step. State
14 your name for the record and spell your last, please.

15 THE WITNESS: It's Detective Jacob Veto. That's
16 V-E-T-O.

17 DIRECT EXAMINATION

18 BY MR. FINNEY:

19 Q. Good afternoon, Jacob Veto. Welcome to South
20 Carolina.

21 A. Thank you, sir.

22 Q. Where do you work, sir?

23 A. Louisville Metro Police Department. I'm with the
24 Homicide Unit in Louisville, Kentucky.

25 Q. All right. And so you are a detective?

1 A. Yes, sir.

2 Q. How long have you been working in law enforcement?

3 A. Just over six years.

4 Q. All right, sir. Did you have a case assigned to you
5 back in November of 2017 regarding a Mr. James Ginther who
6 was picked up in Louisville?

7 A. Yes, sir.

8 Q. At the time that he was transported to the detention
9 center some paperwork had to be done to confirm that he
10 was a wanted individual out of South Carolina?

11 A. Correct.

12 Q. All right. And did you have anything to do with
13 confirming the warrant that had been issued in South
14 Carolina?

15 A. No, sir. That was officer that did the arrest.

16 Q. All right. How did the case get to your desk?

17 A. I was contacted by the Sumter County Sheriff's
18 Department. They just requested my assistance with some
19 things related to an evidence nature of the case. At that
20 point the defendant had already been arrested.

21 Q. All right. And -- so you didn't have anything to do
22 with Mr. Ginther like talking to him or anything like
23 that?

24 A. No, sir.

25 Q. The evidence that was surrounding him in terms of

1 what was in his pockets, what was in his car and what was
2 in his backpack, those items kind of came under your
3 jurisdiction?

4 A. Yes, sir. Those -- the items that were taken off of
5 his person at the time of his arrest were placed in our
6 property room by the arresting officers.

7 Q. And did those items get under your jurisdiction in
8 terms of you helping to get them back here to South
9 Carolina?

10 A. Yes, sir.

11 Q. All right. If I showed you some pictures -- first of
12 all, let's talk about this. Were you given information
13 either by -- did you get information about him having a
14 bag, a backpack?

15 A. Yes, sir.

16 Q. And where did that information come from?

17 A. That information came from Investigator Stewart ---

18 Q. All right.

19 A. --- as I understand was the lead on the case.

20 Q. All right. Once you heard there was a backpack did
21 you go looking for it?

22 A. Yes, sir.

23 Q. Where did -- was it in the car?

24 A. No, sir.

25 Q. All right. How did you find out where it was?

1 A. Myself along with the two arresting officers we went
2 back up to the interstate, the location of the accident.
3 They obviously responded to that the first time so they
4 knew exactly where that location was so I had them go with
5 me, and we looked in the woods near the crash site and
6 found the bag.

7 Q. All right. And would you describe the bag for the
8 jury?

9 A. I would call it like a large military duffel bag.

10 Q. I want to show you what's been marked as State's
11 Exhibit 38.

12 A. Yes, sir.

13 Q. Does that resemble the bag?

14 A. Yes, sir.

15 Q. All right. And would you tell us -- would you tell
16 us ---

17 THE COURT: Y'all's tv's on?

18 JURY PANEL: Yes.

19 THE COURT: Okay..

20 BY MR. FINNEY:

21 Q. Was it found in that condition in the woods already,
22 you know, locked up like that and rolled up?

23 A. I believe so.

24 Q. All right, sir. And the contents of the bag were
25 laid out and inventoried by your staff, your office in

1 Louisville?

2 A. That's correct. That was our Crime Scene Unit.

3 Q. All right, sir. And so all of these items were
4 photographed? They were photographed in Louisville after
5 the bag was opened up?

6 A. That's correct.

7 Q. That's State's Exhibit 39, State's Exhibit 40,
8 State's Exhibit 42. Did you see all of these items?

9 A. Yes, sir.

10 Q. As the bag was being opened?

11 A. Yes, sir. I was there.

12 Q. State's Exhibit 43, Exhibit 44, Exhibit 41, Exhibit
13 45, all these items were photographed and processed by
14 your department of Louisville?

15 A. Yes, sir. That's correct.

16 Q. Exhibit 46, and there's some other pictures. I show
17 you State's Exhibit Number 55, do you remember seeing that
18 item?

19 A. Yes, sir.

20 Q. All right. Now, there were some other items.
21 State's Exhibit 55 was a photograph, but is this the
22 actual item itself?

23 A. Yes, sir, it was.

24 Q. I believe on front of the picture, the photograph, it
25 says it's a 2017 Road Atlas?

1 A. Correct.

2 Q. Is that the same book?

3 A. It appears to be, yes, sir.

4 MR. FINNEY: We've marked it as State's Exhibit 77.

5 THE COURT: Any objection?

6 MR. BRIDGES: No. I believe the photo of it is
7 already in. I don't have an objection to it being ---

8 THE COURT: You want to put the actual book in
9 evidence?

10 MR. FINNEY: I do.

11 THE COURT: Okay.

12 MR. BRIDGES: I don't have an objection.

13 THE COURT: All right. Exhibit 77 in without
14 objection.

15 (WHEREUPON, State's Exhibit No. 77 was admitted into
16 evidence.)

17 BY MR. FINNEY:

18 Q. As far as from the person -- on the person of the
19 Mr. Ginther were there several items in his pockets that
20 night that he was taken into custody?

21 A. That is my understanding, sir. That was done, again,
22 by the arresting officers.

23 Q. I see. All right. And those items were taken into
24 custody and processed through your office back to South
25 Carolina so they could be here?

1 A. That's correct.

2 Q. These items --

3 MR. FINNEY: State's Exhibit 83?

4 MR. BRIDGES: No objection.

5 MR. FINNEY: Of a hand sanitizer.

6 THE COURT: Okay.

7 MR. FINNEY: State's Exhibit 85.

8 MR. BRIDGES: Is that a key chain?

9 MR. FINNEY: It's a flint start ---

10 MR. BRIDGES: Okay.

11 MR. FINNEY: --- fire starter.

12 MR. BRIDGES: No objection.

13 MR. FINNEY: State's Exhibit 84, pocket knife.

14 MR. BRIDGES: No objection.

15 MR. FINNEY: State's Exhibit 86, a small clip for a
16 handgun?

17 MR. BRIDGES: No objection.

18 MR. FINNEY: And 82, five bullets that came out of
19 the clip?

20 MR. BRIDGES: No objection.

21 THE COURT: Okay. They are in without objection.

22 (WHEREUPON, State's Exhibit Nos. 82 through 86 were
23 admitted into evidence.)

24 BY MR. FINNEY:

25 Q. Officer Veto, the handgun that was found on the

1 defendant that night was it held by your office until Mr.
2 Randall Stewart came up and picked it up?

3 A. Yes, sir.

4 Q. And did it have a clip in the handgun?

5 A. I believe so.

6 Q. All right. And in that clip were there 17 nine
7 millimeter bullets?

8 A. That's what this -- yes, sir.

9 MR. FINNEY: This is Exhibit, State's Exhibit 87?

10 MR. BRIDGES: No objection.

11 (WHEREUPON, State's Exhibit No. 87 was admitted into
12 evidence.)

13 BY MR. FINNEY:

14 Q. Now, did you also take a picture of the vehicle Mr.
15 Ginther had been driving that night?

16 A. Yes, sir. That was done by our Crime Scene Unit.

17 Q. All right. And State's Exhibit 76, did you see the
18 vehicle Mr. Ginther was driving?

19 A. Yes, sir.

20 Q. And is that a fair representation of the vehicle that
21 he was driving as it appeared in Kentucky after his
22 arrest?

23 A. Yes, sir.

24 MR. BRIDGES: No objection, Your Honor.

25 THE COURT: It's in without objection.

1 (WHEREUPON, State's Exhibit No. 76 was admitted into
2 evidence.)

3 BY MR. FINNEY:

4 Q. Do you know what kind of car that is, vehicle?

5 A. I believe it was a Nissan Cube.

6 Q. Nissan Cube. All right. Had you all kept it in
7 Louisville and processed it?

8 A. That's correct.

9 Q. Now, in the vehicle or on his person, I'm not sure
10 where, but if you can tell me that would be fine, did you
11 all find certain receipts in a small notebook? Store
12 receipts is what I'm talking about?

13 A. Yes, sir, we did. Those were in the vehicle.

14 Q. All right. In the vehicle you found receipts. Do
15 you -- would you look at State's Exhibit 81 and tell us if
16 you can identify that as a receipt from what store?

17 A. The Dollar General Store.

18 Q. And where was the location of the Dollar General
19 Store?

20 A. Hillsville, Virginia.

21 Q. Hillsville, Virginia.

22 MR. FINNEY: All right. State's Exhibit 81.

23 MR. BRIDGES: No objection, Your Honor.

24 THE COURT: Okay.

25

1 (WHEREUPON, State's Exhibit No. 81 was admitted into
2 evidence.)

3 BY MR. FINNEY:

4 Q. Also State's Exhibit 80, could you tell us what
5 receipt that reflects?

6 A. That is a CVS Pharmacy receipt.

7 Q. Where is that store?

8 A. Also in Hillsville, Virginia.

9 Q. All right, sir.

10 MR. FINNEY: Exhibit 80?

11 MR. BRIDGES: No objection.

12 THE COURT: Okay. In without objection.

13 (WHEREUPON, State's Exhibit No. 80 was admitted into
14 evidence.)

15 BY MR. FINNEY:

16 Q. This final receipt is from a Walmart Store. What
17 location is that store?

18 A. Princeton, West Virginia.

19 Q. All right.

20 MR. FINNEY: And that would be State's Exhibit 79.

21 MR. BRIDGES: No objection, Your Honor.

22 THE COURT: It is in without objection.

23 (WHEREUPON, State's Exhibit No. 79 was admitted into
24 evidence.)

25 BY MR. FINNEY:

1 Q. And on the small notebook that was found do you have
2 a recollection or report on where that was found inside
3 the vehicle?

4 A. I don't believe I have specifically where in the
5 vehicle other than it was in the vehicle.

6 Q. In the vehicle. All right. And that is -- what
7 would you characterize that as the item?

8 A. A notebook with handwritten notes.

9 Q. All right.

10 MR. FINNEY: All right. That's State's Exhibit 78?

11 MR. BRIDGES: No objection, Your Honor.

12 THE COURT: All right. It's in without objection.

13 (WHEREUPON, State's Exhibit No. 78 was admitted into
14 evidence.)

15 BY MR. FINNEY:

16 Q. The backpack, could you tell us how far from the side
17 of the highway/interstate the backpack was located?

18 A. We were estimating somewhere around 20 yards up into
19 the -- up in the tree line of the woods.

20 Q. Would it have been something that a person, an
21 ordinary person, could have thrown that far?

22 A. I don't believe so.

23 Q. All right. And why is that?

24 A. The bag was too heavy.

25 Q. All right, very good.

1 MR. FINNEY: Beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 MR. FINNEY: Nothing further. Thank you. Thank you
4 for coming.

5 THE WITNESS: Thank you.

6 CROSS-EXAMINATION

7 BY MR. BRIDGES:

8 Q. Good afternoon, Investigator Veto.

9 A. Good afternoon.

10 Q. Thank you for coming down to South Carolina.

11 A. Yes, sir.

12 Q. You received these items? You did not personally
13 collect these items, correct?

14 A. That's correct. Well, let me rephrase that, some
15 the items that were taken off this person were not
16 personally collected by me.

17 Q. Did you actually receive a log of what was collected
18 on his person or is it just -- how were these items
19 presented to you when you first ---

20 A. We have a -- when those officers go and check that
21 property in in the property room it is entered into our
22 computer system.

23 Q. So these were all just indicated as being on Mr.
24 Ginther's person at the property room?

25 A. That's correct.

1 Q. Did you ever encounter a beanie type hat in the
2 property room that would've came from Mr. Ginther?

3 A. Not that I can recall.

4 Q. So this what they were saying was on his person that
5 day?

6 A. Correct.

7 Q. Now, the other items were found in the bag and in the
8 car that's been provided here?

9 A. Well, yes.

10 Q. Now, you said the bag was about 20 feet into the tree
11 line or?

12 A. About 20 yards..

13 Q. Twenty yards. The vehicle was in an accident,
14 correct?

15 A. Yes, sir.

16 Q. Yeah. Was it on the guardrail, the position of the
17 vehicle? Did you observe the position of the vehicle?

18 A. I wasn't there for that. No.

19 Q. Okay. So I don't know if you can say, I mean, it
20 could be possible that the bag could have been ejected
21 from the vehicle during the collision?

22 A. I wouldn't be able to answer that.

23 Q. And just to clarify, you were not present when these
24 were collected from Mr. Ginther's person?

25 A. That's correct.

1 MR. BRIDGES: The court's indulgence. No further
2 questions. Thank you.

3 THE COURT: Anything further from the State?

4 MR. FINNEY: Nothing further from the witness. Thank
5 you very much for coming.

6 THE COURT: Thank you, sir.

7 THE WITNESS: Thank you, Your Honor.

8 MR. FINNEY: I'd call Randall Stewart.

9 THE COURT: I'll remind you, Mr. Stewart, that you're
10 still under oath.

11 RANDALL STEWART, after previously being
12 duly sworn, testified as follows:

13 THE WITNESS: Yes, sir.

14 DIRECT EXAMINATION

15 BY MR. FINNEY:

16 Q. Mr. Stewart, just a few items to talk about. When
17 you heard that Mr. Ginther had been arrested in Kentucky
18 did you make arrangements to go up and get him?

19 A. Yes, sir. We had to get a response back from the
20 judicial system in Louisville on his extradition which he
21 waived which would allow us to bring him back.

22 Q. And after he got back -- so you went up, picked him
23 up in a car and brought him back along with other
24 officers; is that correct?

25 A. Yes, sir.

1 Q. All right. The clothes that he had own to include a
2 hat, do you know where those items are?

3 A. All of that evidence was logged on a hand receipt and
4 then transferred and entered into our Sheriff's Office.

5 Q. All right. So as far as you know it still at the
6 Sheriff's Office?

7 A. There are still items in the inventory at the
8 Sheriff's Office.

9 Q. All right. Now, some of the items like the gun you
10 brought back to South Carolina?

11 A. Yes. His personal effects and the firearm,
12 everything that was taken from his person that was
13 searched and seized during his arrest ---

14 Q. All right.

15 A. --- I received an inventory receipt from Louisville
16 and then transferred those here.

17 Q. All right. After getting all of that evidence and
18 getting him back here did you have occasion to get a
19 search warrant on his home in Columbia?

20 A. Yes, sir.

21 Q. And did you execute that search warrant?

22 A. Yes, sir.

23 Q. All right. And as a result of the execution of the
24 search warrant were any items taken away?

25 A. Yes, sir.

1 Q. All right. Can you give me a roster or a list of
2 those items?

3 A. Yes, sir. The search warrant is over there in that
4 notebook to include a -- if you like me to go get it I can
5 actually get you a list ---

6 Q. Yes, sir. Let me ask you this. When you got to the
7 house did you -- how did you get in the house?

8 A. After going through the appropriate Richland County
9 Magistrate to obtain a lawful search warrant I contacted I
10 believe his name was Mr. McGurt, the actual landlord that
11 managed it, and he met us there so that we didn't damage
12 the residence.

13 Q. All right. And when you went in was the house still
14 full of the stuff that belong to James Ginther and Rachael
15 Salak?

16 A. Yes, sir. The house was still fully furnished with
17 all personal items.

18 Q. All right. And did you -- tell me just looking
19 around what were you looking for?

20 A. When we got to the residence it was still secured and
21 the landlord allowed us in. So we made entry looking for
22 any items that would be related to the crime that we're
23 investigating whether it be firearms, electronics, cell
24 phone, computers, tools or anything unlawful that would be
25 either unlawful by itself or related to our crime.

1 Q. All right. Were -- you had already been in the house
2 on Saturday?

3 A. Correct.

4 Q. You talked to Mr. Ginther and Ms. Rachael?

5 A. Correct.

6 Q. And you had a chance to go upstairs and see what the
7 rooms look like up there. You also put up his handgun?

8 A. Yes, sir.

9 Q. Had any of that been disturbed when you were doing
10 your search?

11 A. When I arrived given the search the house appeared to
12 be pretty much the same as my prior visit.

13 Q. Were his long guns, his rifles and AR's, were they
14 still there?

15 A. Yes, sir. There were some items that I noted when he
16 allowed me to help him put his firearm away, and I noted
17 and I actually commented to him there's some -- a wide
18 variety and some long -- some impressive weapons in there.
19 I mean, general comment to him, and they were still
20 present when I was there.

21 Q. All right. Did you also find a bag of ammunition
22 there on your search warrant?

23 A. Yes, sir.

24 Q. Did you take possession of that bag of ammunition?

25 A. Yes, sir.

1 Q. All right. Is it in court this morning?

2 A. Yes, sir.

3 Q. Was it upstairs near the area where you have placed
4 his gun on Saturday?

5 A. I believe it was in that same closet.

6 Q. Did you estimate how many rounds was in that bag?

7 A. I believe it was over two hundred.

8 Q. All right, sir. Did you also find or take possession
9 of a shovel that was at the residence?

10 A. Yes, sir. That shovel came off the back porch.

11 Q. All right. And was there another shovel of any kind
12 or description in the house or on the back porch area at
13 the time?

14 A. No, sir. There were no other shovels found on the
15 property.

16 Q. So this one was taken as a result of the search
17 warrant because as far as you knew you had taken all the
18 shovels that were there?

19 A. Yes, sir.

20 Q. Any other items taken that day?

21 A. Along with the shovel was a pair of tan boots. We
22 found a flip Sprint type cell phone that didn't appear to
23 be used on the network. Some notebooks that had some
24 writing in it, and a large amount of ammunition, some
25 magazines related to our firearms, a 5.56 rifle, another

1 tan rifle with a scope, another rifle, some ballistic
2 vests, some ceramic blades for body armor, a mesh bag
3 which had probably four or five dozen clips for automatic
4 rifles, out of vest carriers, a gun cleaning kit, and a
5 tazer.

6 Q. All right. In the bag of ammunition that you have
7 there in front of you -- let's go ahead and mark that with
8 an exhibit number.

9 MR. FINNEY: What is your next number?

10 THE COURT: Are you marking that into evidence?

11 MR. FINNEY: Yes, sir.

12 THE COURT: Is there any ---

13 MR. BRIDGES: The collective bag or the individual?
14 No objection.

15 THE COURT: Okay.

16 MR. FINNEY: What number?

17 COURT REPORTER: It's gonna be Number 88.

18 MR. FINNEY: Exhibit 88, I move into evidence.

19 THE COURT: Okay. And I understand there's no
20 objection from the Defense? Is there anything else as a
21 result of the search warrant you want to move into
22 evidence?

23 MR. FINNEY: No, sir.

24 THE COURT: Okay.
25

1 (WHEREUPON, State's Exhibit No. 88 was admitted into
2 evidence.)

3 BY MR. FINNEY:

4 Q. When you received the weapon from the officials in
5 Kentucky was it loaded with the bullets that we have in
6 evidence here today, Number -- Exhibit 87?

7 A. Yes, sir. The weapon that you saw on the body cam
8 was secured and then as procedure they saved the weapon
9 and separated the ammo.

10 Q. All right. Do you have any ammo in that bag that we
11 just introduced that is similar to the shell casing that
12 was turned in to S.L.E.D. and analyzed from the crime
13 scene, State's Exhibit 72?

14 MR. BRIDGES: Objection. Form of the question.

15 THE COURT: Okay. Don't lead.

16 BY MR. FINNEY:

17 Q. What kind of, if you examined State's Exhibit 72, can
18 you tell what kind of manufacture tag is on the bottom of
19 that casing?

20 A. Yes, sir. According to -- this is a Winchester Luger
21 nine millimeter shell casing with a W.I.N. head stamped
22 across the top, and nine mill and Luger across the bottom.

23 Q. Are there any similar items to that in the bag that
24 you found that Mr. Ginther's house marked in State's
25 Exhibit 88?

1 A. Yes, sir. In this bag was a large variety of various
2 brands of both ball round and hollow point of multiple
3 different manufacturers, and we were able to find two of
4 the same exact type shell casings, W.I.N., nine millimeter
5 Luger. There are two of those in this bag. The others
6 included brands of Blazer, and I believe Blazer was the
7 other brand. Some of them are heavily corroded, and they
8 were all were emptied.

9 Q. All right, sir. Investigator Stewart, you have been
10 the chief officer on this case from the beginning. Can
11 you tell us why you felt that Ms. Suzie Ginther had been
12 kidnapped on November 16, 2017?

13 A. Based on the victimology and studying our victim, and
14 speaking with coworkers, live-in boyfriend who had been in
15 a long-term relationship, family members, she was
16 extremely punctual. She had never been late for work. No
17 one had ever been out of contact with her for any reason.

18 And based on her not ever being late to work that
19 when she left, we have a witness of when she left, she
20 would've gone one direction and her van was found in a
21 different direction and that her body was located ten and
22 half miles further from the direction.

23 The broken headpiece in the vehicle, we didn't know
24 if that was related, but the amount of dirt inside the
25 vehicle, the scene itself with her manner of death and how

1 her body was disposed of, I absolutely saw every reason
2 that she was taken by force.

3 Q. All right, sir. And as to the charge of murder what
4 led you to believe that a homicide had been committed in
5 this case?

6 MR. BRIDGES: Object to this. I mean he -- what is
7 the purpose? This is a murder trial. It seems cumulative
8 to ask him -- I mean, he's clearly arrested him for
9 murder. I don't see the purpose for this.

10 THE COURT: Yeah, I'm ---

11 MR. FINNEY: Is cumulative an objection? I don't
12 understand.

13 THE COURT: Yeah, but I don't understand. You can
14 tell them the facts ---

15 MR. FINNEY: I'm asking him to summarize the facts
16 that led to him ---

17 THE COURT: Well, that wasn't the question you asked
18 him. You can ask him to summarize the facts of why he
19 made these charges.

20 MR. FINNEY: All right, sir.

21 BY MR. FINNEY:

22 Q. Would you summarize the facts as to why you charged
23 Mr. Ginther with murder?

24 A. Based on the obvious evidence at the crime scene and
25 clearly from the autopsy results. On the autopsy report

1 that the victim died from a lateral gunshot wound to the
2 back of the head and buried. Obviously, there was someone
3 else there with her. We collected evidence at the scene.
4 Specifically identified an individual that connected that
5 individual to that scene. Her life, her death was
6 classified as murder.

7 MR. FINNEY: May I have a moment, Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. FINNEY:

10 Q. Investigator, did you ever discover or locate Suzie
11 Ginther's phone?

12 A. No, sir.

13 Q. Did you ever discover or locate James Ginther's
14 phone?

15 A. No, sir.

16 Q. Did you ever have a chance to analyze the cell phone
17 records on both phones, James Ginther and Suzie Ginther,
18 to look at patterns of when the phone was used and the
19 phone was not used?

20 A. Yes, sir. I had received data I think that Friday --
21 that Thursday, Friday, and Saturday I received cell phone
22 data on the victim, Suzie, her boyfriend, Mr. Parker.
23 Attempted Mr. Warren Dundero. He didn't have a phone and
24 then Mr. Ginther.

25 Q. All right. Did you locate any records that showed

1 that Suzie Ginther used her phone between 4:15 in the
2 morning on Thursday, November 16th and 5:15 in the morning
3 on Thursday, November 16th? During that first hour was
4 there any calls that she made on her phone?

5 A. Yes, sir. This is why I sent the records to the
6 Fusion Center to have them process because the agent that
7 provided that data processed the same information I had
8 gone through. And by looking at the records I could tell
9 that her phone records indicated her device got home that
10 evening. And, of course, the information provided by Mr.
11 Parker lined up with that.

12 And then when she left there was a phone call that
13 came to her phone at 5:15. By flagging that data the
14 phone connected to a tower or I wouldn't have seen it when
15 we tried mapped it at. So I knew that the phone had
16 received a call. And I later identify the individual who
17 made that call.

18 But the phone connected to the tower would show me in
19 order for that phone to register on the system somebody
20 had to have had that phone and manipulated it somehow or
21 it wouldn't connected it. The phone call would have gone
22 straight to voice mail by itself and it would never have
23 flagged the tower.

24 So at 5:15 in the morning the victim's phone was
25 somewhere in the vicinity of where she last was that same

1 morning. But according to her live-in boyfriend she'd
2 been gone an hour and fifteen minutes.

3 Q. And who is that call coming from to Suzie Ginther's
4 phone?

5 A. That was Ms. Amy Yarborough who'd been sitting in the
6 parking lot at work for 30 minutes waiting on her who also
7 testified along with -- explain to me along with her
8 supervisor that Suzie had never been late, she was always
9 there at 4:45. She would unlock the door and go in. But
10 they weren't actually allowed to clock in until 5:00 so
11 they had a few minutes of wake-up time with each other.

12 Q. All right. And on the records of Mr. Ginther's phone
13 did you show any activity on his phone during that same
14 period of time that you just described, Wednesday night on
15 into Thursday morning?

16 A. There was some text message content back and forth
17 between Mr. Ginther and Ms. Ginther that night and then
18 during my interview, when I went to his residence, he
19 allowed me to read through some of those. But then the
20 next activity on his phone which is plottable would be
21 when he made a phone call the next morning.

22 But as I was sitting trying to talk to him there was
23 information on the cell phone records that I myself could
24 not explain. And because of that I contacted S.L.E.D.
25 Fusion Center in between talking to him and Sprint because

1 they have their own law enforcement division. It appeared
2 that the phone may have been turned off at some point
3 during the night and the data was not logged.

4 MR. BRIDGES: I object to that. Speculation.

5 THE COURT: I'll overrule the objection. Go ahead.

6 BY MR. FINNEY:

7 Q. The first thing that we know about Suzie Ginther's
8 activities other than what Billy said happen at four
9 o'clock -- what is the next thing in the chain regarding
10 her or her vehicle?

11 A. She would have left at 4:00 a.m. according to her
12 live-in boyfriend. The phone call at 5:15, but then
13 Corporal Prescott located that van at 7:01 a.m. and he had
14 none of this knowledge at that particular time. So we
15 knew that van was in place prior to 7:00 a.m. and someone
16 had the phone at 5:15. So we have an approximate hour and
17 a half limit.

18 Q. Thank you. Answer any questions the Defense attorney
19 may have.

20 CROSS-EXAMINATION

21 BY MR. BRIDGES:

22 Q. Good afternoon, Deputy Stewart.

23 A. Hello, sir.

24 Q. Just to go back a little bit to phone records. I
25 believe you testified earlier that you had the exigent

1 phone records on the 16th and 17th?

2 A. Yes. I had those in my hand when I was interviewing
3 him.

4 Q. And everything that you saw that could transmit data
5 from his phone that gave a location, that location was in
6 Columbia?

7 A. From the evening before that morning?

8 Q. Yes.

9 A. Yes.

10 Q. Yes. And so everything during that timeframe that
11 gave a location. So his location was in Columbia?

12 A. Well, no, sir. The last phone call he made that
13 afternoon connected to that tower. But from that last
14 phone call Wednesday until that Thursday morning phone
15 call there's no location data because the phone was not on
16 voice call, was not downloading, or streaming data. So
17 there is no connection to a tower at that timeframe at
18 all.

19 Q. You actually had a -- this was not part of the
20 S.L.E.D. agents testimony because he only analyzed the
21 voice records that were Sprints?

22 A. Correct. It's the same information that I had.

23 Q. But there was some questions about data transmissions
24 that you asked Mr. Ginther, and did you understand those
25 did not give locations for his phone?

1 A. Right. The -- approximately somewhere between 3:00
2 and 6:00 a.m. there were numerous incoming messages to his
3 device that did not have a phone number. They were coded.
4 And when I asked Sprint they said that they can't -- they
5 can't tell me where that came from because it appeared the
6 that that phone was not on the network at all.

7 Q. And you didn't -- you could never determine the
8 identity of that or even really the content or medium was
9 that either text or data? You couldn't tell what that
10 was?

11 A. Correct, because nothing actually came to the phone.

12 Q. Okay. So you served the search warrant on James and
13 Rachael's home. Was that on December 7th?

14 A. Pardon me, sir.

15 Q. Take your time.

16 A. On Beltline Boulevard dated December 7th.

17 Q. And were you aware -- you heard Ms. Salak's testimony
18 she had moved out some time before Thanksgiving?

19 A. Yes.

20 Q. And so the house was -- and she -- you heard
21 testimony that she left her keys with the neighbors?

22 A. Yes.

23 Q. And that residence was not secured from the 28th
24 until you entered?

25 A. Correct. I cannot explain the amount of time between

1 when she gave the key to the neighbor, who I spoke to, and
2 when the landlord came and took it because he did not want
3 someone else in control of that. So I received the key
4 from the landlord.

5 Q. Yeah. And then you entered with the landlord on
6 December 7th?

7 A. Correct.

8 MR. BRIDGES: May I approach the witness, Your Honor?

9 THE COURT: Yes, sir.

10 BY MR. BRIDGES:

11 Q. And this is just for I.D. Is that a copy of your
12 supplemental report about the serving the search warrant?

13 A. Yes, sir.

14 Q. Is that your handwritten notes down there at the
15 bottom?

16 A. Yes, sir.

17 Q. Is there something about that you found only
18 ballpoint ammo?

19 A. I hadn't had time to go through hundreds of rounds at
20 that particular time. I had only been at the house a
21 small amount of time.

22 Q. Oh, so that was your initial assessment of what you
23 saw?

24 A. Yeah, those are scribbled notes while on the fly at
25 the residence.

1 Q. Okay. Now, after you served the search warrant you
2 had a sit down interview with Ricky Hallman, December
3 14th? Do you remember that?

4 A. Yes, sir.

5 Q. And at the conclusion or during this interview you
6 received a piece of paper that was allegedly from Mr.
7 Dundero's pocket. Do you remember that?

8 A. No, sir.

9 Q. Do you not recall being handed something from Ms.
10 Hallman during that interview?

11 A. I don't recall. I know that we recorded the
12 interview, and I haven't looked at it in a while so.

13 MR. BRIDGES: May I play the relevant version of the
14 interview to refresh his memory?

15 THE COURT: What says the State?

16 MR. FINNEY: Your Honor, I'm not aware of this. It
17 hasn't been made -- we weren't put on any notice of it.

18 THE COURT: You object or not?

19 MR. FINNEY: I do object.

20 THE COURT: Okay. I sustain his objection. You
21 can -- you can show it to him. You can't show it to
22 anybody else in this room.

23 MR. BRIDGES: May I ask for -- may I approach?

24 THE COURT: Yes, sir.

25

1 (WHEREUPON, a bench conference was held off the
2 record in the presence of the jury, but out of the
3 hearing of the jury.)

4 THE COURT: Jury, let me excuse you for 15 minutes.
5 Do not discuss this case.

6 (WHEREUPON, the jury panel was excused from the
7 courtroom at 12:42 p.m.)

8 THE COURT: Okay. At the bench conference you said
9 there was an interview provided to you in discovery
10 material from Ms. Hallman?

11 MR. BRIDGES: Yes, sir.

12 THE COURT: And allegedly in that interview she gave
13 the detective a piece of paper?

14 MR. BRIDGES: That is correct.

15 THE COURT: And you wanted to know if he tested
16 anything?

17 MR. BRIDGES: I was going to ask him if he had done
18 anything with that piece of paper.

19 THE COURT: So ask whether he remembers all of that
20 now without playing it. If he doesn't you can play it to
21 him.

22 BY MR. BRIDGES:

23 Q. You remember receiving a piece of paper from Ms.
24 Hallman that was alleged to have come from Warren
25 Dundero's pocket around the time in question of Suzie's

1 disappearance?

2 THE WITNESS: It's been over a year. No, sir. I
3 don't specifically remember. I do remember speaking to
4 her at the scene during the search warrant, and then she
5 came in for an interview a short time later.

6 THE COURT: How long does it take for you to pull
7 that up?

8 MR. BRIDGES: Very quickly. I have the time keyed
9 up. I just need access to do it.

10 THE COURT: All right. Do it. You said you could
11 pull it right up?

12 MR. BRIDGES: Yeah, it's on PELCO. If you put PELCO,
13 and then it loads.

14 (WHEREUPON, a video is played for a witness outside
15 the presence of the jury.)

16 BY MR. BRIDGES:

17 Q. Can you see the video, Investigator Stewart?

18 A. Yeah.

19 Q. Okay. You see Ms. Hallman is reaching into her
20 pocket?

21 THE COURT: You can get down there and go. This is
22 just refreshing your memory. So if you want to go listen
23 to it, however, you can work it. You can work better than
24 either, counsel.

25 MR. BRIDGES: That might be easier. Do you remember?

1 THE COURT: Yes, sir. Is there something else that
2 we need to deal with outside the presence of the jury?

3 MR. BRIDGES: No, sir. And, again, I'm not going to
4 play it through for the jury or anything like that. It
5 was just to refresh Investigator Stewart's memory.

6 THE COURT: Okay. Well, I need to get it off the
7 screen then before the jury walks in.

8 MR. BRIDGES: Yeah, I'm going to go ahead and close
9 this. There you go.

10 THE COURT: Okay. All right. Bring me the jury.

11 MR. BRIDGES: I appreciate you taking a break, Your
12 Honor.

13 (WHEREUPON, the jury panel enters the courtroom at
14 12:51 p.m.)

15 THE BAILIFF: Jurors are seated.

16 THE COURT: Thank you, sir. You may continue.

17 MR. BRIDGES: Thank you, Your Honor.

18 BY MR. BRIDGES:

19 Q. Restate my previous question, Investigator Stewart.
20 You met with Ms. Brittany Hallman on December 14th. Do
21 you recall her handing you a piece of paper that may have
22 been relevant to Mr. Warren Dundero?

23 A. She brought me a small bag with a few knickknack
24 items and a small piece of paper. She gave them to me and
25 said that she had found those items on Mr. Dundero.

1 Q. Around the time period in question?

2 A. Yes, sir.

3 Q. Did you do any testing or anything on these items?

4 A. No, sir.

5 Q. Did you log these items into evidence?

6 A. I didn't find any connection between those particular
7 items when I examined them. I couldn't determine anything
8 related to them at all.

9 Q. And as part of this case you were the chief and lead
10 investigator on this case?

11 A. Yes.

12 Q. Were you aware that there was a soil analysis done
13 and conducted?

14 A. Yes, sir.

15 Q. And it was done on various -- on the Nissan Cube
16 belonging to Mr. Ginther?

17 A. Yes, sir.

18 Q. It was done on the van found on Babette?

19 A. Correct.

20 Q. Was it done on any of the items recovered from Mr.
21 Ginther's house?

22 A. Yes, sir.

23 Q. And there's also this analysis was -- there was an
24 inconclusive and not say where the soil was conclusively
25 from on any of the surfaces?

1 A. That is correct.

2 Q. That the soil on -- cause James' car was tested and
3 there was no -- they could not connect it back to the soil
4 at Burnt Gin Road?

5 A. What was done was we took and contacted the FBI
6 Laboratory in Quamico, and in speaking with a geologist
7 that worked at the FBI we decided we would take soil
8 samples from the van that was found on Babette.

9 And then when we spoke to the geologist he gave us
10 instructions on what he needed to perform the best
11 possible test. So we took samples from the roadway, from
12 the grave site and then when Mr. Ginther's vehicle was in
13 Louisville, Kentucky, then we sent a search warrant up
14 there and then obtained soil samples from inside of that
15 Cube.

16 And we also did soil samples text on the shovel and a
17 pair of boots that we took from the residence.

18 Q. And all of those samples were inconclusive?

19 A. Everything came back as inconclusive.

20 MR. BRIDGES: Court's indulgence.

21 BY MR. BRIDGES:

22 Q. Briefly, you said there were some unidentified
23 messages that went to Mr. Ginther in the morning which you
24 could not identify. They did not have any cell site data
25 on it?

1 A. Yes, sir. There was a strain of them. If I had
2 my -- the sheet I highlighted there's probably 12 to 20
3 different incoming messages that just cannot be explained.

4 Q. And you obviously couldn't determine if that was text
5 message or anything. What timeframe do you think this
6 crime occurred?

7 A. Given the facts of the evidence of what we know and
8 taking into account the victim's phone if she left her
9 residence, as her boyfriend explained, approximately 4:00
10 a.m. or immediately thereof, and then something happened
11 with her phone at 5:15 that would be a 75 minute window
12 from her driveway all the way out to Camp Burnt Gin.

13 And then for her phone to be back in the area, and if
14 she was already deceased at that time and the offender had
15 her phone and it rang and it was shut off and then powered
16 down from there that was a 75 minute window.

17 So when I went to the crime scene I actually analyzed
18 and drove in from where the van was located in normal
19 driving traffic in the middle of the day. It took me 11
20 minutes to get from where the van was found to the
21 location where the body was.

22 Q. And did you do that drive at night or was that during
23 the day?

24 A. That was actually during the day with traffic.

25 Q. Well, at night the area of Camp Burnt Gin there's

1 not -- are there street lights out on that road or is that
2 ---

3 A. I don't know of any lights out there.

4 Q. Yeah, so that's -- it's very dark?

5 A. That's why I felt, based on the lack of light in that
6 area, that when Ms. Ginther was taken out there to the
7 woods and based on my victimology review and the case
8 investigation, I would have to assume that would've been a
9 one-way trip.

10 And going out to that location as remote as it was
11 they knew where they were going, and according to the
12 hunter that hole was already there.

13 Q. Let's -- this issue that you bring up, assume it's a
14 one-way trip, in that case would you expect for her to
15 have fought or resisted?

16 A. We know a gun was involved.

17 Q. But there was -- you were present at the autopsy?

18 A. Yes, sir.

19 Q. There was no other injuries to her body, other major
20 injuries, other than the gunshot wound?

21 A. The -- as the autopsy report stands.

22 Q. And there's no indication that she was restrained,
23 restricted in any way, medical evidence?

24 A. No, sir.

25 Q. And there's no toxicology showing that she was

1 drugged or subdued in any way?

2 A. In the autopsy report her toxicology was clean.

3 Q. So do you know -- I mean could you -- tell how she
4 was taken without injuries, without being drugged? She
5 was taken, but there wasn't any resistance from her?

6 A. No, sir. Studying with my victimology I received
7 information from family and coworkers that she feared Mr.
8 Ginther. And that even with the custody and transfer her
9 kids she never did it alone. So I couldn't phantom that
10 it was a willful trip for her to leave that residence and
11 go out into that remote location at that time of the day
12 with the evidence placing him at the scene. I didn't see
13 any of that willful.

14 Q. Given the -- you said the relationship between the
15 two is it very likely that she would try to resist if Mr.
16 Ginther tried to take her somewhere against her will?

17 A. Again, looking at the barrel of a gun, I can't
18 explain that. Believe me, I struggled with the thoughts
19 of what went through my victim's head.

20 Q. And there's a lot of -- and the location of the van
21 in Babette are you saying that's just completely random
22 happen stance? It just happened to be there at that
23 particular ---

24 A. It's geographical location?

25 Q. Yes.

1 A. The geographical location being left there on Babette
2 was three quarters of a mile from Oak Lawn Mobile Home
3 Park. There are trails that cuts through those woods that
4 goes right to Cherryvale Community Center where Mr.
5 Ginther played with his kids as Rachael explained to us.
6 So that was a well-known easy area to drop the van and
7 then leave on foot. .

8 Q. But it being across the street from Warren Dundero's
9 house is less relevant than that information?

10 A. Related to Mr. Dundero?

11 Q. Yes.

12 A. I cleared him of the investigation, so I saw no
13 connection.

14 Q. And you cleared him and then you did not test any
15 additional things given to you about him as well in
16 December?

17 A. Well, I tested his D.N.A. from the scene, and I
18 interviewed him several times. Yes.

19 Q. But you did not test the additional items that was
20 presented to you by Ms. Hallman?

21 A. They weren't tested.

22 MR. BRIDGES: No further questions, Your Honor.

23 THE COURT: Anything further, Mr. Finney?

24 MR. FINNEY: Nothing further.

25 THE COURT: Okay. You can step down. All right, Mr.

1 Solicitor, you got any other witnesses?

2 COLLOQUY

3 MR. FINNEY: I'd like to ask the Court to allow me to
4 have a lunch break to decide my next move. I believe
5 we're about at the end.

6 THE COURT: Okay. We'll take a lunch break. Ladies
7 and gentlemen, I need you to be back in the jury room at
8 2:30. When you get back I need you to do something for
9 me. I need you to select a foreperson. That person will
10 not have any greater vote than anyone else. He will
11 simply -- he or she will preside on the deliberations in
12 this case and sign the verdict form.

13 I don't know any of y'all. Y'all been together for a
14 week. So if you'll select the person. It needs to be out
15 of the 12 and not the remaining alternate. So if you'll
16 do that when you get back, and I get you back in here
17 hopefully at 2:30 and will continue this trial. Thank you
18 so much.

19 (WHEREUPON, the jury panel was excused from the
20 courtroom at 1:01 p.m.)

21 THE COURT: One quick thing before we go to lunch. I
22 need to put one more thing. Mr. Ginther, if would you
23 stand up, please, sir. Raise your right hand.

24 JAMES GINTHER, after being duly sworn,
25 testified as follows:

1 THE COURT: Thank you. You can put your hand down.
2 I don't know if the State's going to rest after lunch or
3 we may have a few more witnesses, but when they do rest it
4 will become your opportunity to put a case up if you want
5 to. You have a right to testify. You also have a right
6 not to testify. You have a constitutional right to remain
7 silent.

8 If you choose to remain silent I'll instruct the jury
9 they cannot consider that in any way in their
10 deliberations. If you choose to testify you will be just
11 like any other witness and you would be subject to
12 cross-examination. I don't think you have a criminal
13 record from what I've learned in this trial, but if you
14 did they could possibly impeach you with that, but that
15 doesn't seem to be a problem.

16 Whether you testify or whether you not testify it's
17 your decision. Your attorneys can advise you to what they
18 think you should do or should not do. But it is ultimately
19 your decision. You can talk with them. You can take
20 their advice or not take their advice, but your decision
21 will be up to you. And I'll instruct the jury if you
22 choose not to they can't hold that against you in any way.
23 Do you understand that?

24 MR. GINTHER: Thank you, sir.

25 THE COURT: You got any questions you want to ask me

1 concerning your rights?

2 MR. GINTHER: No, sir.

3 THE COURT: Okay. Well, during the lunch hour I'll
4 give you some opportunity to discuss with your attorneys
5 whether you want to get their advice to whether they think
6 you should or should not testify, but is ultimately your
7 decision. Do you understand?

8 MR. GINTHER: Yes, sir.

9 THE COURT: Thank you, sir. We'll see y'all at 2:30.

10 (WHEREUPON, Court was in recess at 1:12 p.m. and
11 reconvened at 2:40 p.m.)

12 MR. FINNEY: Your Honor, the State of South Carolina
13 will rest its case.

14 THE COURT: Okay. Mr. Ginther, I questioned you
15 before lunch about whether you wanted to testify or not.
16 The State has informed me that they've rested their case,
17 and now it becomes your opportunity, if you want to, to
18 put on the case. Have you had an opportunity to discuss
19 that with your attorneys?

20 MR. GINTHER: Yes, sir, I have.

21 THE COURT: Okay. Have you made a decision as to
22 whether you want to testify or not?

23 MR. GINTHER: I will not be testifying, Your Honor.

24 THE COURT: Okay. Thank you, sir. Then based on our
25 conversations in chambers as far as time is concerned I'll

1 bring the jury in, dismiss them for the day, deal with the
2 unique -- the legal motions that we have to deal with, and
3 then we will return at 9:30 in the morning to do the
4 closing arguments and charge. Is there any objection to
5 either side?

6 MR. FINNEY: No objection from the State.

7 MR. BRIDGES: No objection from the Defendant, Your
8 Honor. I just, mechanically, I raise my pretrial
9 objections and all.

10 THE COURT: And I understand and I'll let you go over
11 those objections as soon as I deal with the jury. Based
12 on our conversation it may be 4:30 or 5:00 today before we
13 can give this case to the jury and once I give it to them
14 we've got to stay until we get a verdict. So everybody
15 decided maybe it'd be easier to come back in the morning.
16 Hopefully, we'll have them the case by lunchtime, okay?
17 Bring the jury.

18 (WHEREUPON, the jury panel enters the courtroom at
19 2:42 p.m.)

20 THE BAILIFF: All jurors are seated, Your Honor.

21 THE COURT: Thank you. Solicitor.

22 MR. FINNEY: May it please, the Court. Your Honor,
23 at this time the State of South Carolina will rest its
24 case.

25 THE COURT: Okay. Mr. Bridges.

1 MR. BRIDGES: Your Honor, I renew my pretrial
2 objections, and the Defense rests as well.

3 THE COURT: Okay. Then I will deal with your
4 objections in the little while. Ladies and gentlemen, you
5 have heard all of the evidence you're going to hear in
6 this case. Now, we will have closing arguments and
7 charge, and I will give you this case to decide. But from
8 a time standpoint we are going to probably do that in the
9 morning because once I give you this case to decide you
10 can't go home until you decide it. And it may be 4:30 or
11 five o'clock before we can even give you this case.

12 So what we will do is I'm going to stay here this
13 afternoon, and we're gonna deal with some legal issues and
14 ask you to come back at 9:30 in the morning at which time
15 the lawyers would give their closing arguments, I will
16 charge you on the law and I will give you this case.

17 So I need all of you to be back -- if you got an
18 emergency call us. Please don't discuss this case or do
19 any research and you have a good evening.

20 Ms. Hannibal, I need you to stay with me for just a
21 minute. Did y'all select a foreperson? Okay, then, thank
22 you. So everybody else -- Ms. Hannibal, I need just a
23 minute with you. Everybody else, I'll see you at 9:30
24 tomorrow.

25 (WHEREUPON, the jury panel was excused from the

1 courtroom at 2:47 p.m.)

2 (WHEREUPON, Juror Hannibal remained in the
3 courtroom.)

4 THE COURT: Ms. Hannibal, it's come to my attention
5 that you may have some relationship or friendship with the
6 Ms. Weeks that works in the solicitor's office, is that
7 correct?

8 MS. HANNIBAL: I do.

9 THE COURT: Okay. And I know I didn't ask y'all. I
10 don't think I asked you or any jurors. I just asked about
11 attorneys that worked in the Solicitor's Office. And my
12 understanding is that she's a staff person and not an
13 attorney. How often do you see her and how much
14 communications do you have with her?

15 MS. HANNIBAL: I see her like maybe every Monday. We
16 have Girl Scouts meeting.

17 THE COURT: Okay. Have you talked to her at all
18 about anything involving this case?

19 MS. HANNIBAL: No, sir.

20 THE COURT: And when you have a meeting together ---

21 MS. HANNIBAL: Girl Scouts meeting.

22 THE COURT: Girl Scouts meeting?

23 MS. HANNIBAL: Um hum.

24 THE COURT: Okay. Outside of that do you have any
25 other contact with her?

1 MS. HANNIBAL: Very rarely.

2 THE COURT: Do you think your contact would affect
3 your ability at all to be fair and impartial in this case?

4 MS. HANNIBAL: Uh, uh.

5 THE COURT: Okay. Thank you. How about, if you
6 would, step right there in the hall for a minute and let
7 me talk to these attorneys and then I'll give you some
8 further instructions.

9 MS. HANNIBAL: Okay.

10 (WHEREUPON, Juror Hannibal was excused from
11 courtroom.)

12 THE COURT: Are there any further questions either
13 side would like for me to ask her?

14 MR. BRIDGES: Just that are they related? Did you
15 ask if they were related?

16 THE COURT: I didn't ask about that. Anything else?

17 MR. FINNEY: Nothing from the State.

18 MR. BRIDGES: Nothing else other than that question.

19 THE COURT: Bring her back here.

20 (WHEREUPON, Juror Hannibal returned to the
21 courtroom.)

22 THE COURT: One other question I didn't ask you. Are
23 you related to her in any way?

24 MS. HANNIBAL: She's my niece.

25 THE COURT: Your niece?

1 MS. HANNIBAL: Um hum.

2 THE COURT: Okay. Thank you so much.

3 MS. HANNIBAL: Okay.

4 THE COURT: Before you leave wait there one more
5 minute, okay?

6 MS. HANNIBAL: Okay.

7 (WHEREUPON, Juror Hannibal was excused from
8 courtroom.)

9 THE COURT: Okay. What do y'all want me to do with
10 her?

11 MR. BRIDGES: We would request that the alternate be
12 used instead of ---

13 THE COURT: You got any objection to that, Solicitor?

14 MR. FINNEY: I don't have an objection. I would like
15 to make sure the alternate is here tomorrow because if
16 she's not that would put us in another situation. And so
17 at this point ---

18 THE COURT: Do you want me to have her come back and
19 let's ---

20 MR. FINNEY: Yes, sir.

21 THE COURT: Is that any problem with you?

22 MR. BRIDGES: No, I have no problem with that, Your
23 Honor.

24 THE COURT: Okay. Tell her I'll see her at 9:30 in
25 the morning.

1 MR. BRIDGES: Thank you for addressing this matter.

2 THE COURT: Okay. I'll be glad to entertain any
3 motions from either side.

4 MR. BRIDGES: Your Honor, at this time I'd like to
5 make a directed verdict under Rule 19 to both counts.

6 THE COURT: Okay.

7 MR. BRIDGES: The count of murder, evidence has been
8 presented has been circumstantial. It relies on cartridge
9 case mash. That's a two cross examination that the bullet
10 cannot be matched.

11 The glove, DNA analysis revealed other individuals as
12 contributors. The phone records indicate that Mr. Ginther
13 was at his house that evening in the vicinity of his house
14 the day before as well.

15 In regards to the kidnapping, there is -- the medical
16 testimony did not offer any evidence of any restraints,
17 any other injuries on Suzette Ginther's body. There
18 hasn't been any testimony about her being abducted from
19 anywhere. There's no eyewitness testimony about that.

20 The van, both of the officers who processed the van
21 said that there was not a sign of any disturbance.
22 There's -- there's really, I'd say, nothing in the record
23 to show where she was taken, how this happened; that none
24 of the phone records support -- they don't give the
25 particulars of how she was transported by -- allegedly by

1 the defendant anywhere.

2 So I would just move that there's nothing in the
3 record to support the charge of kidnapping because it
4 requires unlawfully seizing, confining inveigling, decoy,
5 kidnap, abduct or carry away by any means whatsoever. I
6 submit that there's not been testimony to describe how
7 that happened, where it happened.

8 The medical evidence doesn't support it. So I would
9 respectfully request that you grant the directed verdict
10 on kidnapping, Your Honor.

11 THE COURT: Okay. Mr. Solicitor, do you want address
12 that?

13 MR. FINNEY: May it please the Court, Your Honor.
14 All right. As to the kidnapping charge, while the case,
15 the State's case, is circumstantial it is a very strong
16 circumstantial case. We have identified a young lady who
17 was very regular and meticulous in her routine. She was
18 very, I call, of high character and not known to deviate
19 from her routine.

20 She was last seen leaving her house four o'clock in
21 the morning and the next two things -- the next thing we
22 know for sure is that her phone was cut off by someone at
23 5:15 by a coworker looking for her.

24 We also know that about an hour later -- excuse me.
25 An hour or an hour and half later a Sumter deputy saw her

1 vehicle about a mile away from her home in an area where
2 she did not frequent. And the vehicle was somewhat
3 different from the standpoint of it having a lot of sand,
4 red type sand, on the bumpers and wheels and inside the
5 vehicle.

6 The phone records will show that she last talked to
7 James Ginther Wednesday evening and that they had a
8 conversation by text, at least, she did. And then Mr.
9 Ginther's phone records showed no contact or no
10 availability on the network at all from the time he got
11 that text from her until the time they call to him, from
12 Suzie's family, saying, 'do you know anything about this
13 van because the cops have found the van in Cherryvale'.

14 Your Honor, we think that the circumstances at the
15 crime scene point to a person who was killed violently,
16 who was killed quickly and from the rear. She didn't see
17 it coming.

18 We have a situation where we have a hole that was
19 empty on Wednesday and filled with her on Thursday. Those
20 circumstances would lead a reasonable juror to conclude
21 that she was taken against her will to a spot that she did
22 not want to be at and she was there. Her life was ended.

23 I would say if the motion is for both charges that
24 there is plenty of evidence that the murder charge should
25 go forward against Mr. Ginther. Not only has he told

1 untruth to everybody just about that asked him questions,
2 but not only did he confess to or tell his girlfriend, Ms.
3 Salak, that he had had a fight with Rachael, he went on to
4 tell her that he could explain to her the details of how
5 it happened because he wished for her to take the fall on
6 the charge and allow him to raise the kids.

7 When he did not get her cooperation he fled the scene
8 in the only family vehicle leaving her basically stranded
9 in Columbia. The only thing he made sure to take besides
10 his provisions was the gun. The same gun that he had
11 shown Randy Stewart the day before. The same gun he would
12 not turn over to Randy Stewart on Saturday afternoon. The
13 same gun he refused to tell Louisville about on Sunday --
14 excuse me. Monday morning, and that gun now ballistically
15 has been matched to the shell casing that took the life of
16 Ms. Ginther.

17 I believe the State has a very strong case on both
18 counts, and I'd ask the Court to deny the motion.

19 THE COURT: Anything else?

20 MR. BRIDGES: Just briefly in reply to the
21 kidnapping. I am making a motion for both charges, but in
22 regards to the kidnapping the evidence that supposedly
23 ties James to the scene does not -- still does not convey
24 how he transported the victim. There's just nothing -- my
25 contention would be that there's not -- I mean, he said

1 it's outside of a regular schedule. You can say it is in
2 a place where she wasn't scheduled to be that day, but
3 there's no how, in the record, how did he do that. How
4 did he transport her out there? The medical evidence
5 doesn't show it.

6 There's no witness testimony to support that. Even
7 according to Rachael what James said he didn't say, "I got
8 in a fight with Suzie. I transported her somewhere. I
9 took her somewhere." Even in that light most favorable to
10 the State I do not think there are any facts in the record
11 to indicate he abducted her, took her.

12 I mean, there's circumstantial evidence when you get
13 there about what happened at that scene, but how she gets
14 from there, from her house in Cherryvale, to Camp Burnt
15 Gin Road, there's hasn't been anything in the record about
16 how James forced her out there. No eyewitness testimony
17 present. Thank you, Your Honor.

18 THE COURT: As far as the murder is concerned I think
19 there is substantial evidence in the record that would
20 support a conviction for murder. And at this point it
21 goes to the existence of evidence versus the weight. The
22 jury can give it whatever weight they deem appropriate.

23 On the kidnapping charges, it is all circumstantial
24 and for all the reasons the Solicitor said; that she was,
25 and what's in this record, the evidence that this jury

1 hears, is that she's normally a very punctual person; that
2 she was supposed to be at work that morning. She had
3 always been to work. She left home to go to work on time.

4 Her body was ultimately found in a place that --
5 there's nothing in the record that she would be there
6 voluntarily. There was nothing in the record it was
7 somewhere. It wasn't like it was coffee shop somewhere
8 that she could have stopped and got a cup of coffee and
9 got murdered as a result of that.

10 So even though it is circumstantial I think the jury
11 can conclude that -- and the other scenario is that
12 whoever committed this murder -- murdered her in the yard
13 as soon as she walked out of the house and took her body
14 to this location to dispose of it, then you could argue,
15 well, if she wasn't kidnapped until after she was
16 murdered.

17 But the pathologist testified that she had mud and
18 dirt in her right lung which is consistent to the hole
19 that she was found in and that the only way that mud and
20 dirt could have gotten there is just prior to her dying.
21 And she had a couple of breaths that sucked in blood from
22 trauma to her brain as well as the dirt. So it applies at
23 least circumstantially that she was not murdered somewhere
24 else and carried there. But, in fact, she was murdered at
25 the scene where she was.

1 And she had no logical reason of being in those woods
2 at that location at that time of the morning. And even
3 though it is circumstantial I will deny your motion.
4 Having said that, if the jury convicts him of murder he
5 will not be sentenced under kidnapping Because under State
6 v. Owens and State v. Digby I can't sentence him for a
7 kidnapping if he's been convicted of murder.

8 So the only way that he is facing any kind of
9 kidnapping charges if you found not guilty of the murder
10 and they find him guilty of the kidnapping. That's the
11 only way I can sentence him, okay?

12 So having said that I deny your motion -- both of
13 your motions and allow this to go to the jury. Anything
14 else?

15 MR. FINNEY: Nothing from the State, Your Honor.

16 MR. BRIDGES: Would you like me to rest on the record
17 in front of the jury tomorrow?

18 THE COURT: You certainly you can. And if you change
19 your mind overnight we'll have to deal with that, but ---

20 MR. FINNEY: He already did rest.

21 THE COURT: I thought you did.

22 MR. BRIDGES: I was just making sure. I don't need
23 to renew that in the morning.

24 THE COURT: Okay. That's fine.

25 MR. FINNEY: And just for the record, while we are on

1 the record, I will open in full. Mr. Bridges will give
2 his summation, and then I will be allowed to reply?

3 THE COURT: You agree with that? You introduced
4 evidence into this record, but you can only reply to
5 anything he brought up. You cannot add any new
6 information. So you're limited in your reply to what his
7 argument was.

8 MR. FINNEY: To his argument?

9 THE COURT: That's correct. That's my understanding
10 of the rule. Do y'all, either side, disagree with that?

11 MR. BRIDGES: Yeah, every trial that I've done since
12 that rule has been in effect it was always -- the reply
13 was limited in scope to ---

14 THE COURT: And I think that what's that case says.
15 And If y'all think that's wrong I'll be glad to hear those
16 arguments, but you'll be limited to bring any -- you've
17 got to do whatever you're going to say in your opening
18 and, you can only reply to something he's brought up, you
19 know. You just can't get up and repeat the same thing
20 that you did.

21 MR. FINNEY: All right, Your Honor.

22 THE COURT: Okay. Anything else?

23 MR. FINNEY: Nothing from the State.

24 MR. BRIDGES: Nothing from the Defense.

25 THE COURT: All right. Thank y'all. I'll see you in

1 the morning at 9:30.

2 END OF TRANSCRIPT OF RECORD

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I, HATTIE O. GORDON, Official Court Reporter for the 4th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Sumter County, South Carolina, on the 11th day of April, 2019.

I do further certify that I am neither of
kin, counsel nor interest to any party hereto.

August 30, 2019


HATTIE O. GORDON, Court Reporter

HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF SUMTER) 2018-GS-43-00206

STATE OF SOUTH CAROLINA)
) PLAINTIFF)
) vs.) TRANSCRIPT OF RECORD
))
 JAMES L. GINTHER)
) DEFENDANT)
)

April 8-12, 2019
 Sumter, South Carolina
 Volume No. 5 of 5

B E F O R E:

THE HONORABLE R. FERRELL COTHRAN, JUDGE; and a jury.

A P P E A R A N C E S:

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A P P E A R A N C E S:

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JOHN BATES,
MARK SJOLUND,
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ERIC GRABISKI,
DARON SOLOMON,
CHASE BARNETT,
JEFF BISHOP,
JACOB VETO,

HATTIE O. GORDON
Circuit Court Reporter

COLLOQUY

1
2 THE COURT: All right, now. As far as the charge is
3 concerned I'm going to do, you know, my standard; they're
4 the finders of the facts, I'm the judge of the law, the
5 presumption of innocence, the indictment is not evidence,
6 the defendant's failure to testify, reasonable doubt,
7 expert witness, circumstantial and direct evidence,
8 criminal intent, murder and kidnapping, and anything else
9 which y'all think needs to be charged.

10 MR. BRIDGES: I actually request failure to testify
11 or decision not to testify?

12 THE COURT: Yeah, and I am going to instruct the jury
13 that the fact that the defendant did not testify they
14 cannot consider that in any way and can't be discussed in
15 the jury room since he didn't testify.

16 MR. BRIDGES: Yeah, sometimes that verbiage is not
17 clear, and I just would not want that.

18 THE COURT: Me neither. The actual instructions that
19 I'm instructing them says the fact that the defendant did
20 not testify is not a factor to be considered by you in any
21 way in your deliberations. And I go on, he has a
22 constitutional right to remain silent, and the fact that
23 he exercised that right cannot be considered against him.
24 Can't even be discussed in the jury room.

25 MR. BRIDGES: I apologize, Your Honor. Thank you,

1 Your Honor.

2 THE COURT: All right.

3 MR. FINNEY: Your Honor, evidence of flight should be
4 charged to the jury.

5 MR. BRIDGES: I believe that's something he can
6 argue. I don't think that's a legal charge anymore.

7 THE COURT: I'll think about that. I mean I don't
8 have a charge on that that been presented through the
9 Court Administration Supreme Court. And I have never
10 charged that. Have you got a case that says it's an
11 appropriate charge I consider that.

12 MR. BRIDGES: There is State v. Grant that references
13 that it's improper for the trial judge to instruct the
14 jury on the law of flight.

15 THE COURT: And that's -- okay. And I never charged
16 it. If you make an argument I'll be happy to charge it.

17 MR. BRIDGES: It is certainly within the scope of his
18 argument, certainly. But as a jury charge, I think the
19 case law supports that.

20 THE COURT: Okay. I won't charge that.

21 MR. FINNEY: I respectfully accept your decision. I
22 just want to be on the record that I requested that.

23 THE COURT: Now, if you've got some case that
24 overrides Grant I'll be to consider that. But at this
25 point I don't think it's appropriate. Anything else?

1 MR. FINNEY: Nothing further.

2 MR. BRIDGES: Nothing from the defendant.

3 THE COURT: Okay. Let me go -- y'all want to see the
4 verdict form or want to wait until after the charge? I
5 mean my law clerk got caught by a train or something.
6 He's back there printing it.

7 MR. FINNEY: I don't need to see it right now.

8 THE COURT: Okay.

9 MR. BRIDGES: Yeah, we can ---

10 THE COURT: It's going to be simple verdict form.
11 It's going to be Count One, murder, guilty or not guilty.
12 County Two, kidnapping, guilty or not guilty. It's pretty
13 simple, straight forward. You know, verdict forms are
14 complicated, but this is going to be pretty simple. Okay.
15 All right. Are y'all ready for the jury?

16 MR. FINNEY: Yes, sir.

17 MR. BRIDGES: Yes, Your Honor. I want to remove this
18 map.

19 THE COURT: Okay. Well, get everything right, and
20 you want me -- I guess I need to speak with that one juror
21 before I bring the panel in here.

22 CLERK OF COURT: You want me to bring her to you,
23 Judge, or you want to go back there?

24 THE COURT: No. We've got to bring her out here.

25 CLERK OF COURT: Ms. Hannibal.

1 (WHEREUPON, the juror enters the courtroom.)

2 THE COURT: Okay, Ms. Hannibal, the fact that your
3 niece works for the Solicitor's Office, and even though
4 you assured me you could be fair and I assume you could
5 be, but as an abundance of caution after conferring with
6 the lawyers I'm going to excuse you and seat the last
7 alternate.

8 JUROR: Okay.

9 THE COURT: Now, and you're free to go.

10 JUROR: Okay.

11 THE COURT: I've been telling you the whole week that
12 you can't talk about this case. Now you can talk about it
13 with anybody you want to. Thank you so much. And I'm
14 sorry you had to sit here the whole week and didn't get to
15 decide it. You have a good day.

16 JUROR: You, too.

17 (WHEREUPON, the juror was excused from the
18 courtroom.)

19 THE COURT: Okay. Let's get the Clerk back. We'll
20 get them in here. Who did you tell me the foreperson was?

21 CLERK OF COURT: Judge, I don't know if we have it
22 marked.

23 (WHEREUPON, the jury panel enters the courtroom at
24 9:39 a.m.)

25 THE COURT: Thank you. Mr. Wiley, you're on the jury

1 now. Okay. I excused Ms. Hannibal, so I'm down to 20.
2 So everyone of you are on the jury. All right.

3 We have reached that point in the trial where you
4 will hear the close arguments of the attorneys. Then I
5 will charge you on the law and give you this case to
6 decide so if you will pay close attention. Mr. Solicitor.

7 CLOSING STATEMENT BY MR. FINNEY

8 MR. FINNEY: Please the Court. Thank you. Good
9 morning, Your Honor. Good morning, ladies and gentlemen..
10 It has been a long week. It has been a good week. As a
11 trial lawyer one of the most difficult things to do is to
12 get ready for a case where you have to put a lot of things
13 together and everything has to come together just right.
14 That has happened in this case.

15 There week we called 25 witnesses to present evidence
16 of the guilt of James Ginther. Every one of the officers
17 and witnesses and investigators and hunters and doctors,
18 every one came through. That's not an easy thing to
19 happened. But the blessing of that is that you all have
20 seen the whole picture. And having seen the whole picture
21 you have a much easier decision in my opinion because
22 there are no gaps. There are no cracks. There are no
23 what ifs.

24 This case came together very, very, very well because
25 there is a truth in the middle of the case, and that truth

1 is that James Ginther on November the 16th 2017 took the
2 life illegally, premeditatedly and violently from Suzie
3 Ginther.

4 I want to say thank you on the record up front to you
5 all because a month ago, before you got that letter from
6 Jamie Campbell saying that you had to be in Court this
7 week, you all were doing important things, other things
8 you might not have ever thought about ever wanting to be
9 on a jury. That might not have been on your bucket list.
10 But I thank you for coming every day, for being willing to
11 serve.

12 You don't know how important it is to solicitors and
13 defense lawyers and judges so that our system can work
14 every single day. It works because we have jurors, for
15 basically nothing, you don't get paid much to do this,
16 you're willing to come and say I'll do my civic duty. I
17 will serve. And you bring your common sense and you bring
18 your civic duty, and that's basically all you've got. And
19 it's important.

20 I want to thank Suzie's family because they trusted
21 us to take that case and to work that case and to do the
22 best that we could with that case. And even though it has
23 taken a long time and even though it means that out of
24 their lives they have had to start over and try to go
25 forward with since November of 2017. We had to open up

1 all of those issues again this week, but they hung in
2 there. They've been with us, and I appreciate y'all being
3 here. I appreciate y'all standing by us while we got this
4 process done.

5 Some of you might not be old enough to remember the
6 show Perry Mason, but every lawyer wants to grow up to be
7 Perry Mason, and Perry Mason had Della Street. I had my
8 own Della Street this week. She kept me straight. She
9 kept me focused. She wouldn't let me forget things that
10 have to be put in the record. I want to appreciate her,
11 and my Paul is Perry Masons Investigator. I have my own
12 investigators this week. Randall Stewart, I want to thank
13 you.

14 A very smart lawyer told me one time we all have a
15 very important gift that we got from God. We have the
16 power to choose. You can choose to do your homework and
17 try to pass that test without studying. You can choose to
18 go to that bar and drink and have a few drinks and drive
19 home. We have choices, and every choice has a
20 consequence.

21 In this case over the week you have heard of choices
22 that James Ginther had which way he decided to go. In my
23 opinion, based on the evidence that we have brought to
24 you, James Ginther planned to kill Suzie Ginther. He
25 planned it in advance, and he took every calculated step

1 that he could to pull that plan together and to carry it
2 off. The reason we know that, the proof that we have
3 brought to you about that is clear because the hunter saw
4 the hole on Wednesday. It was already dug, and it was
5 already filling up with ground water on Wednesday before
6 Suzie Ginther was shot and killed.

7 We also know that on that particular day he didn't
8 use his phone. Very easy to, if you want to leave your
9 phone at home, you're leaving in the middle of the night
10 to go to Sumter to do something against the law.

11 We also know that the time he had a gun that matched
12 the same kind of gun that killed Suzie. Planned in
13 advance. How do we know these things? Because there are
14 evidentiary pieces of the puzzle. We have situations
15 where he and Suzie -- he and Rachael, we have found out
16 through Rachael, were coming to Sumter on various times to
17 get ready to take Suzie back the Court so he could get
18 those kids.

19 In order to do the spying and the checking he would
20 have to come to Cherryvale. He knew a lot about
21 Cherryvale. He lived in the house with Suzie at
22 Cherryvale, the main house that John owns. And then he
23 got put out of that house, and then he when and lived in
24 the trailer a couple of blocks away. He stayed there
25 until he met Rachael, and then they lived in the trailer

1 for a while. Then they moved to Virginia. When he came
2 back the kids were in Cherryvale School, and he would go
3 to Cherryvale School and have lunch with the kids.

4 There would be times when he would be in Sumter, and
5 Rachael said, "I came with him. Brought the baby,
6 Patrick. And he would park the Cube around the corner
7 somewhere. Secret, out of way, and he would walk around
8 to check on Suzie's house to see if the kids were there.
9 To see if they were there alone. To see if Suzie was
10 there.

11 He was doing all of this weeks and weeks before
12 November 2017. Planning it. Putting it together. You
13 have to remember that when you are planning things and
14 putting things together you want to have things together
15 beforehand. You want everything together during and you
16 want to have it very smooth after.

17 Ladies and gentlemen, James Ginther dug a hole in the
18 forest days before, weeks before. Where is the shovel
19 that Rachael Salak said they owned. They had his and hers
20 shovels. Rachael showed you the shovel she had. Little
21 shorter with a handle on top.

22 When investigators go to look for James Ginther's
23 shovel it's not there. It's missing. It's gone. Why?
24 Because it's connected to the hole. Once you have a
25 situation where she's been killed and she's been buried do

1 you think James Ginther thought the body was going to be
2 found? Not in a million years. He knew that the car was
3 going to be found. That's why he put it in Cherryvale.
4 He wanted the police to be focused on Cherryvale.

5 We have a missing person. She didn't show up for
6 work. Her car is in Cherryvale. Something happened to
7 her in Cherryvale. But where is her body? Nobody would
8 have found it. When he left her that day, State's Exhibit
9 25, all that you can see is the bottom of the shoes.

10 He makes special arrangements, State's Exhibit 22, to
11 put leaves and dirt on top and cover the leaves and dirt
12 with big branches. You wouldn't want -- you wouldn't
13 cross that. You wouldn't just be walking around on this
14 looking for deer right here. You would go around that.
15 You would never have thought there was a body there.

16 State's Exhibit 21, 200 yards -- 200 feet -- 216 feet
17 from the roadway. A good distance away. Nobody is coming
18 down that roadway and going down there except the deer and
19 the squirrels to get down to that creek to get some water.
20 And what else do we know? In the parking area, scratches
21 on the ground. Very unusual. The police say, 'could be a
22 struggle. We're going to take a picture of that. We're
23 going to save that in evidence'.

24 What else did they find in the parking area? A
25 glove. Kind of unusual. A glove rolled up like it just

1 got there. It's laying on top of the leaves. It's not
2 buried. Might be connected. Let's take that. Put it in
3 evidence.

4 State's Exhibit 15, a ladies tampon. White paper
5 with blue and green ink flowers on it. Might be
6 important. We've got a lady down her buried. Guess what?
7 They didn't know it when they found this on top of the
8 ground that the lady that was buried, State's Exhibit 32,
9 had two tampons, same wrapper, same color, in her jacket.
10 The pieces are coming together.

11 They want to ask you, 'how big was the hole,
12 Mr. David Gayle? Was it 1 foot by 1 foot? How small of a
13 hole to put a body in. Well, if you want to see how big
14 the hole is look at the pictures in State's Exhibits 30
15 and 31. That shows you how big the hole is.

16 And if you really want to know what was the first
17 words that David Gayle says when he calls 911?

18 (WHEREUPON, an excerpt of a State's Exhibit was
19 played for the jury as follows:)

20 MR. GAYLE: "I'm down here in
21 Wadesville at Camp Burnt Gin, and it's a
22 spillway on your right hand side which is -- I
23 wanted to walk down there. I been down in there
24 yesterday. There was a big, deep hole. Looked
25 like an animal had dug. So when I came back

1 down there today the hole was covered up, and I
2 say, "Oh, you know, what is this." So I went to
3 look. There is a shoe sticking out of this
4 hole. I don't know if it's a dead body or what
5 it is. But it looks like a shoe with
6 somebody's ---

7 FEMALE VOICE: Where is it at?

8 MR. GAYLE: On Burnt -- Camp Burnt Gin. The
9 campgrounds."

10 MR. FINNEY: A great big hole yesterday. I saw it.
11 It's not there today. There is a shoe sticking out of it.
12 As far as the timeline goes, I have tried to present this
13 case to you in order so that you can understand what
14 people knew, what people didn't know, how things
15 developed. I intentionally didn't tell you things that
16 were going to be discovered because I wanted you to
17 discover them as the case unfolded for them to make better
18 sense to you.

19 Suzie Ginther was reliable. She was hard working.
20 She was dependable. She was up in the morning going out
21 the door at 4:00 a.m. to drive to Columbia. She was never
22 late. When she wasn't there in Columbia at 5:00 Amy
23 Yarborough got worried. This doesn't happen. Let me call
24 her. Ring. Ring. Ring. Hi. This is Suzie Ginther.
25 Leave me a message. It rings and then it goes to voice

1 mail.

2 We know from the cell phone records that were
3 analyzed by the S.L.E.D. agent that the phone rang several
4 times and then it was routed to voice mail. Just like you
5 can route a call you don't want to take from your phone.
6 When your phone is ringing you can route a call to voice
7 mail by hitting that button. I think Randall said it
8 might be a red button. 'Ignore' is what is says on my
9 phone.

10 You ignore it. That switches it from incoming call
11 to going to voice mail, but the secret of it is it says so
12 on the tower. It tells the tower which connected with it.
13 I don't know. I do want to take this call. You send it
14 to voice mail. It had to be routed. That call was routed
15 by a person holding Suzie's phone at about 5:15 in the
16 morning when she was already supposed to have arrived at
17 Columbia.

18 Ladies and gentlemen, somebody like James Ginther
19 knew that that minivan had a broken door. It was his
20 minivan. It was still in his name. Suzie never locked
21 her car, Billy said. It was open all the time. Wouldn't
22 have been a problem for somebody to get in the car in the
23 middle of the night. And we know he had to get in the car
24 in the middle of the night because we have a picture of a
25 Cube leaving Columbia at about one o'clock in the morning

1 heading for Sumter. Look at State's Exhibit 67.

2 No, I don't have the driver's license, the plate on
3 that. No, it's not in color. But thank Gods Christina
4 Gainey, Investigator, stayed up and worked this case. And
5 she looked at all the traffic cam she could and she found
6 this picture. Heading to Sumter at one o'clock in the
7 morning on Wednesday night. And there is the car that was
8 stopped in Kentucky a week later.

9 Look at them. Talk about it. Is that proof? Is it
10 circumstantial evidence that, yes, a car like that might
11 have been driven by James Ginther to Sumter. You bet it
12 is. When he gets to Sumter in the middle of the night on
13 Wednesday night he's already got a plan. He already knows
14 where he is going to park the Cube. It's got to be a
15 quiet place, an out of the way place.

16 But he's got to have time to get into that minivan or
17 get in that minivan when Suzie comes out. Whether it's at
18 five minutes to 4:00, 4:00, five minutes after 4:00, no
19 matter what time she gets in that minivan I will be
20 waiting for her. She will not be expecting me, and I will
21 take control. I've got the gun. I've got the element of
22 surprise. I will take her away from her family. Away
23 from her normal routine. I will take her out to the wood
24 line where I've already dug the hole. And she won't like
25 it, but we're going to do this my way.

1 And he gets her out there. It takes 12 to 15 minutes
2 to drive out there. When he gets her out there he pulls
3 her out of the car and things fall out of her pocket on
4 the ground. And he takes her down 216 feet to the hole
5 he's dug and he shoots her in the back of the head with
6 his handgun.

7 And he buries her the best he could. And, ladies and
8 gentlemen, at four o'clock in the morning, 4:30 in the
9 morning, it's dark. It's pretty cold. Nobody else is
10 down there. I can't tell you exactly how he did it, but
11 he did it. And the reason I know he did it is because on
12 the way back from down there he forgot and left a glove.
13 This glove. In the picture. Found by the investigator.
14 Sent to the lab. Tested by S.L.E.D. His skin cells are
15 the major contributor to the D.N.A. in the glove.

16 James Ginther's D.N.A. He didn't count on Mr. Gayle
17 being down there looking for deer. Mr. Gayle was there,
18 and he found Suzie. He didn't count on the cops finding
19 the van so quickly. 7:00 a.m. Only an hour or so after
20 Suzie got killed. They reported the van missing -- I mean
21 being out of place down there on the road looking kind of
22 strange and things are starting to crack.

23 It's not going the way he planned it. Remember when
24 he dropped the glove he was on his way out. That's -- he
25 was in a hurry. He wasn't dropping it on the way down

1 there. He had them on on the way down there. His D.N.A,
2 dark, 4:30 in the morning, down a pathway, way off the
3 road. After he shoots her he took the wrong kind of gun.
4 He took a gun that every time you shoot it the gun ejects
5 the casing.

6 State's Exhibit 27, the casing is found next to
7 Suzie's body down there by the burial site. The casing is
8 found by the Sheriff's Office cause it's too dark for him
9 to find it. He's scared now. He's done done the dirty
10 deed. He's got to get out of there. Thank goodness we
11 found the shell casing. It tells us what kind of gun
12 fired it. All we've got to do now the find the gun. He
13 gets back home in time to get his clothes in the washing
14 machine, to get upstairs to take a shower.

15 He doesn't know what the day is going to be like. He
16 doesn't know what the day is going to be like cause he
17 doesn't know what's going to break. He's buried the body.
18 He's hidden the car. He gotten rid of everything Suzie
19 had with her that day that wasn't inside her jacket
20 pocket. He got rid of her cell phone. He got rid of the
21 work phone that she mistakenly took from work the day
22 before. One of those hand held units. He got rid of her
23 car keys. He got rid of her Pet Smart work keys. He got
24 rid of all that stuff. He got rid of the shovel,
25 whenever. He didn't need it that day. Probably got rid

1 of the other glove.

2 How do you think he fell when he went to throw the
3 glove away and he realizes he only had one? Oh, God,
4 where is the other glove. Then he gets to Columbia. He's
5 cleaned up and he's waiting. At seven o'clock, 7:15, the
6 officer knocks on the door. He doesn't come down. He's
7 upstairs taking a shower. Rachael answers the door.
8 There's a car in Sumter, in Cherryvale, that's been found
9 that's registered to James Ginther. Does he live here?
10 Yes. Can you give me his number? I need to talk to him
11 about the car over there. Yes.

12 James Ginther's phone comes on for the first time.
13 Yeah, what's going on with the car. The car is in my
14 name? He didn't know that. Suzie had that car for a long
15 time. He didn't realize the police were going to be
16 talking to him. All of the planning, all of the spying,
17 all of the digging, he was trying to keep his name out in
18 the background. Why was he doing that?

19 He and Rachael were planning on going to Court. They
20 needed evidence. He was digging up evidence to try to go
21 to Court and win. He wanted those kids, J.J. and Emily,
22 in his house. He was tired of dealing with Suzie. He was
23 tired of paying child support. He was tired of the
24 friction. Rachael says they argued all the time. He knew
25 that. He didn't like that. The plan, let's get rid of

1 Suzie. I'll have the kids. After he talks to the officer
2 he says to the officer, "Can you go by the school and
3 check on my kids?" The officer does that. The kids are
4 fine.

5 He never after that goes to Sumter. Never goes to
6 see the van. Never goes to see the kids. Never goes to
7 talk to Billy. Never goes to look for Suzie. He never
8 does anything. That's Thursday. Friday, he's got some
9 things set up on his schedule because he's already planned
10 what he's going to do after Thursday morning when he gets
11 back from the woods and the burial. He's got a little
12 plan. He's going to stay active. He is going to take
13 some pictures in Ballantyne. He's going to a wedding
14 rehearsal and take some more pictures. He's got that on
15 his schedule.

16 He knows that Saturday, a day or two from now;
17 Thursday, Friday, Saturday, he's going to have the kids
18 dropped off supposedly by Suzie. But guess what? Suzie
19 is missing now. Her van has been found on Thursday
20 morning. She's missing, but he still thinks the kids are
21 coming because the schedule is they're going to be with
22 him all week. And Rachael's parents are coming in on
23 Sunday night. They're going to be there all week.
24 They're going to be a big happy family. They don't have
25 to worry about anything except the little problem where

1 Suzie has disappeared. And according to his plan she
2 hasn't been found. All they've got is her van. They
3 don't have her cell phone. They don't have anything.

4 But one little incident happened that he wasn't
5 counting on. Suzie texted him Wednesday night, and said,
6 "I want my book. You have been dragging me for a long
7 time. Please, go get my book and give it to me. I know
8 you probably threw it away." She texted him that
9 Wednesday night. He didn't know that she was going to do
10 that.

11 When he got back to the house Thursday and he checked
12 his phone which he hadn't been using cause he had been
13 gone from the house hiding in the Cherryvale area,
14 kidnapping his ex-wife and killing her, he came back to
15 the house and saw the text. And he said, "I better
16 respond." So he sent out a text Thursday morning at
17 7:41 a.m. He went to bed according to Rachael at
18 eight o'clock Wednesday night. He needed to get his rest
19 cause he had a long night up at one o'clock driving the
20 Cube to Sumter, hiding and getting ready for the attack.

21 Rachael says, "I had the baby that night in the big
22 room, and when I got up to go to the bathroom and I looked
23 in where he was supposed to be he wasn't there." It was
24 cold. She wanted to get back in the bed. She did. She
25 went back to sleep. She didn't hear or see him until she

1 heard him coming in early Thursday morning.

2 Now, we know that the van has been found. We press
3 ahead to more investigation being done about the van.
4 You've got the pictures of the van. Found on the side of
5 the road, out of place, close by her house. Sand all over
6 the back bumper. Sand all under the driver's steering
7 wheel. Sand in the back seat. Not the seat behind where
8 she was sitting cause there is a baby seat in that chair,
9 but sand on the passenger side of the van right where you
10 would have do come in if you came in the door on that
11 passenger side where that lock was broken.

12 Sand in the wheel wells of that van. Sand just like
13 they have out there on that dirt road. And here is an
14 interesting thing. Sometimes the small things tell you a
15 lot. Billy Parker gets to the van Thursday morning. He's
16 worried. He checking things out. He notices when he gets
17 in the van, the first thing, the seat is back too far.
18 She didn't drive this car. Somebody else drove that car
19 and forgot to put the seat back up.

20 He starts looking in the woods. He's trying his
21 best. He calls family. Suzie won't answer her phone.
22 She didn't show up for work. Her brother said, "I'm on
23 the way right now." He jumped in his car, and he drove
24 from Virginia. He got here about midnight, and they are
25 still looking for Suzie. Night has come. They haven't

1 heard from her at all. Thursday night.

2 Friday morning, the officers know where the body is.
3 They bring the body out. They're looking for evidence.
4 They've got the shell casings. They've Got the glove.
5 They've got the tampon up in that area. They have taken
6 their pictures. They're moving out to find out what
7 happened. They take her to the doctor to have the autopsy
8 done.

9 Going forward, Investigator Stewart, after Saturday's
10 autopsy goes by and sees James Ginther. He's not
11 expected. Knock. Knock. Knock. Knock. Knock. James
12 Ginther know she's been deceased. He knows she's been
13 found. He wasn't counting on that. It ain't coming
14 together the way he planned it. He knew they were going
15 to find the van. He never thought they would find the
16 body. Investigator Stewart talks to him for an hour.
17 Investigator Stewart says, "I need something from you,
18 James Ginther."

19 (WHEREUPON, a portion of a video was played for the
20 jury.)

21 MR. FINNEY: Let me think about this. Let me think
22 about this. He wants D.N.A. He wants my gun, and he
23 wants my telephone. Not, 'I'll do anything to help you,
24 officer. She was the mother of my children'. He knows
25 that she was buried in a grave with a gunshot to the head.

1 And he says, "Let me think about this." The officer
2 presses on because he has done this before. James Ginther
3 has never done this before. The officer is not going to
4 take no for an answer if he thinks that there are still
5 some things that he needs to operate and move and to
6 investigate.

7 At this point James Ginther is not a suspect. He's
8 there to find background information. How was Suzie
9 doing? Anybody mad at her? Is there anything that you
10 can tell me to help me with the investigation? Then the
11 officer says to him this.

12 (WHEREUPON, a portion of a video was played for the
13 jury.)

14 MR. FINNEY: Help me figure out who. He says, "Let
15 me call my family." After leaving his house Rachael says
16 the investigators go and Saturday evening they're still
17 processing; their still putting together their trip.
18 They're still putting the pieces together. After leaving
19 his house Rachael says to him, "Why wouldn't you have
20 given the D.N.A? What's wrong with giving the D.N.A? All
21 he wants to do is take the D.N.A. and put it in the lab
22 and see if it comes up so he can clear you. That's what
23 Investigator Stewart said he was going to do. He is
24 trying to clear people off his plate. If you didn't have
25 anything to do with it then can take you out of the way

1 and I can concentrate on the people who are still left."

2 They give his D.N.A. He comes back. He calls him
3 back. Rachael calls. Somebody calls and says, "Come
4 back. He's going to do the D.N.A." he does the D.N.A. and
5 after that things are not the same at James Ginther's
6 house because things are not going the way.

7 He knows he's a suspect. Before he left the house
8 that day the investigator gave him his rights. Read him
9 his rights. Left the house. After giving the serial
10 number for the gun, after giving the D.N.A, after not
11 getting the phone. You know, he didn't give him his
12 phone. He said, "I'll bring the phone to you so you
13 can -- he was supposed to come to Sumter later on.

14 Rachael can't sleep Saturday night Remember now,
15 Saturday night Rachael had seen him come in the house
16 early Thursday morning. The first thing he said to her
17 when he came in the house was, "Me and Suzie had a fight."
18 The second thing he does is he washes his clothes. The
19 third thing he does is he takes a shower.

20 Somewhere in that period, Friday night or Saturday
21 night, he cleans his gun. Rachael said, "Please don't do
22 that in here. I don't like the smell of those chemicals.
23 It upsets me and the baby." Ladies and gentlemen, if you
24 know anything about guns when do you clean your gun?
25 After you use it. Sometime Friday or Saturday, maybe

1 after the officers left his house he cleaned his gun.

2 Let me talk to you about this just a second. James
3 Ginther had a special relationship with that nine
4 millimeter gun. Have you ever seen a man sit down on
5 camera -- he might not have known he was on camera. For
6 on hour he talks to police officers in that chair. He's
7 got the gun sitting down there in front of him the whole
8 time in his house.

9 The officer was shocked. "You've got your gun on
10 you? Can we stop this right now and take that out of the
11 way and let's put it upstairs? You are in an emotional
12 state, and you've got your gun on you." That's not the
13 first time. You're going to see that in a of couple more
14 days. After Saturday comes Sunday. After Sunday comes
15 Monday. We're going to see that same, same thing again.

16 Cleans his gun. Rachael can't sleep. Sunday morning
17 he gets up. Rachael says something that shook him down.
18 "You did it, didn't you." Boom. What does he tell her?
19 "I don't think I can trust you." Then he starts, "Well,
20 if I can't trust her she might tell the officers what
21 she's seen," because she didn't tell the officers on
22 Saturday. She was giving him the benefit of the doubt on
23 Saturday when she said to the officers, "He slept with the
24 baby Wednesday night."

25 He was here with -- you know, she didn't say anything

1 at that time. But once she found out he had had a fight
2 with Suzie, a couple hours later she found out that the
3 van was found in Cherryvale, Suzie never made it to work.
4 The next day or day after she found out Suzie was buried
5 in a grave with her head shot. Something's coming
6 together.

7 You did it, didn't you? Sunday morning, I got to get
8 out of here. Yeah, you need to leave cause I don't -- I
9 think you're acting crazy. You've got to get out of here.
10 He packs up his gear. A lot of gear. He's got
11 everything. He's got food. He's got change of clothes.
12 He's got first aid kits. He's got everything. I'm out of
13 here. What is the last thing he tells Suzie before --
14 excuse me. Tells Rachael before he leaves? Rachael says
15 she tried to write it in this book, but her hands were
16 shaking too hard. He wrote it. State's Exhibit 78.
17 "Most west city Wyoming. Six months or two months at the
18 city hall. Recommend South Dakota until then."

19 She couldn't write it. Her whole world just fell
20 apart. She has been dealing with sickness and delivery
21 and post partum and financial pressure and James arguing
22 with his ex, and this and that and the other. And now
23 he's leaving. He takes the only car they have. He takes
24 the baby seat in the car. He takes his backpack full of
25 goods. He takes the credit card with all the family

1 money. He takes his Glock handgun.

2 If you look in the evidence you will see a couple of
3 receipts. We just put the ones in that we thought were
4 interesting. He leaves town one or two o'clock in the
5 afternoon. Rachael is crying. She's got the baby to take
6 care of. She doesn't know what to do. She calls Randall
7 Stewart. Randy Stewart says, "I'll send you some help."
8 Katrina Gainey comes and gets her, and we have her first
9 full statement about what happened. She tells the whole
10 story.

11 She says to the officer, "He wanted me to take the
12 fall for Suzie's death. And he told me he could tell me
13 how it was done. They won't be hard on you because you're
14 a woman, because you're a mother. I will get to raise the
15 kids. You take the fall." Strike three. Rachael says,
16 "Im not going for that. You've got to get out of here.
17 You don't know what you're talking about. I'm in danger
18 now. If you did that to Suzie, if don't do what you say
19 do I may be in danger." He gets on the road.

20 He's got his Atlas with him. If you look on Page --
21 you go to Virginia first, Page 106 in the Atlas. You will
22 see a receipt here. You will see two receipts. First
23 stop he made after he left South Carolina was in a place
24 called Hillsville, Virginia. He stopped at two stores
25 there just a few minutes apart. He bought some stuff at

1 the CVS Pharmacy and a couple of minutes later he went to
2 the Dollar General and bought teriyaki, teriyaki,
3 teriyaki, something to eat. Hillsville Virginia. It's on
4 I-77. As you leave Columbia you go through Charlotte.
5 You keep on going north. You get to Hillsville, Virginia
6 soon as you cross the Virginia line.

7 Couple hours later he's at the Walmart in Princeton,
8 West Virginia. Turn over to Page 112. When you get into
9 West Virginia as soon as you cross the border Hillsville.
10 Went to the Walmart there. He spent \$2 on some original
11 turkey something and got \$100 cash back.

12 If you look at this Atlas you will realize he was
13 heading up to Charleston, West Virginia where he would
14 take I-64 West from Charleston, West Virginia. West is
15 going towards Wyoming. Other places in that notebook.
16 But it's getting late. He's under a lot of pressure.
17 He's driving. He's driving. He has a crash on the
18 highway in Louisville, Kentucky, four o'clock in the
19 morning. His car is now totalled. He cannot use it.

20 He does not know that Suzie [sic] has given a full
21 statement to law enforcement. I'm sorry. Rachael has
22 give a full statement to law enforcement. He did not know
23 that. He hadn't called her. His phone is not in use
24 after he leaves Columbia, South Carolina at one o'clock in
25 the afternoon. His phone records never show another call

1 on that phone.

2 Suzie had given -- excuse me again. Rachael has
3 given a full statement. The police have issued a warrant
4 for his arrest. He doesn't know that. The computer
5 system that the police use, Randall Stewart has entered
6 his name, his description, his car, his car tag, and the
7 serial number of his Glock. In the computer system, be on
8 the lookout for James Ginther.

9 That's at 12:00 midnight, Sunday night, maybe a
10 little later other into one o'clock in the morning. James
11 Ginther's driving. Getting away. Going, going, going,
12 going. When Louisville police stop him he's in the
13 system. They run the tag in Louisville.

14 (WHEREUPON, a portion of a video was played for the
15 jury.)

16 MR. FINNEY: Lie Number One.

17 (WHEREUPON, a portion of a video was played for the
18 jury.)

19 MR. FINNEY: Lie Number Two.

20 (WHEREUPON, a portion of a video was played for the
21 jury.)

22 MR. FINNEY: Lie Number Three.

23 (WHEREUPON, a portion of a video was played for the
24 jury.)

25 MR. FINNEY: He asked him, the officer asked him, "Do

1 you have anything on you right now." What's his answer?

2 (WHEREUPON, a portion of a video was played for the
3 jury.)

4 MR. FINNEY: No weapons. He never tells him that
5 he's got the Glock. "I don't want to stay here. I'm just
6 going to leave my car on the side of the road cause I've
7 got a friend that I called and I'm going to see the
8 friend." He didn't call anybody. The records show that.
9 When the officers arrested him and looked around in the
10 car and look in his pockets, no phone.

11 MR. BRIDGES: Your Honor, I believe the phone records
12 do not go to this date that was presented at trial. It
13 think the last was November 19th in the morning. I think
14 that was not testified to.

15 THE COURT: Okay.

16 MR. FINNEY: Excuse me, Your Honor, but the exigent
17 records for the search warrant that the investigator got
18 went past the date of the arrest.

19 MR. BRIDGES: Those are not in evidence.

20 THE COURT: Okay. They're not in evidence so you
21 stick to what's in evidence.

22 MR. FINNEY: He wasn't going to give up that gun.
23 That was his way of keeping control. Something he very
24 much valued. The officers that night did an outstanding
25 job. First, because Randall put that information in the

1 system so that he could be tracked if he was stopped.
2 And, second, when he was stopped in Kentucky they did an
3 excellent job. They got him. They got the gun. They got
4 the car.

5 This is an easy case to prove. It's a hard case to
6 understand. Suzie Ginther was starting to climb, for the
7 first time in a long time. She had everything going for
8 her. She had happiness in her relationship. She had kids
9 that were doing well. She had a job that was treating her
10 like a star. James Ginther didn't have any of those
11 things. He had a girlfriend who was sick, who had a rough
12 pregnancy. He couldn't work because he had to take care
13 of her and the baby.

14 He was financial dependent on Rachael's father.
15 Child support was being pressurized. He had been moving
16 up and down. Virginia, California, back to South
17 Carolina. Too much pressure. We're not here to judge
18 anything except the evidence. I didn't walk in his shoes.
19 I don't know what he was thinking, but I know he had the
20 power to choose. And I know he chose the wrong path.

21 James Ginther is guilty of murder, and James Ginther
22 is guilty of kidnapping Suzie Ginther. I can stand up
23 here for the next two hours and talk to you about all the
24 things that I believe in this case that we think the
25 evidence shows you. It boils down do this: The gun that

1 shot Suzie Ginther's gun was the same gun he had in the
2 front of his pants when he talked to the investigators.
3 It's the same gun that Kentucky took off of him when he
4 left South Carolina headed for Wyoming or whenever he was
5 going. And it's the same gun that was taken by Kentucky,
6 sent to Randy and going on to the lab and tested to show
7 that it matches the shell casings that was found at that
8 scene of Suzie's burial.

9 Number Two, James Ginther was at the crime scene not
10 only because of the gun but because of the glove and the
11 D.N.A. that was found in the glove that was left at the
12 crime scene.

13 And, Number Three, we know that he had planned this
14 because the hole was dug previously. If you remember the
15 conversation one of the things we talk about with the
16 phone records is how many times can we show that he came
17 to Sumter. The phone records show that on the 8th of
18 November he came to Sumter and went to Cherryvale to the
19 school. The records at the school show he was there.

20 On the 9th, the next day, a week before she was
21 killed, he came to Sumter. He was in Cherryvale. His
22 phone was pinging that tower near her house. He didn't go
23 to the school. And after about 2:45 in the afternoon,
24 which is the last time the phone was used. It went dark.
25 The phone records, no contact with the network until 5:00

1 or 6:00 in the evening back in Columbia. Plenty of time
2 to take a trip over into that wood line and dig a hole.
3 Plenty of time.

4 Ladies and gentlemen, I told you in opening
5 statements some of the case was direct evidence. This is
6 direct evidence. Some of the case is circumstantial
7 evidence. Don't get confused. You can use both. Thank
8 God we have both. The bag of ammunition that he had in
9 his house when the officers took the search warrant had
10 all kinds of bullets in it. Hollow points with the
11 Winchester Brand. Ball round with the Winchester Brand.
12 Same as the shell casing that was found in the woods next
13 to Suzie. Everything matches up.

14 It's not easy to sit in judgment. When you took your
15 oath on Monday you said you would well and truly try this
16 case. You have no friends to reward. You have no enemies
17 to the punish. What you do have is an opportunity to set
18 the record straight. James Ginther is guilty of murder
19 and kidnapping, and I ask you to find him guilty. And I
20 thank you for listening, and I thank you for your service
21 and I appreciate the time this morning. Thank you.

22 MR. BRIDGES: Your Honor, may I have a few minutes to
23 readjust the courtroom?

24 THE COURT: Yes, sir.

25 MR. BRIDGES: May it please the Court.

1 THE COURT: Yes, sir.

2 CLOSING STATEMENT BY MR. BRIDGES

3 MR. BRIDGES: Good morning, ladies and gentlemen. I'd
4 like to start by extending the Solicitor's thanks. This
5 has been a very long week. We are very grateful for your
6 time and attention.

7 Again, this process would not be possible without
8 you, without your involvement. You've heard the facts of
9 this case. Very tragic case. Very tough, I'm sure, for
10 the families to be here. Family of Mr. Ginther. Family
11 of Suzette. Family of Rachael. This is very tough for
12 everybody. This process would not work without our
13 involvement.

14 Now, it's important to remember that in any criminal
15 case the burden of proof is on the State. And the Judge
16 will soon instruct you about that burden of proof and
17 about the State has to prove Mr. Ginther did these crimes
18 beyond a reasonable doubt. And there is many definitions
19 of reasonable doubt. The Judge will give you one.

20 Reasonable doubt has been described as a doubt that
21 would cause an ordinary person to hesitate to act. When
22 you look at the facts and you look at the evidence, as I
23 stated in my opening, there are more questions than
24 answers. There are unresolved issues at every turn.

25 You start with the timeline. You start with Suzette

1 leaving from her house early in the morning. Mr. Parker
2 testified that it was ordinary circumstance. He didn't
3 hear anything. Nothing was amiss. He didn't observe
4 anything going wrong. Then he hears from his boss that
5 that the van is in Cherryvale. Now, I don't know how he
6 knew it was Cherryvale, but it was no witness. We don't
7 know how that happened.

8 The van in Cherryvale is -- the State made a big
9 point about how Mr. Ginther used to live in some distance
10 away, but he couldn't walk there. But what is most closer
11 the address at Babette. And the address Babette there is
12 Mr. Warren Dundero. Warren Dundero, who you heard
13 testify, convicted burglar, convicted drug dealer,
14 convicted auto thief. He's got stolen vehicles in his
15 yard.

16 Apparently, on Friday he was out stealing vehicles.
17 About week earlier he had ran from the police. He had an
18 injury on his face that was noted when Investigator
19 Stewart came up on Friday to interview him. What a bad
20 coincidence for Mr. Dundero. He's got stolen cars in his
21 yard. He's got facial injury, and low and behold, there
22 is this van right across the street.

23 And Investigator Stewart said when he testified, 'he
24 was a primary suspect at that point'. Now, the van as the
25 officer who processed testified, it was located at 7:00,

1 but it wasn't processed until about 3:30. So it was
2 sitting there unsecured in Cherryvale. And Mr. Parker
3 came to look through it. The investigator on scene said
4 the inside didn't show signs of a struggle. There was
5 some sand. There was no fingerprints of any kind. No
6 blood of any kind. They didn't get any D.N.A. evidence or
7 anything like that.

8 Apparently, Mr. Ginther -- again, none of
9 Mr. Ginther's fingerprints in the van. His blood, his
10 D.N.A. were in the van, neither was Suzie. Again, there
11 is a lot of unresolved questions about how the van went
12 out to the woods, how many vehicles were involved.

13 The State is making a point about this traffic
14 footage. This is at 12:51 in Columbia. I think Agent
15 Gainey testified that it's about 30-miles away. There are
16 many different roads before you get from here to Sumter.
17 Many different ways that -- this is not Cherryvale. This
18 is not outside any location. This is not in Camp Burnt
19 Gin. This is remote in time, remote in place, very
20 non-specific. You can't see what type of vehicle this is.

21 This is no indisputable this is a Cube or anything
22 like that. There is -- Agent Gainey testified a lot of
23 box type is vehicles in the world, and there is -- even if
24 this is a Cube it's unknown how many Cubes exist in this
25 area. There are no pictures of driver. It's no tag

1 number.

2 And one thing that has not been testified to this van
3 was not testified to as being in Cherryvale area that
4 morning anywhere close to any of those locations where
5 Suzette was last seen. They also did soil samples on Mr.
6 Ginther's car, and he could not establish that he was at
7 any of those locations.

8 Now, when you get to the scene there continues being
9 more questions than answers. And the parking area, there
10 is a glove. Now, a lot has been made about this glove,
11 but this glove actually contains way more questions than
12 answers. You heard from the D.N.A. expert. There was at
13 least three individual contributors to this glove, and in
14 the any major component there are at least two
15 contributors.

16 One person that was not ruled out -- not Suzette's
17 and it was not James'. One other person we have no idea
18 who they were. We have no idea what their involvement
19 was. Were they there. What was going on that day. And
20 the D.N.A. expert also said something very important. For
21 children, and James and Suzette had two biological
22 children, without samples from them their D.N.A. would
23 show the exact same as the parents.

24 And the -- we've had testimony from both Rachael and
25 Billy that the kids went back about forth between the

1 houses. We had testimony from Rachael that James kept --
2 you know, he still had some of his stuff at the house.
3 So, again, there are more questions than answers around
4 this glove. And D.N.A. is time sensitive. It doesn't
5 tell you when somebody wore this. It doesn't tell you the
6 circumstances under that. It doesn't tell you any of
7 that.

8 And in fact, this tells us that there are more people
9 involved in this that we don't know about; that we don't
10 have samples. We didn't develop that. So if the van was
11 there, and this was in the van, and the van, the kids had
12 been in the van, the van had been to Suzie's house, had
13 been to James' house, you need to say it was his D.N.A. in
14 there.

15 That doesn't establish he was there the morning that
16 this happened. In many ways his D.N.A. could be there
17 does not establish that he was there. And, again, because
18 of the issue that the children weren't tested we won't
19 know if that was actually his sample or not. And then at
20 that scene there is the most tragic part of this whole
21 thing; Suzette being in that hole.

22 The hunter testified, and he also says in the 911
23 call, that the first day it looked like an animal had dug
24 the hole. He could not tell if that was a manmade or a
25 human hole. And he said it was quite small at first. So

1 the State is claiming that it was pre-meditation and
2 planning. It's in dispute whether that first day that was
3 actually a predug hole or if that's a naturally occurring
4 thing. I believe David Gayle said a coyote.

5 He's a hunter. Very familiar with the area. He's
6 been hunting that area for years. He says that's his
7 sweet spot that not many people know about. So it's just
8 too much evidence that the hole was hastily dug after the
9 fact and created not some process of long planning and
10 scouting out. And that's -- then we go to what else? Was
11 that the hole.

12 There is ballistics evidence. Well, the ballistics
13 evidence. Now, the ballistic evidence is three part.
14 There is bullet fractures and there is shell casings. The
15 ballistics expert said he matched the shell casing to the
16 Glock, but he didn't test any other Glock. He just tested
17 one Glock. And he said that there is at least one Smith
18 and Wesson firearm and other Glocks make similar patterns.
19 He said, "This matched up based on my tests," but he only
20 tested one Glock.

21 And most importantly, the bullets, they could not
22 match them to any gun and they could not match them to the
23 casing. It was inconclusive. Even the caliber was
24 inconclusive. So you a three piece puzzle with the
25 bullets the matching the cartridge, and the bullets

1 matching the cartridge. We're missing two of those three
2 pieces. And the one piece, again he only tested one
3 Glock.

4 And, tragically, more questions than answers raised
5 about the condition of Suzette. It was testified by
6 Investigator Stewart, who was present at the autopsy, that
7 that autopsy raised more questions than answers. And you
8 heard from the doctor, Doctor Collins. She had no other
9 injuries other than the gunshot wounds. There is no signs
10 of restraint. There were no marks. There were no
11 scratchings.

12 It was testified that that was a heavily brushy area
13 from where the parking area was to where the hole was.
14 So, again, how does this kidnapping happen? Is there
15 force involved. There was testimony that her and James
16 were having issues. They don't trust each other. She
17 doesn't like him. She doesn't put up a fight.

18 There is just no -- there an unanswered questioned
19 about how she gets out there without any injuries. The
20 question is we don't know how she got out there. We don't
21 know how the van got out there and the D.N.A, we don't
22 know who was out there. And these are all gaps in the
23 State's theory. These are gaps.

24 Now, we move from the -- from the last other main
25 piece of evidence is the cell data. Now, I put these maps

1 up. They were also on a computer, but I put these maps
2 into evidence because I think it was good to have. Now,
3 there has been a lot made of James' phone potentially
4 being off or not receiving calls. But, again, that's
5 speculation on where his phone was. The only towers we
6 have, tangible information we have, is that his phone was
7 in Beltline at his house over 30-miles away both the day
8 before and the morning of this incident.

9 So you can speculate, oh, his phone may have been off
10 or might have been something like that. It's also
11 consistent with what he said; that he was asleep with the
12 baby. The cell expert testified that if you had the phone
13 and you didn't have activity on it that it wouldn't ping
14 the tower. So, again, it's speculation about whether the
15 phone was going off or not. All we have tangibly is that
16 he was in Columbia the day before and the morning of. And
17 there is no tower pinging anywhere near Cherryvale for
18 those two days at all.

19 And the other information that the State brings up
20 about him going to Cherryvale about a week before and
21 about a week after that, that was consistent with what
22 Rachael testified is that was something he normally did,
23 take his kids Cherryvale Elementary. And there have been
24 no maps showing that he was even in those times he went
25 to Camp Burnt Gin or anywhere in that area. He was

1 confined to the Cherryvale area where had a habitually
2 tested -- again, it's not -- that's not a crime to see
3 your kids at Cherryvale Elementary. He had visitation
4 rights. We heard no reports of him doing anything
5 improper there when he was at these visits.

6 And, again, the map does not -- it does not show on
7 those days that he went to Camp Burnt Gin or that he dug a
8 hole or anything like that. So there is all these
9 unanswered questions. And, you know, at this time the --
10 chronologically, we're hitting Saturday. The autopsy has
11 happened. There are a lot of unanswered question. That's
12 where how you go from unanswered questions to James
13 Ginther as a suspect and arrested, two things. It's law
14 enforcement.

15 You have Investigator Stewart arriving, you know,
16 saying originally that Dundero was my primary suspect.
17 You have him -- oh, now, there is an ex-husband. I'm
18 going to go to the house. And he does things and says
19 things as we've heard him testify to like he's in a movie.
20 He told his neighbor pastor to pray for him if you
21 believed he had a soul. He told Mr. Ginther in Kentucky
22 he can choose between needle or the chair.

23 He told Mr. Ginther himself -- he quotes Sherlock
24 Holmes to Mr. Ginther while he's at his house. He also
25 expresses repeated concern for him while also very

1 carefully keeping his interrogation going. And in his own
2 words, in Investigator Stewart's own words, Mr. Ginther
3 during that time was in a very emotional state. He wanted
4 to talk to his father. And, again, James has a concealed
5 weapons permit. He has a constitutional right to have
6 firearms. He had no possession of illegal firearms. It's
7 not illegal to carry firearms. And as Rachael testified
8 he habitually carries that Glock everywhere.

9 And you saw two interactions with law enforcement.
10 Mr. Ginther where he is armed. He in no way tries to use
11 his weapon. He in no way makes any motion to do that.
12 He's allowed to have these things. It's not a crime to
13 have the Glock, and after James is arrested he's taken
14 back here.

15 You have Stewart. Me meets with Brittany Hallman,
16 somebody who lives with Warren Dundero at his house. She
17 tries to show him some more information saying, "I think
18 you need to look into this." At that point, you know,
19 Stewart said he couldn't put it in evidence. He didn't
20 test it. He just didn't think it was relevant, because at
21 that point he has already arrested James and made his
22 decision. He's ex-husband. That's it.

23 There are all of these unanswered questions. We're
24 not going to answer them because we have the man. We have
25 the ex-husband. Now, how did we get from a lot of

1 unanswered questions Friday -- Thursday and Friday and
2 Saturday to James is the guy? The key to all this is
3 Rachael Salak. That's -- there is no warrant. There is
4 no anything before Rachael Salak comes to S.L.E.D. And
5 the Judge will tell you that you're allowed to evaluate a
6 witness' credibility and believability.

7 And I think it's important that we take a look at --
8 now, Rachael is on camera on Saturday. You get to see,
9 you know, her version of -- she's there with Investigator
10 Stewart in the house and Investigator Gainey. And at no
11 time does she say anything that -- anything of what she
12 said on Sunday.

13 (WHEREUPON, a portion of a video was played for the
14 jury.)

15 MR. BRIDGES: So you see Investigator Stewart asks
16 him, you know, "What were you doing last night," and he
17 says, "I was with the baby. I had the baby at night."
18 Rachael confirms that. She is sitting right there. She
19 is there is for a good length of time casually on the
20 phone. Now, she testified that during that day she was
21 just so overwhelmed, everything was so crazy, she couldn't
22 coherently remember any of this.

23 Well, I encourage you to watch this tape to see does
24 she look like that? Does she look like she's, you know,
25 just incapable of even processing what's going on here.

1 As was testified to she was separated for part of that
2 with Agent Gainey. And, you know, you can actually hear
3 them I think kind of laughing at one point in this video.
4 And, again, Agent Gainey said during that time that she's
5 not saying anything. She's not saying her story on Sunday
6 about James showed up right before dawn and washed his
7 clothes and all. So you have inconsistent statements from
8 her because on that video on Saturday she is not tell the
9 story she is telling on Sunday.

10 Now, it's clear after Investigator Stewart's visit is
11 over that, you know, James is a suspect and things are
12 getting serious. And Rachael has testified that she had a
13 lot of health problems. A lot of thing were going on.
14 She was worried something was going to happen. And she
15 actually told James to leave. It's not like saying he
16 left with all this. He was told to leave.

17 Now, he's, you know, not been listening to anybody.
18 If he's the type of person that committed this crime
19 then -- I mean he doesn't have to listen to her. He
20 leaves without any resistance. He leaves at her request.
21 And she testified things -- some other things that were
22 very interesting. She testified that the family was not
23 having financial problems. She kind of went back and
24 forth saying, "Yes, James and Suzie had fought," but also
25 things were getting so much better. After the baby things

1 were getting so much better. She testified that she
2 didn't like Suzie, and then she testified that, "I just
3 said that because that's the impression I got from James."

4 Again, there are many inconsistencies. Their own
5 words, it's more importantly testified that repeatedly she
6 had problems remembering details. She had problems
7 piecing all this stuff together. And most importantly,
8 and this is why I thought it was important enough to put
9 it in evidence, Defense Exhibit Two, in her own words to a
10 mutual friend.

11 "I've had delusions in the past. Somebody needs to
12 look into my medical history." She's on disability for
13 bipolarism. Again, you know, all the stress of pregnancy
14 and everything else. How reliable and accurate and her
15 statements of accounts of things be. That's a question
16 that you can decide. Now, she gave her own definition, I
17 believe, when I asked her what she meant by that, you
18 know. And something involving believing people were
19 possessed or something like that.

20 Well, here is Mariam Webster's definition of
21 delusion: "Something that is falsely or delusively
22 believed. A persistent false psychotic belief regarding
23 the self or persons outside the self that is maintained
24 despite indisputable evidence to the contrary." So she
25 has her definition, and we have the dictionary definition.

1 So, again, you assess credibility, believability of a
2 witness.

3 And from there, you know, when Stewart is there it
4 would be very hard to characterize that in that two and a
5 half hours as James being uncooperative or cagey. They
6 showed up unannounced, uninvited. He welcome them into
7 his home. He talks to him for two hour. And at no time
8 is he aggressive in that video. At no time is he, you
9 know -- he has -- he's in a very emotional state. As you
10 can see in his own words his emotions.

11 Many times he's bursting into tears. Many times he
12 is very sad. And, you know, he just wants to talk to his
13 family and he has every right to. At that point there is
14 no arrest warrant. At that point there was no search
15 warrant. He legally owns his gun. There is no way have
16 die he have to surrender any of those things.

17 And, in fact, he shows his phone. It's on video. He
18 shows his phone to Investigator Stewart and he goes
19 through the messages with him. Again, does that she him
20 being uncooperative? Withholding? And he eventually does
21 give him a D.N.A. sample which he did not have to do. And
22 its actually been testified by Investigator Hilliard and
23 Agent Gainey that it was James who called and said, "Hey,
24 come back to the house. I want to do this." No. Rachael
25 is saying that that was at her behest and everything.

1 But then on Sunday he goes to Kentucky, and that's,
2 you know, that's something the State will note that, oh,
3 he went out of state and that is suspicious. Rachael went
4 to California very shortly after this happened, too. So
5 you have James who is told he has got to leave the house.
6 And there has been testimony, you know, that he has a
7 father in Tennessee. He doesn't have any local
8 connections to Sumter. He's got nowhere to go locally.

9 Now, and again, before Stewart left he did say, "You
10 know you can't leave the state." He didn't say, "If you
11 don't turn yourself in within the next 48 hours, that's
12 it. I'm coming to get you." None of that happened. At
13 that point he was free to go. He was not a suspect. I
14 mean, he was free to go. There was not an arrest warrant.
15 There were not any restrictions on his travel.

16 And, again, there is plans for them to get married
17 that preexist all this, completely. There was marriage
18 license on, I believe it was November 6th. And then in
19 Kentucky James had the car accident. Officers testified
20 on the video, you know, they said he was sleepy. He was
21 drowsy. Again, they say he gives a fake name and stuff,
22 but he's also pretty out of it.

23 And it's also, you know, again, he's carrying his
24 weapon that he legally allowed to carry. And everything
25 he has is consistent with things we know about his habits.

1 He has, you know, military background. He has a lot of
2 tactical gear. He habitually carries his gun. He likes
3 to do outdoor activities. So and he has also been kicked
4 out of his house. So it wouldn't be surprising that he
5 would have food and clothes cause we don't know -- you
6 know, he doesn't know where he's going to stay next.

7 So, again, the key, when you get to this case, you
8 have all these unanswered questions about the crime scene,
9 about the D.N.A, you know, multiple people potentially
10 being on the glove. Lot of unanswered questions about how
11 the van gets out there, multiple vehicles involve, no
12 eyewitness testimony about that Nissan Cube being in
13 Cherryvale about the time of the crime.

14 And the maps that we do have about the cell phone
15 activity show that he was at his house in Columbia. Now,
16 you can speculate that his phone was turned off and all
17 these other things, but again, what we actually have, the
18 actually documentation is that he was in Columbia. And
19 Investigator Stewart comes to his house as you saw on the
20 video.

21 Both him and Rachael say he was watching the baby
22 that night. She doesn't try to correct it. It's not
23 until the next day and then everybody starts to panic and
24 then you've got to assess her credibility. Somebody that
25 has had delusions. Somebody that has a host of medical

1 problems; that had repeatedly testified that she's has
2 problems remembering things. She has problems piecing
3 things together. So, again, these are all things that are
4 reasons to hesitate to act. These are all gaps in the
5 State's case.

6 It's not a crime to carry weapons when you have
7 permits. It's not a crime to go to Kentucky. It's not a
8 crime to have tactical gear. It's not a crime to visit
9 your kids at Cherryvale. They have to prove beyond a
10 reasonable doubt that he actually was involved; that he
11 did this murder; that he did this kidnapping.

12 Again, the injuries and the crime scene don't show
13 anything other than the gunshot wound to the head. There
14 is no testimony about him taking her vehicle or there is
15 no testimony about how she was run off the road or taken
16 out there at all. Again, this is an extremely tragic
17 situation, but again, there are so many unanswered
18 questions. And as I said in my opening, too, it's not my
19 role to solve the case. We can't solve the case in this
20 context. This is about is James Ginther guilty or not.

21 And because there are so many unanswered questions
22 and because he relies so much on the testimony of Rachael
23 who I submit is a very unreliable witness who has many
24 issues with memory and processing events.. The State has
25 not met its burden of proving James guilty beyond a

1 reasonable doubt of either charge. And because the State
2 has not met their burden the only verdict that cannot --
3 that can be returned is not guilty only both counts.
4 James Ginther is not guilty of murder. He's not guilty of
5 kidnapping.

6 And, again, I thank you for your time and attention.
7 It's always a privilege to practice law in Sumter in front
8 of you all.

9 MR. FINNEY: Please the Court?

10 THE COURT: Yes, sir.

11 CLOSING STATEMENT BY MR. FINNEY

12 MR. FINNEY: Ladies and gentlemen, this is the final
13 time you get to hear from the lawyers today, so I won't
14 belabor the point. I do thank you for your patience. If
15 I understood my colleague he just wanted you to believe
16 that the reason you should let James Ginther go is because
17 we doesn't test his two children and their D.N.A. Because
18 if their D.N.A. was in the glove or they were playing with
19 the glove, which isn't in evidence, that would somehow
20 show how his D.N.A. was in the glove.

21 Because he thinks or he believes that you believe
22 that the kid's D.N.A. matches the dad's D.N.A. D.N.A.
23 wouldn't be worth a cuss if everybody's children had the
24 same D.N.A. as they did. The reason D.N.A. The reason
25 that D.N.A. is scientifically proven in this Court is

1 because everybody's D.N.A. is different just like
2 everybody's fingerprint is different. I don't care how
3 many children you have. Their D.N.A. is different, and
4 they're fingerprint is different.

5 This is an argument that has no validity. They're
6 trying to get you to change the focus. They want you to
7 focus on reasonable doubt when you have facts and
8 evidence, proof. Your job is to weigh the evidence and
9 find did we prove it beyond a reasonable doubt. The
10 question is going to be, when you go back in that jury
11 room, will you hesitate to act based on the evidence.

12 When the question is asked, "Is James Ginther guilty
13 of murder," will you hesitate to act or will you rely on
14 the evidence. The circumstances. The proof.

15 We needed cell phone data. It would be great if
16 James Ginther was using his phone, and it was pinging off
17 the towers out there in the woods where Suzie was. We had
18 to check. What we found is his phone wasn't in use for a
19 great deal of time during the month of November. His
20 phone wasn't in use for great deals of time when he was in
21 Sumter spying on Suzie. He would leave Sumter and for
22 long periods of time his phone wouldn't come back on the
23 network until it was back in Columbia.

24 We don't know what he was doing, but we know it gave
25 him an opportunity to do what he wanted. Law enforcement

1 had tunnel vision. Warrant Dundero, is it an opportunity?
2 Let me say this. You heard Suzie say when they came over
3 here they would take the kids to the park down in
4 Cherryvale. That park is very close to Warren Dundero's
5 house. James Ginther knew that area. He used to run.

6 Suzie said he would go out and exercise and run
7 around the area. And I'm sorry. I keep saying. 'Suzie'.
8 I'm sorry. It's Rachael. I apologize. Rachael said when
9 they lived in Cherryvale she knew his habits. He was a
10 fitness guy. He liked to go hiking. He took the kids.
11 They would have picnics in this area. Poinsett, Rachael
12 remembered the name of it.

13 State's Exhibit 57, this is where Suzie was found.
14 Poinsett State Park is over here a couple miles. They
15 used to go there. They used to have fun. James Ginther
16 rode around. He knows what's going on. He's familiar
17 with that area, and James Ginther is planning to kill his
18 own wife. He's not going to take his phone everywhere.

19 I'm sorry I don't have the records, but I understand
20 why we don't have the records. Rachael is the key to this
21 case. If you could go back in the jury room and discuss
22 what the evidence law enforcement had before Saturday they
23 were going to ask James Ginther to volunteer to help them
24 to get the D.N.A, the phone records and the gun. He said
25 it on the tape. Randy Stewart said, "I can do this the

1 easy way or the hard way. I'm just asking for your help
2 because I'm here in Columbia. I'm trying to put this case
3 together."

4 A court order could have been gotten for the phone
5 records and the gun test and the D.N.A. Rand was not
6 focused. He wasn't tunnel vision. He was asking for
7 cooperation. If you don't have Rachael Salak's statement
8 then things are going to take longer to develop. Rachael
9 Salak statement sped up the process because she then
10 realized what she had information about his whereabouts,
11 his activities, what he said to her when he came in the
12 house Thursday morning about having a fight with Suzie.
13 All of those things came together.

14 His process is she wasn't processing. That was her
15 words, "Im not processing things. Just found the van. A
16 day later I found out she's dead. I've got all these
17 issues. James is acting different." The police are at
18 the house Saturday. They come and talk to him. He won't
19 give up his D.N.A.

20 Yes. But she's not the key because other things;
21 they have the bullet. They were going to get that gun
22 tested once they found out he had the kind of gun. It was
23 going to be a match even if Rachael was not giving a
24 statement. They have the glove. The D.N.A. was going to
25 be at match as soon as the judge ordered him to give up

1 the D.N.A. All they had to do was get the sample. And
2 they tried to do it the easy way. They could have very
3 easily done it the hard way.

4 Rachael Salak and her condition is not the issue
5 here. She says in those texts, "I used to be ill, but I'm
6 better. I've gotten better." This is the man that she
7 thought she was going to spend the rest of her life with.
8 She was upset. He was in jail when those messages were
9 written. She was torn. She was struggling.

10 She had her feelings, and then she had to stand up
11 for her child like she did when she said, "I don't like to
12 way you look, James. You've need to get out of here. You
13 did it, didn't you, James?" And James only could say,
14 "You take the blame, Rachael. I'll raise the kids,
15 Rachael. They won't treat you hard, Rachael."

16 There is no reasonable doubt here. You talk about
17 it. You explore it. Use your common sense. I ask you to
18 do that. There are things that we probably neither one of
19 us has said today. There may still be a question in you
20 mind. The 12 of you together can reason it out. It
21 doesn't have to be a perfect case. It doesn't have to be
22 a confession in every case. These are cases that are
23 decided by the weight of the evidence. I have given you
24 more than enough evidence to decide that beyond all
25 reasonable doubt James Ginther broke the law, took a life,

1 and he should pay for it.

2 THE COURT: Ladies and gentlemen, y'all need a break?
3 We'll take about a 10 or 15 minute break. Don't discuss
4 the case. I'll get y'all back out very soon.

5 (WHEREUPON, the jury panel was excused from the
6 courtroom at 11:17 a.m.)

7 THE COURT: All right. We'll be in recess for ten
8 minutes.

9 (WHEREUPON, Court was in recess at 11:18 a.m. and
10 reconvened at 11:36 a.m.)

11 THE COURT: Everybody ready?

12 MR. FINNEY: Yes, sir.

13 MR. BRIDGES: Yes, sir.

14 THE COURT: Y'all want to look at the verdict form
15 real quick? All right. If the jury is ready you can
16 bring them in. If they need more time that's fine, but if
17 they're ready to go we are.

18 (WHEREUPON, the jury panel enters the courtroom at
19 11:37 a.m.)

20 CHARGE OF THE COURT

21 THE COURT: Thank you, sir. Ladies and gentlemen of
22 the jury, now that you have heard all of the evidence in
23 this case as well as the arguments of the attorneys I'm
24 going to charge you the law that you are to apply in this
25 case. Under our constitution and code of laws only a jury

1 can make a finding of facts in a case, so if I am not
2 permitted to have an opinion about the facts. So if I
3 said anything or done anything in this case that indicate
4 to you that I might have an opinion about the facts you
5 are disregard that cause you and only you are the ones to
6 determine the facts in this case.

7 And that's same constitution, same code of laws that
8 makes me the -- makes you the exclusive judge of the facts
9 make me the exclusive judge of the law. So if you have an
10 opinion of what you think the law is or what you think the
11 law should be and it differs from what I now tell you the
12 law is under your oath you are to disregard your opinion
13 and apply the law exactly as I give it to you.

14 If fact that the defendant was arrested, charged and
15 indicted in this case is not evidence in this case. And
16 cannot be considered by you as evidence of guilt in this
17 case nor does it create any presumption or inference of
18 guilt. Indictment is simply a formal legal document that
19 contains the charges against the defendant and serves as
20 the formal document to process this case through the court
21 system.

22 Now, the defendant has entered a plea to this
23 indictment to not guilty, and that burden casts upon the
24 State the burden of proving this defendant guilty beyond a
25 reasonable doubt. A person charged with committing an

1 offense in South Carolina is never required to prove
2 himself or herself innocent. And I instruct you and
3 emphasize to you the fact that the defendant did not
4 testify in this case is not a factor that can be
5 considered by you in any way in your deliberations. In
6 your deliberation of considering the guilt or innocence of
7 this defendant.

8 It must not be considered in my manner whatsoever. A
9 defendant has a constitutional right to remain silent, and
10 the assertion of that right cannot be considered in your
11 deliberations. And under your oath you are to draw no
12 conclusions whatsoever from the fact the defendant did not
13 testify in this case. That cannot even be discussed in
14 your deliberations, the fact that he didn't testify,
15 because he has the constitutional right and the State has
16 the burden of proof of him beyond a reasonable doubt.

17 And it's important an rule of law in this country
18 that a defendant in a criminal trial is always to be
19 presumed innocent of the crime for which he or she is
20 indicted unless and until his guilt has been proven by
21 evidence that satisfies you of that guilt beyond a
22 reasonable doubt.

23 A presumption of innocence is not a mere legal
24 theory. It's not just a legal phrase. It is a
25 substantial constitutional right which every defendant is

1 entitled. The presumption of innocence accompanies a
2 defendant from the time he is charged throughout the trial
3 until you reach a verdict of guilt based on evidence that
4 satisfies you of that guilt beyond a reasonable doubt.

5 A reasonable doubt is a doubt which makes an honest,
6 sincere, conscience juror in search of the truth to
7 hesitate to act. Proof beyond a reasonable doubt must
8 therefore be proof of such a convincing character that a
9 reasonable person would not hesitate to rely and act upon
10 it in the most important of his or her own affairs.

11 Proof beyond a reasonable doubt can also be described
12 as proof that leaves you firmly convinced of the
13 defendant's guilt. There are very few things in this
14 world that we know with absolute certainty, and in a
15 criminal case the law does not require proof that
16 overcomes every possible doubt. And based on your
17 consideration of the evidence if you are firmly convinced
18 of the defendant's guilty of the crime charged you must
19 find him guilty.

20 If on the other hand you think there is a real
21 possibility that he is not guilty you must give him the
22 benefit of that doubt and find him not guilty.

23 Now, in determining the facts in the case you must
24 necessarily pass upon the credibility which simply means
25 believability of the witnesses and the value of weight to

1 be given to their testimony. You alone must decide the
2 force and effect and the truth of that testimony. In
3 making these decisions there are many things that you may
4 and should take into consideration such as the manner or
5 appearance of the witness on the stand, sometimes referred
6 to as the demeanor of the witness.

7 Was the witness forthright or hesitant. Was the
8 witness' testimony consistent or did it contain
9 discrepancies. What was the ability of the witness to
10 know the facts about which he or she testified. Did the
11 witness have a cause or reason to be biased and prejudiced
12 in favor of that testimony or was the witness' testimony
13 corroborated or made stronger by other evidence and
14 testimony or was it made weaker or impeached by such
15 evidence and testimony.

16 Now, the rules of evidence do not ordinarily permit a
17 witness to testify to an opinion or a conclusion. And
18 exception to this rule exists for witnesses we call an
19 expert witness. A witness who by education and experience
20 has becomes an expert in some art, science, profession or
21 calling may state an opinion as to relevant materials and
22 matters in which the witness claims to be an expert. And
23 may also give reasons for that opinion.

24 You should consider an expert's opinion received in
25 evidence in this case just like any other evidence. Give

1 it the weight you think it deserves. If you decide the
2 opinion of an expert is not based on sufficient education
3 or experience or if you conclude that the reasons given in
4 support of the opinion are not sound or that the opinion
5 is outweighed by other evidence you may disregard the
6 testimony in its entirety.

7 An expert witness' testimony is to be given no
8 greater weight than that of any other witness simply
9 because the witness is an expert. And you're not required
10 to accept that expert's opinion even though it is not
11 contradicted. And as jurors you have a right to believe a
12 small portion of a witness' testimony and disregard the
13 larger. Or vice versa. You may believe all of a
14 witness's testimony or none. You may believe the
15 testimony of a single witness against that of many or the
16 other way around.

17 Now, in a trial there are generally two types of
18 evidence that are presented during a trial; direct
19 evidence and circumstantial evidence. Direct evidence
20 directly proves the existence of a fact and does not
21 require deduction. Circumstantial evidence is proof of a
22 chain of facts and circumstances that indicates the
23 existence of a fact.

24 Crimes may be proven by circumstantial evidence, and
25 the law makes no distinction between the weight or value

1 to be given either direct or circumstantial evidence.
2 However, to the extent the State relies on circumstantial
3 evidence all of the circumstances must be consistent with
4 each other. And when taken together point conclusively to
5 the guilt of the accused beyond a reasonable doubt.

6 If these circumstances merely portray the defendant's
7 behavior as suspicious then the proof has failed. The
8 State has the burden of proving the defendant guilt beyond
9 a reasonable doubt, and this burden rests upon the State
10 regardless of whether the State relies on direct evidence
11 or circumstantial evidence or the combination of the two.

12 Now, criminal intent is a necessary element of each
13 crime, and the State must prove beyond a reasonable doubt.
14 Now, criminal intent is always a matter that must be
15 determined by the jury from the circumstances surrounding
16 the situation. There is no way to prove intent to a
17 mathematical certainty. There is no way medical science
18 can dissect a person's brain and determine what he or she
19 had in mind. So the law states criminal intent maybe
20 inferred from the circumstances shown to have existed both
21 before and after the fact.

22 This is how you, the jury, make a determination of
23 whether or not the element of intent was present.
24 Criminal intent is a state of mind that operates jointly
25 with an act or omission in the commission of a crime.

1 Criminal intent is a mental state of conscience
2 wrongdoing. So it is up to you, the jury, to determine
3 what the defendant intended based on circumstances shown
4 to have existed. And I tell you the State must prove
5 criminal intent beyond a reasonable doubt. This is the
6 State must prove each element beyond a reasonable doubt.

7 The defendant is charged with murder. The State must
8 prove beyond a reasonable doubt that the defendant killed
9 another person with malice aforethought. Malice is
10 hatred, ill will or hostility towards another person. It
11 is the intentional doing of a wrongful act without just
12 cause or excuse and with the intent to inflict an injury
13 by circumstances that the law will infer an evil intent.

14 Malice aforethought does not require that the malice
15 exist for any particular time before the act is committed.
16 But malice must exist in the mind just before and at the
17 time the act is committed. Therefore, there must be a
18 combination of previous evil intent and the act.

19 Malice aforethought may be expressed or implied or
20 inferred. Now, express and inferred do not mean a
21 different kind of malice, but merely the manner in which
22 the malice maybe shown to existed. That is either by
23 direct evidence or by the facts and circumstances which
24 are proven.

25 Express malice is shown when a person speaks words

1 which express hatred or ill will for another person or
2 when the person prepares beforehand to do the act which
3 was later accomplished. For example, lying in wait for a
4 person or any other act of preparation going to show this
5 deed was within the defendant's mind would be express
6 malice. Malice may be inferred from conduct showing a
7 total disregard for human life.

8 Now, the defendant is also charged with the crime of
9 kidnapping. The State must prove beyond a reasonable
10 doubt that the defendant knowingly and unlawfully seized,
11 confined, inveigle, decoyed, kidnapped, abducted or
12 carried away another person without authority of law. To
13 do a thing unlawfully is to do it willfully against the
14 law.

15 Knowingly means with knowledge. Consciously, not
16 accidentally.

17 Seize means to take hold of suddenly or forcefully.

18 Confine means to limit, restrict or enclose within
19 bounds, imprison or shut up or keep in.

20 Inveigle means to lure, entice, lead astray by false
21 representation, promise or other deceitful means.

22 Decoy means to lure about or as by to decoy someone.
23 A decoy is something to entice a person into a trap.

24 Kidnap is to remove a person against his or her will
25 by unlawful force or by fraud.

1 Abduct means to carry off secretly or by force for an
2 illegal purpose.

3 Carry away means to remove.

4 The State does not have to prove the defendant did
5 all of these things. Instead, if you find beyond a
6 reasonable doubt that the defendant did any of these
7 things you may find the defendant guilty of kidnapping.
8 Something done without the authority of law is something
9 that the law does not sanction, permit, allow, condone or
10 provide justification for. The kidnapping does not have
11 to be on any personal or monetary gain or for any illegal
12 purpose, but it may be for any reason whatsoever.

13 Now, ladies and gentlemen, you are not partisans or
14 advocates for the State of South Carolina or this
15 defendant. You do not serve as jurors to reward your
16 friends or punish your enemies. Obviously, that system of
17 justice simply would not be tolerated. You have been
18 selected by both the State and the defendant to be fair
19 and impartial jurors.

20 It is your duty then by your joint deliberation to
21 determine the truth in this case, giving to the defendant
22 the benefit of every reasonable doubt on each issue. Then
23 the facts that you determine to be the truth you apply the
24 law that I've given to you and return a verdict in this
25 case.

1 When you have done this you would have satisfied your
2 duty to this Court. And, Mr. Foreman, I have made my law
3 clerk type up a possible verdict form. It is said with
4 the caption of this case: "The State of South Carolina.
5 County of Sumter. State of South Carolina v. James Lee
6 Ginther." Count Number One on here, "Count One of Murder.
7 We the jury find the Defendant, James Lee Ginther, guilty
8 or not guilty.

9 Number Two, on the count of kidnapping, we the jury
10 find the Defendant, James Lee Ginther, guilty or not
11 guilty."

12 This verdict must be unanimous which means all 12 of
13 you must agree on this verdict. And when all 12 of you do
14 agree on this verdict you are to check the appropriate
15 box, knock on the door. Sign your name to it and date it.
16 Knock on the door. We'll bring you back out and receive
17 the verdict.

18 The order that this is put in, you should draw no
19 conclusion from it whatsoever. We just had to put them in
20 some order. Now, I've got to go over my charge with the
21 attorneys to be sure I haven't left anything out. If I
22 have left something out I will bring you back out, charge
23 you further on the law. If I have covered everything I
24 will send the verdict form along with all of the evidence
25 to the jury room.

1 When you receive this verdict form that means you can
2 begin your deliberations. While you are deliberating this
3 case anyone -- any of you need to be excused for some
4 reason, if you need to go to the restroom or whatever, you
5 are to stop your deliberations cause you can only talk
6 about the case when all 12 of you are present. And like I
7 said when you have reached a verdict, the unanimous
8 verdict of all 12 of you agreeing, you will let us know.

9 So, now, if you have a question in this case you must
10 write that question down on a piece of paper and give it
11 to the bailiff and he will bring it out. But tell you
12 right now I cannot answer any questions of fact. If you
13 have a factual question I can't reopen the case and you
14 can't get any more evidence. You've got to decide this
15 case based on what's been presented to you.

16 If have a legal question I can answer that question.
17 So if you have any legal matters you need to write that
18 down. I'll bring you back out and try to address those,
19 your concerns. So if you will go to the jury room. I'll
20 either send this in or get you back out in a few minutes.
21 Okay.

22 (WHEREUPON, the jury panel was excused from the
23 courtroom at 11:54 a.m.)

24 THE COURT: Okay. Any exceptions or deletions? Hear
25 from the State.

1 MR. FINNEY: None from the State.

2 THE COURT: From the Defense?

3 MR. BRIDGES: None from the Defense, Your Honor.

4 COLLOQUY

5 THE COURT: Okay. Y'all get the evidence together
6 along with the court reporter. It's a lot of evidence, so
7 we need to check off and be sure. I assume the gun is
8 secured and it can't be fired in the jury room?

9 MR. FINNEY: That is correct, Your Honor.

10 THE COURT: All right. I just didn't want anybody to
11 accidentally get hurt or I didn't want anybody test firing
12 a gun in the jury room. Okay. Y'all get the evidence
13 together here.

14 MR. FINNEY: Can I ask one question, Your Honor? Are
15 we going to let the ammunition go in or ammunition stay
16 out?

17 THE COURT: As long as the gun is locked I don't
18 care. The ammo is part of the case. You need to send it
19 in there.

20 MR. FINNEY: All right.

21 THE COURT: As long as the gun is locked.

22 MR. FINNEY: Yes, sir.

23 THE COURT: Now, I didn't tell them if they want to
24 hear something, there is one redacted tape. And so I
25 guess you can send it back there. They have no way of

1 playing anything that's on the disk. If they want to play
2 anything on any of the disk you need to let them know that
3 we will bring them back out here.

4 THE BAILIFF: All right, sir.

5 THE COURT: Okay. Jury

6 (WHEREUPON, the jury panel was excused from the
7 courtroom to begin deliberations at 11:59 a.m.)

8 VERDICT OF THE JURY

9 (WHEREUPON, Court was in recess at 11:59 a.m. and
10 reconvenes 1:02 p.m.)

11 THE COURT: Y'all ready?

12 MR. FINNEY: Yes.

13 THE COURT: We've got to get the defendant. Where is
14 your client?

15 MR. BRIDGES: They're on their way up, Judge.

16 THE COURT: Okay. State ready?

17 MR. FINNEY: State's ready.

18 THE COURT: Okay. Defense ready?

19 MR. BRIDGES: Defense is ready, Your Honor.

20 THE COURT: All right. Bring the jury in and receive
21 the verdict. I have no idea what the verdict is, and I
22 understand this has been a stuff case for both sides. But
23 if you can't control yourself you need to leave now cause
24 you've got to stay in order. I'm not going to have any
25 outbursts in here. Do you understand? Okay. Bring me

1 the jury.

2 (WHEREUPON, the jury panel enters the courtroom at
3 1:04 p.m.)

4 THE BAILIFF: Mr. Foreman, have you reached a
5 verdict?

6 JURY FOREPERSON: Yes, sir.

7 THE COURT: Is it unanimous?

8 JURY FOREPERSON: Yes, sir.

9 THE COURT: Would you please pass it up, please, sir.
10 You may publish the verdict.

11 CLERK OF COURT: May it please the, Your Honor.

12 THE COURT: Yes, sir.

13 CLERK OF COURT: In the Court of General Sessions.
14 Third Judicial Circuit. 2018-GS-43-0206. State of South
15 Carolina v. James Lee Ginther, the defendant.

16 On Count One of murder, we the jury find the
17 Defendant, James Lee Ginther, guilty.

18 On Count of Two of kidnapping, we the jury find the
19 Defendant, James Lee Ginther, guilty.

20 Signed, Foreperson Steven Schaffer. Date 12 --
21 correction on that. 4/12 '19.

22 THE COURT: Thank you, sir. Anything from the State
23 before I release the jury?

24 MR. BRIDGES: Please poll the jury, Your Honor.

25 POLLING OF THE JURY

1 THE COURT: All right. Please poll the jury.

2 THE BAILIFF: May it please the Court, Your Honor.

3 THE COURT: Yes, sir.

4 THE BAILIFF: Juror Number 166, Larry Walton, is this
5 your verdict and still your verdict?

6 JUROR: Yes.

7 THE BAILIFF: Juror Number 68, Martha Hannibal, is
8 this your verdict and still your verdict?

9 JUROR: Yes.

10 THE BAILIFF: Juror Number 107, Jason Mosley, is this
11 your verdict and still your verdict?

12 JUROR: Yes.

13 THE BAILIFF: Juror Number 73, Shawna Hilferty, is
14 this your verdict and still your verdict?

15 JUROR: Yes.

16 THE BAILIFF: Juror Number 126, Michael Ray, is this
17 your verdict and still your verdict?

18 JUROR: Yes.

19 THE BAILIFF: Juror Number 143, Steven Schaeffer, is
20 this your verdict and still your verdict?

21 JUROR: Yes.

22 THE BAILIFF: Juror Number 49, Zachary Evans, is this
23 your verdict and still your verdict?

24 JUROR: Yes.

25 THE BAILIFF: Juror Number 132, Kristina Richburg, is

1 this your verdict and still your verdict?

2 JUROR: Yes.

3 THE BAILIFF: Juror Number 131, Patricia Richbow, is
4 this your verdict and still your verdict?

5 JUROR: Yes.

6 THE BAILIFF: Juror Number 181, Campbell McAdams, is
7 this your verdict and still your verdict?

8 JUROR: Yes.

9 THE BAILIFF: Juror Number 215, Andre Mickens, is
10 this your verdict and still your verdict?

11 JUROR: Yes.

12 THE BAILIFF: Juror Number 103, Tamika Miller, is
13 this your verdict and still your verdict?

14 JUROR: Yes.

15 THE BAILIFF: Juror Number 72, Patricia Wiley, is
16 this your verdict and still your verdict?

17 JUROR: Yes.

18 THE BAILIFF: Your Honor, the jurors have been poled.

19 THE COURT: Thank you, sir. Anything else?

20 MR. BRIDGES: Nothing further from the Defense.

21 THE COURT: Anything further from the State?

22 MR. FINNEY: Nothing further.

23 COLLOQUY

24 THE COURT: Ladies and gentlemen, I want to thank you
25 for your service this week. It's been a long week. You

1 have followed my instructions well throughout the week.
2 You have paid close attention. You have done a huge
3 service to the citizens of Sumter County. You are going
4 to get a check in the mail, and it's not anywhere close to
5 compensate you. If we paid you the pay for what you're
6 worth couldn't afford your property taxes.

7 I have been telling you that you couldn't talk about
8 this case. Now, you can talk about it to anybody you want
9 to. You don't have to, but you certainly can. And I hope
10 that this week of jury service have been educational to
11 you. You don't have to do this again for three years, but
12 I appreciate your service very much.

13 If you need a work excuse the Clerk's Office will
14 provide one. They thank you, too, for your service.
15 You've got a great Clerk of Court's Office here in Sumter
16 County, and I appreciate your service. And I appreciate
17 them. You have a good week and thank you so much.

18 (WHEREUPON, the jury panel was excused from the
19 courtroom at 1:10 p.m.)

20 SENTENCE OF THE COURT

21 THE COURT: You got sentencing sheets ready?

22 MR. FINNEY: I do, Your Honor.

23 THE COURT: Okay. Y'all want to come around.

24 MR. BRIDGES: Yeah, I just renew all my pretrial
25 motions and motions during the trial.

1 THE COURT: All right. Your record is so noted,
2 you're motions, and I think that I ruled properly
3 throughout the trial. I deny those motions.

4 MR. BRIDGES: I know Mr. Ginther's family is on the
5 way. I ask that you hold off on sentencing as they would
6 like to be heard during sentencing.

7 THE COURT: Okay. How long?

8 MR. BRIDGES: Soon as I got the call to come
9 upstairs.

10 THE COURT: Okay.

11 MR. BRIDGES: Yes. I believe the Defense's family is
12 present.

13 THE COURT: All right, Mr. Solicitor, you want to
14 tell me anything else?

15 MR. FINNEY: Your Honor, please, first of all I want
16 to thank the Court and the staff, Clerk's Office,
17 everybody, for this week. It's, as you know being trial
18 lawyers, is not easy to put a big case together, but
19 everything went very well this week. Thank you for
20 working with us and our schedule.

21 This has been -- I've been practicing law now for 40
22 years, and I've never had a case like this. I've never
23 had a case where premedication was so clear and planned
24 and so calculated. I've never had a case where so many
25 things that could have gone wrong that could have caused

1 us so much of a problem didn't go wrong. And I think
2 we've talked about it in my office for weeks now. There
3 was some providential guidance for us.

4 That hunter going back to the same spot the next day
5 was the break we needed because we never would have found
6 Suzie otherwise. Her father, John Bates, is here and he
7 would like to address the Court, and I'd like for you to
8 hear for him.

9 THE COURT: Yes, sir, Mr. Bates. I'll be glad to
10 hear from you.

11 MR. BATES: Good afternoon, sir. I wrote some notes
12 to try to keep myself on track.

13 THE COURT: I understand.

14 MR. BATES: On November 16th 2017 is a day that
15 changed my entire family and it will never be the same.
16 The biggest impact was on the two small grandchildren. On
17 the morning of November 18th we as a family had to sit
18 Emily and J.J. down and tell them that their mother was
19 never coming home.

20 What even makes this matter harder is that it was not
21 done by a stranger. It was done by somebody that she had
22 married and she had two children with and that had lived
23 with us as a family since high school. There are no words
24 that I can use to explain the pain that we feel every day
25 and that will never go away.

1 I can definitely sympathize with the feelings that
2 James' family is going through right now. There is
3 nothing that can be done to ever bring Suzie back. But
4 there must be stability for Emily and J.J. And due to the
5 heinousness of this crime I respectfully request that the
6 maximum penalty be applied. Thank you, Your Honor.

7 THE COURT: Thank you, sir.

8 MR. FINNEY: Your Honor, we would respectfully
9 request of the Court to follow the recommendation offered
10 by the family, and we understand based on some comments
11 yesterday that the kidnapping charge cannot be combined
12 with a sentence on the murder charge. So we respectfully
13 request a life sentence for Mr. Ginther.

14 THE COURT: Thank you, sir. Yes, sir.

15 MR. BRIDGES: Thank you, Your Honor. I've been
16 representing Mr. Ginther for 18 months during this
17 process. It's a very long, hard week for all of us. We
18 know that this is a tragic case, and there are multiple
19 families that suffered greatly because of this.

20 We request that Mr. Ginther has no prior criminal
21 record. He served 500 days. This is his 500th day since
22 he's been arrested. All my interactions with him, he's
23 been polite, respectful, helpful. His family has been
24 wonderful. They have been here. Would anybody from the
25 family like to address the Judge at this time. They're in

1 a very emotional state. At this time I believe this is
2 his stepmother.

3 MS. GINTHER: This has been a very difficult process
4 on all of us.

5 THE COURT: For the record, though, can you start by
6 telling me your name.

7 MS. GINTHER: My name is Teresa Ginther. I am James
8 Ginther Sr's wife: I've known James since he was six
9 years-old. He's been a great kid. This has been a
10 nightmare for everybody; our family, Suzie's family. We
11 grieve for Suzie. This was a horrid thing that happened
12 to her. We've not had a chance to grieve for her and
13 neither has James.

14 This has been a nightmare on our side as well. We
15 are so sorry for the loss of Suzie for the family's sake,
16 for the children's sake. We ask the Court's leniency. He
17 has no record. He has military service. Thank you for
18 your time.

19 THE COURT: Yes, ma'am. Thank you.

20 MR. BRIDGES: I understand, Your Honor, with murder
21 there is mandatory minimums, and there is certain statutes
22 to what you can sentence Mr. Ginther to. You've heard
23 throughout the trial he has three children. He cares for
24 his children very much. We would just request whatever
25 mercy you seek to impose on the situation that you impose

1 it.

2 We understand that this is a tragic case all around,
3 but that because of his lack of a record that you seek to
4 grant him at much mercy as you can, Your Honor.

5 THE COURT: Yes, sir. And I saw somebody else want
6 to address me?

7 MS. GINGRICH: Yes.

8 THE COURT: You can come forward. Yes, ma'am.

9 MS. GINGRICH: My name is Maryanne Gingrich, and I'm
10 great aunt of James. I have been watching this and
11 listening to it all, and I think under the circumstances
12 so much is circumstantial of what was presented and the
13 person --

14 MR. BRIDGES: That's not what you're here to talk
15 about.

16 MS. GINGRICH: Okay. I just think, and given the
17 nature of who he is as an individual, and whose he's
18 proven to be I just think that he should be allowed to
19 have the least amount of sentencing possible.

20 THE COURT: Thank you, ma'am.

21 MS. GINGRICH: He's of great character.

22 THE COURT: Thank you. Anything else?

23 MR. BRIDGES: That's it from the Defense, Your Honor.

24 THE COURT: Okay.

25 MR. BRIDGES: Actually, I believe Mr. Ginther would

1 like to say something.

2 THE COURT: Yes, sir.

3 MR. GINTHER: I understand this isn't the place to
4 assert my innocence. This is not the time for it. He
5 said I hadn't apologized to the family. I'm sorry for
6 what happened to her. It would be very easy to be bitter
7 and all the years I was lose. There is no telling how
8 many years Suzie lost. Yesterday would have been our ten
9 year anniversary. Thank you, Your Honor.

10 THE COURT: Yes, sir.

11 MR. BRIDGES: Thank you, Your Honor.

12 THE COURT: This has been a tough case for both sides
13 of this, and I have tried a lot of murder cases. And I
14 understand the pain that's involved. I want to thank the
15 lawyers in this case. You worked hard. You represented
16 your clients well. The jury has spoken. I wish that I
17 could relieve some of the pain felt in this courtroom by
18 the family of the victim and the tremendous loss and the
19 son won't ever get over.

20 And the defendant's family also has a considerable
21 amount of pain. And I can't receive that, and I can't
22 make it right, and I can't bring Suzie back. The only
23 thing that I can do is try under the facts in this case is
24 to administer justice within my power.

25 And what concerns me about this case, and probably as

1 the Solicitor said is more planning and more calculation
2 and more premeditation than probably any other case I've
3 seen. And it goes down to the decisions the defendant
4 made. We all have, that's one thing the Lord gave each
5 one of us, is we all have the right to choose and to make
6 decisions about what we do.

7 And on the count of murder, the sentence of the Court
8 is that you're committed to the State Department of
9 Corrections for a term of your natural life. I vacate the
10 sentence on the kidnapping.

11 Okay. I'll take a ten minute recess. Solicitor, got
12 any more work for me to do let me go. I'm going on in the
13 back.

14 MR. FINNEY: Thank you, Your Honor.

15 MR. BRIDGES: Thank you, Your Honor.

16 END OF TRANSCRIPT OF RECORD

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WITNESSES

Randall K. Stewart Sumter County Sheriff

DOCKET NO. 2018-GS-43-0206

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

March TERM 2018

THE STATE

vs.

JAMES LEE GINTHER

ARREST WARRANT NUMBER

2017A4310101063 2017A4310101062

Indictment for

Murder

Kidnapping

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

Foreperson of Petit Jury

Date:

RECEIVED
APR 19 2019
SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

INDICTMENT FOR

Murder
Kidnapping

At a Court of General Sessions, convened on March 15, 2018 the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE
MURDER

That **James Lee Ginther** did in Sumter County, on or about **November 16, 2017**, willfully, feloniously, and intentionally kill the victim, Suzette Ginther, with malice aforethought, either express or implied, by shooting the victim in the head and burying her body in a wooded area, and the victim did die as a proximate result thereof on or about November 16, 2017 in Sumter County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

COUNT TWO
KIDNAPPING

That **James Lee Ginther** did in Sumter County on or about **November 16, 2017**, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Suzette Ginther, without authority of law, in violation of Section 16-03-0910, S. C. 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.

Solicitor



676

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Sumter
 STATE VS.
James Lee Ginther

CERTIFIED TRUE INDICTMENT/CASE#: 2018-GS-43-0206
 OF ORIGINAL FILE# 2017A4310101063

AKA: _____ Date of Offense: 11/16/2017

Race: White Sex: M Age: 28 S.C. Code § 16-03-0010

DOB: 11-16-1988 SS#: ██████████ CDR Code #: 0116

Address: _____
 City, State, Zip: _____
 DL#: ██████████ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Murder

SENTENCE SHEET

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

ER FENNY Solicitor 2019 SC Bar# _____ Defendant _____ Attorney for Defendant _____ SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of Life with out bond days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the SCDoc.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 (Assessments 107.5 %) _____ \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$

TOTAL \$

Clerk of Court/ Deputy Clerk James C. Campbell

Court Reporter: WATIE GORDON

SCCA/217 (04/2018)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

APR 19 2019

SC Court of Appeals

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge James C. Campbell

Judge Code: 2144

Sentence Date: 4-12-19

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

AUG 30 2021

APPELLATE DEFENSE

Appeal from Sumter County

Honorable R. Ferrell Cothran, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES LEE GINTHER,

APPELLANT

APPELLATE CASE NO 2019-000672

Proposed Stipulation

The parties agree that a portion of witness testimony from the April 10, 2019, trial transcript is missing. Specifically, a portion of the first cross examination of State's witness Investigator Randall Stewart, the entire direct and cross-examination of Investigator Randall Hilliard and Agent Kristina Gainey, both also State's witnesses, and the direct examination of State's witness Rachael Salak are not included in the transcript due to an equipment malfunction. (Tr. p. 343.

lines 20-21; p. 344, lines 1-9; p. 345, lines 2-3). On May 12, 2020, Appellant moved before this Court for an order to remand the case for a hearing to attempt to reconstruct the missing testimony from the trial transcript. On May 22, 2020, the State filed a return in opposition to the motion for remand. On June 4, 2020, this Court granted the motion to remand for reconstruction.

While preparing for the reconstruction hearing counsel for the Appellant was able to review notes taken by trial counsel as well as notes taken by a member of law enforcement during the trial about the missing testimony. As a result, counsel for Appellant and counsel for Respondent reached an agreement, in the form of a proposed stipulation, as to the substance of the missing testimony that, in the opinion of counsel, adequately addresses the issue for purpose of the direct appeal without the need for a reconstruction hearing. The trial judge, the Honorable R. Ferrell Cothran, reviewed the proposed stipulation and agreed that the proposed stipulation accurately reflects the missing testimony. As an alternative to a reconstruction hearing, the parties propose the following stipulation:

1. Investigator Randall Stewart – The direct examination of Investigator Stewart is included in the transcript. (Tr. pp. 303-337). While some of the cross-examination is included in the transcript, the court reporter's equipment malfunctions during the cross-examination and a portion of the cross is missing. (Tr. pp. 337-343). During the portion of the cross-examination that is missing from the transcript Investigator Stewart testified about the interview with Appellant at his house on Saturday, November 18, 2017, concerning the death of his ex-wife. The interview was recorded by a body camera and admitted in evidence, over objection, as State's exhibit #62. This exhibit will be included in the record on appeal. During the cross-examination the investigator admitted that during the interview he told Appellant that he knew everything he needed to know about the case on Thursday November 16, 2017. The investigator also confirmed that he told Appellant that he knew when, and where, the shooting took place and had a good idea why and was almost certain who did it. The investigator testified that Appellant provided the serial number of his lawfully possessed weapon

and provided a DNA sample. The investigator confirmed that at the time of the interview Appellant was not under arrest and was free to leave the State with no restrictions. The investigator testified that there was no GPS data available for the abandoned van, there were no fingerprints lifted from the van and no blood was found in the van.

2. Investigator Randall Hilliard – Both the direct and the cross-examination of Investigator Hilliard are missing from the transcript. (Tr. p. 343, line 23 – p. 344, lines 1-2). During the direct and cross-examination Investigator Hilliard testified that he went to the scene where the body was found with Investigator Stewart and was with Investigator Stewart when he interviewed Appellant at his house. Investigator Hilliard collected the DNA sample from Appellant. There were no objections to testimony or evidence during Investigator Hilliard's testimony.
3. Agent Kristina Gainey - Both the direct and the cross-examination of Agent Gainey are missing from the transcript. (Tr. p. 344, lines 5-9). During the direct and cross-examination Agent Gainey testified that she was also present when Investigator Stewart interviewed Appellant at his house. Agent Gainey testified that on Sunday, the day after the interview with Appellant, Investigator Stewart asked her to pick up Rachael Salak because she had called and said she had information to provide. Agent Gainey also testified that she was able to pull still shots from traffic cameras of a box like vehicle on Hwy 378 and Atlas Rd. heading east toward Sumter on November 16, 2017, at 12:56, AM the morning prior to the discovery of the body. Defense counsel objected to her testimony about the still shots pursuant to the objection made to these still shots during a pre-trial hearing. (Tr. p. 61, line 23 – p. 62 – 64, lines 1-22). Defense counsel also objected to the still shots when the State moved to admit them in evidence. (Tr. p. 344, lines 11-21).
4. Rachael Salak – The direct examination of Rachael Salak is missing from the transcript. (Tr. p. 344, line 24 – p. 345, lines 1-3). The cross-examination of Rachael Salak is included in the transcript. (Tr. pp. 346 – 371). The re-direct and re-cross are also included in the transcript. (Tr. pp. 371-377). During the direct examination that is missing from the trial transcript Rachael Salak testified that she met Appellant on-line. She testified that at the time they met Appellant was separated from his wife with whom he had two children, a daughter and a son. She eventually moved from California to Sumter, South Carolina where she lived with Appellant. She testified that they lived a few blocks away from where Appellant's wife was living with the children. They moved from Sumter to Virginia where Appellant worked for an armored car service. She testified

that she suffered a miscarriage and Appellant was not happy with his job so they moved to California in 2016, and lived with her parents.

Rachel testified that Appellant wanted to be closer to his children so the couple returned to South Carolina in January of 2017, living in Columbia. She testified that she gave birth to a baby boy on [REDACTED], 2017. The delivery was complicated resulting in an emergency cesarean section. Appellant was working in armed security. She testified that Appellant was "amazing" with the baby. Her parents were helping them financially and gave them \$5,000.00 for a car. She testified they bought a dark colored "cube" car.

Rachel testified about the visitation schedule with the other children. She testified that Appellant and his ex-wife got along at times but would also argue. Rachel testified that Appellant was upset about an "app." that was on his daughter's phone and discussed getting primary custody of the children.

Rachel testified that she was uncertain about marrying Appellant but admitted that they got their marriage license a week or two before the death of the ex-wife on November 16, 2017. She also admitted that she and Appellant were wearing wedding rings. Rachel testified that there was tension and constant arguing between Appellant and his ex-wife. She discussed going to Sumter to make sure the children were supervised and testified that Appellant would have lunch with his children in Sumter.

Rachel testified that her family helped Appellant start a photography business. She recalled that Appellant had been hired to take wedding rehearsal photos on Thursday, November 16th and wedding photos on Friday, November 17th. She testified that during this time she was still having difficulty with her back following the birth of their son by cesarean section. She testified that she got up the morning of November 16th and saw that Appellant was not in the room but also testified that he would sometimes sleep in the other bedroom where the children stayed when they came to visit. Rachel testified that she saw Appellant that morning coming from the back of the house where he was taking off clothes and putting them in the washing machine. She testified that he told her he had gotten in a fight with his ex-wife.

Rachel testified that a City of Columbia police officer came to the house on the morning of November 16th, while Appellant was in the shower. This exchange was captured on the officer's body camera. The video was introduced in evidence as State's exhibit #61 and will be designated as part

of the record on appeal. The officer was asking about a van registered in Appellant's name. The van belonged to Appellant's ex-wife. Rachael testified that Appellant became angry when he learned that the ex-wife's van was still in his name. Rachael testified that Appellant photographed the wedding rehearsal on Thursday the 16th and photographed the wedding the next day on Friday the 17th, returning home late.

Rachael testified that she remembered that they learned on Saturday November 18, 2017, that the ex-wife had died. Rachel testified that the police came to the house to talk with them on Saturday. The interview was recorded by a body camera and admitted in evidence, over objection, as State's exhibit #62. This exhibit will be included in the record on appeal. She recalled wondering why Appellant was initially not willing to provide the police with a DNA sample. She recalled the gun Appellant showed the police during the interview and referred to it as his favorite gun. She testified that she remembered him cleaning the gun on Thursday or Friday. Rachel testified that Appellant was very agitated Saturday night and worried that he would be charged with his ex-wife's murder.

Rachel testified that she confronted Appellant on Sunday and he suggested that Rachel tell the police that she murdered the ex-wife. She testified that Appellant suggested that the police would go easy on her because she is a woman and has bipolar disease. She testified that she became afraid of Appellant and told him to leave. She then testified that he packed survival gear and left. Rachel called Investigator Stewart and Agent Gainey came and picked her up.

I agree that the above stipulation accurately reflects the missing portions of the trial transcript for purposes of the direct appeal.

James Lee Ginther 26-AUG-2021
James Lee Ginther

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED**Feb 02 2023****SC Court of Appeals**


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 2nd day of February, 2023.