

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

May 12 2020

SC Court of Appeals

Appeal from Sumter County
Honorable R. Ferrell Cothran, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES LEE GINTHER,

APPELLANT

APPELLATE CASE NO. 2019-000672

**MOTION FOR ORDER TO REMAND FOR A HEARING
TO ATTEMPT TO RECONSTRUCT THE RECORD AS TO MISSING WITNESS
TESTIMONY IN ORDER TO ALLOW MEANINGFUL APPELLATE REVIEW**

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, counsel for Appellant, James Lee Ginther, requests an order remanding the case for a hearing to attempt to reconstruct the record as to missing witness testimony. The trial transcript reflects that a portion of the first cross examination of State's witness Investigator Randall Stewart, the entire direct and cross-examination of State's witnesses Investigator Randall Hilliard and Agent Kristina Gainey and the direct examination of State's witness Rachael Salak are not included in the record due to an equipment malfunction. (Tr. p. 343, lines 20-21; p. 344, lines 1-9; p. 345, lines 2-3). The testimony of these witnesses is needed for meaningful appellate review. In support of the remand Appellant submits the following:

1. On April 12, 2019, a Sumter County jury found Appellant guilty of the murder and kidnapping of his former wife and mother of his two young children, indictment #2018-GS-43-206. Jason E. Bridges and Allen J. Barnes represented Appellant at trial. Ernest A. Finney, III prosecuted the case. The Honorable R. Ferrell Cothran sentenced Appellant to life in prison. A timely notice of intent to appeal was filed and the case is pending direct appeal.
2. On October 30, 2019, the court reporter notified the Office of Appellate Defense that portions of the trial testimony from April 10, 2019, were not included in the record because the microphone was inadvertently disconnected. (See Attachment A – Letter from Court Reporter Hattie O. Gordon.) Appellate counsel hoped to avoid a reconstruction hearing but, upon reviewing the entire trial transcript, counsel submits that reconstruction is necessary.
3. One of the potential issues that may be raised on appeal is a challenge to statements Appellant made to Investigator Stewart and Agent Kristina Gainey prior to being *mirandized*. (Tr. pp. 29-45). Part of Investigator Stewart’s cross-examination and all of Agent Gainey’s testimony are missing from the record. The testimony from the investigator and agent may be important as to the issue of voluntariness. Investigator Hilliard was also involved in the investigation and all of his testimony is missing. Rachael Salak was living with Appellant and was present when Appellant was interviewed by Investigator Stewart and Agent Gainey. Salak’s direct examination is missing from the record. Her direct testimony may be important to demonstrate prejudice in the admission of Appellant’s statements to the investigator and agent.

When a trial transcript has been lost or destroyed, the Court may remand to have the record reconstructed. Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992); State v. Ladson, 373 S.C. 320, 325, 644 S.E.2d 271, 273-274 (Ct. App. 2007).

Counsel respectfully requests an order remanding the case for a hearing to attempt to reconstruct the record as to missing witness testimony. **While this motion is pending, counsel for Appellant asks this Court to hold the timelines in abeyance for filing the initial brief and designation.**

Respectfully submitted,

s/Kathrine Haggard Hudgins

Kathrine Haggard Hudgins
Appellate Defender
South Carolina Commission on Indigent Defense
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CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Motion for Order to Remand for a Hearing to Attempt to Reconstruct the Record in the above-referenced case have been served upon Melody J. Brown, Esquire at the primary e-mail address listed in the Attorney Information System (AIS); and James Lee Ginther, #379791, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 12th day of May, 2020.

s/ Kathrine H. Hudgins

Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT



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SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Wanda H. Carter, Deputy Chief Appellate Defender

May 12, 2020

Melody J. Brown, Esquire
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

VIA EMAIL ONLY

Re: The State v. James Lee Ginther

Dear Ms. Brown:

Enclosed are two copies of the Motion for Order to Remand for a Hearing to Attempt to Reconstruct the Record in the above entitled case, that I filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

s/ Kathrine H. Hudgins

Kathrine H. Hudgins
Appellate Defender

KHH/cws

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

May 12, 2020

Mr. James Lee Ginther, #379791
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Re: Your appeal

Dear Mr. Ginther:

Enclosed please find a copy of the Motion for Order to Remand for a Hearing to Attempt to Reconstruct the Record that I filed with the South Carolina Court of Appeals on your behalf.

Should you have any questions concerning this matter, please contact me.

Sincerely,

s/ Kathrine H. Hudgins

Kathrine H. Hudgins
Appellate Defender

KHH/cws

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