

RECEIVED

May 04 2022

SC Court of Appeals



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332  
Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1397

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

May 4, 2022

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Jackson, South Carolina 29831

Re: State v. James L. Ginther  
Appellate Case No. 2019-000672

Dear Ms. Kitchings:

On June 4, 2020, this Court granted Appellant's motion to remand to the circuit court to reconstruct missing portions of the transcript. In preparation for the reconstruction hearing counsel for appellant and counsel for respondent contacted the prosecutor and the defense attorneys, reviewed notes taken at trial and transcripts from interviews. After consultation Senior Assistant Deputy Attorney General Melody Brown and counsel for Appellant were able to reach an agreement as to a proposed stipulation in regard to the content of the missing testimony to hopefully be submitted instead of conducting a reconstruction hearing. The trial judge, the Honorable R. Ferrell Cothran, reviewed the proposed stipulation and agreed that the proposed stipulation is consistent with his recollection of the trial testimony.

I have attached a copy of the proposed stipulation and ask the Court to allow the stipulation to take the place of the missing transcript in the record on appeal without requiring a remand for a reconstruction hearing. If the proposal meets with the Court's approval, counsel additionally requests that the Court take the case out of abeyance and set a filing date for the initial brief and designation. If you have any question or concerns, please do not hesitate to contact me. Thank you for allowing me to bring this to your attention.

Sincerely,

Kathrine H. Hudgins  
Appellate Defender

KHH/cws  
Encl.

cc: Honorable R. Ferrell Cothran  
Senior Assistant Deputy Attorney General Melody Brown  
James L. Ginther

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

**RECEIVED**  
**May 04 2022**  
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

**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. The investigator testified on cross-examination that he knew everything he needed to know about the case on Thursday but wanted to speak with Appellant about the deceased and what Appellant knew. 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 **later** 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 automobile 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.

Rachael 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 August 2, 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.

Rachael 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. Rachael testified that Appellant was upset about an “app.” that was on his daughter’s phone and discussed getting primary custody of the children.

Rachael 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. The marriage, however, never occurred. Rachael 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.

Rachael 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 16<sup>th</sup> and wedding photos on Friday, November 17<sup>th</sup>. 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 16<sup>th</sup> 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. Rachael 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.

Rachael testified that a City of Columbia police officer came to the house on the morning of November 16<sup>th</sup>, 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 16<sup>th</sup> and photographed the wedding the next day on Friday the 17<sup>th</sup>, returning home late.

Rachael testified that she remembered that they learned on Saturday November 18, 2017, that the ex-wife had been killed. Rachael 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. Rachael testified that Appellant was very agitated Saturday night and worried that he would be charged with his ex-wife's murder.

Rachael testified that she confronted Appellant on Sunday and he suggested that Rachael 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 his notebook which were introduced in evidence at trial. Rachael also testified that Appellant planned to meet her at the City Hall of the western most town in Wyoming. Rachael called Investigator Stewart and Agent Gainey came and picked her up.