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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

Opinion No. 6126

THE STATE,

RESPONDENT,

V.

JUSTIN TYLER ELLAREE HOPKINS,

APPELLANT

APPELLATE CASE NO. 2022-001567

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Justin Tyler Ellaree Hopkins respectfully requests that this Court grant rehearing in Opinion No. 6126 filed in connection with this matter on December 3, 2025, for the reasons set forth.

I. The search warrant for the Apartment 27A was not supported by probable cause.

As to whether the search warrant for the Apartment 27A was supported by probable cause that appellant actually resided in (or was in some other way connected with) the place to be searched, this Court's opinion applies facts and information developed during trial in finding

probable cause and failed to acknowledge the defect in the search warrant at issue concerning the connection between appellant and the place to be searched as presented to the magistrate in 2019. Much of this Court's opinion and recitation of facts pulls from information presented to the jury during trial. Appellant does not contest that the evidence *presented during trial* established a connection between appellant and Apartment 27A of the Landmark Apartment complex.

However, testimony provided during trial (in this case in October of 2022 R. 1) does not alter the information before the magistrate when the search warrant was originally approved in December of 2019. The probable cause portion of the search warrant established the basis for suspicion of appellant being involved in the crime, with some reference to his phone number being listed with Landmark Apartments. R. 830 – 831. The search warrant, despite acknowledging being in touch with the Landmark Apartment complex to confirm the phone number was consistent with appellant's cellular phone, did not inform the magistrate of who leased apartment 27A (Maxie Jacobs) or what connection, if any, appellant had with apartment 27A. This Court's opinion notes that "Sergeant Burt explained that Hopkins had been positively identified as the individual getting into the white dually truck on the day of the murders and that an LCSD officer who lived at the Landmark Apartments as a courtesy officer was able to confirm Hopkins lived in apartment 27 A." Certainly, *during the suppression hearing on the first day of trial*, Burke did claim an Investigator Zylstra was a courtesy officer at Landmark and confirmed that appellant resided in Apartment 27A. R. 61, l. 23 – 62, l. 4. Had that information provided by Burke in October of 2022 been provided to the magistrate in December of 2019, then probable cause would have been established that Appellant did in fact have a connection with Apartment 27A. However, there is no testimony or evidence in the Record that information was ever relayed or provided to the magistrate.

The affidavit before the magistrate would only have supported a factual finding that appellant lived somewhere in the Landmark Apartment complex. The affidavit before the magistrate in December of 2019 lacked any information regarding which apartment within the apartment complex appellant either resided or had some other tangible connection which justified a search. While this Court’s opinion noted that “information law enforcement had gathered to support that Hopkins lived in apartment 27 A” existed, that information was simply not relayed to the magistrate in the affidavit supporting the search warrant.

In determining the validity of a search warrant, “the crucial element is not whether the target of the search is suspected of a crime, but whether it is reasonable to believe that the items to be seized will be found in the place to be searched.” State v. Thompson, 419 S.C. 250, 256–57, 797 S.E.2d 716, 719 (2017) (*quoting* Zurcher v. Stanford Daily, 436 U.S. 547, 556 (1978) (emphasis supplied). Thus, under the “totality of the circumstances set forth in the affidavit” is there “a fair probability that evidence of a crime will be found in the particular place to be searched.” Thompson, 419 S.C. at 256–57, 797 S.E.2d at 719. In the present case, the state completely omitted information connecting appellant to a specific residence within the apartment complex (specifically to Apartment 27A) that would justify a search warrant against that apartment number (27A) versus any other apartment within the entire Landmark Apartment complex. During oral argument, the bench questioned both parties as to the relative size of the Landmark Complex. While that information was not in the Record, both parties acknowledged at oral argument at least 27 different apartment numbers were used.¹ Since the supporting affidavit was void of any connection with appellant being connected to a specific apartment number, this search warrant would have applied to any apartment number the officers elected to

¹ The state asserted at oral argument that the Landmark complex was much larger than 27 units.

write in as the place to be searched. Probable cause simply requires more precision than to allow a vague connection to an apartment complex of a suspect to support a search warrant of a specific apartment within that complex.

This Court's opinion mistakenly attributes facts developed at trial for facts that were presented to the magistrate to establish probable cause. This Court noted that "the property manager confirmed Hopkins had been living in 27A and that he had recently completed the paperwork to assume his half-brother's lease." This information was presented during trial and does not appear in the search warrant itself. *Compare* R. 543, l. 12 – 545, l. 23 *with* R. 830 – 831. This Court also notes that the "night before the search, LCSD again confirmed this information with the Landmark office." Again, this information was not presented to the magistrate in December of 2019. R. 830 - 831.

For proper resolution of the validity of the search warrant, this Court should focus solely on the affidavit supporting the warrant rather than information that was presented during a trial almost three years later. For the reasons argued in both appellant's Final Brief and Reply Brief, this Court should reconsider its opinion on the existence of probable cause supporting the search of Apartment 27A and reject good faith as a basis to ignore the improper search of Apartment 27A under the Fourth Amendment to the United States Constitution as well as Article 1, Section 10 of the South Carolina Constitution.

While this Court's opinion did not touch upon the state's asserted good faith reliance on the invalid search warrant, as argued in the brief before this Court, good faith would not excuse the complete lack of any connection between the probable cause claims in the search warrant and a specific address to be search – here Apartment 27A. An apartment complex contains individual residences with rights of privacy protected from warrantless intrusions. A search

warrant allowing a search of a “home” on a residential street without unique identification such as a street number or distinguishing characteristic would be facially invalid and “good faith” that officers happened to search the correct home would not survive constitutional challenge. Guidance here can be found in State v. Robinson, 415 S.C. 600, 785 S.E.2d 355 (2016) which acknowledged that when a “search-warrant affidavit, on its face, supports a finding of probable cause, an objective law enforcement officer's belief in it could be reasonable.” Id., 415 S.C. at 609, 785 S.E.2d at 360. However, the supporting affidavit in the present case completely omitted any connection between the place to be searched (Apartment 27A) and the probable cause assertions. On its face, the search warrant lacks sufficient detail connecting the location to be searched and the probable cause assertions, making good faith reliance inapplicable.

This Court should, respectfully, reconsider its opinion that the search warrant supports a probable cause connection between appellant and Apartment 27A as presented to the magistrate for judicial consideration.

II. The stop of the vehicle leaving the area to be searched was improper.

In upholding the validity of the initial traffic stop of a vehicle unconnected to the police investigation that was not based upon any traffic violation under Terry v. Ohio, 392 U.S. 1 (1968), this Court noted “law enforcement had independent, reasonable suspicion to call for a uniformed officer to execute the traffic stop, and the fact that a magistrate found probable cause to believe the suspect's apartment contained evidence of these crimes was an additional factor appropriate to the analysis.”

However, when the traffic stop occurred on December 21, 2019, the police had no reasonable suspicion *that any crime was involved that evening* and made the decision to stop the car regardless of the lack of any ongoing or suspected criminal activity by the occupants of the car. “[W]hile reasonable suspicion is not a high bar and ‘is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop.’ This inquiry involves the totality of the circumstances, and ‘[c]ourts must give due weight to common sense judgments reached by officers in light of their experience and training.’” State v. Frasier, 437 S.C. 625, 635, 879 S.E.2d 762, 767 (2022).

At its heart, the Terry exception is designed to deter and prevent ongoing criminal activity, not to pull vehicles over in order to search bags that may be inside the car. Prior to the stop, officer Johnathan Brock observed someone of the “proper” height (short) and “weight” (heavy) leave the apartment to be searched under a facially invalid search warrant for Apartment 27A and get into the unrelated car’s rear compartment. R. 35, l. 12 – 36, l. 22. While Brock was aware a search warrant had been issued, and this Court focuses on the probable cause claims contained in the search warrant application as generally known to law enforcement, that warrant was not ready for execution at the time Brock observed this individual. R. 37, ll. 10-21. Brock also admitted the lighting was poor, and he was unable to properly see the individual beyond generic height and weight. R. 36, l. 5 – 37, l. 9. While police had a reasonable suspicion that appellant was connected to the earlier crime, *the police did not have a reasonable suspicion of criminal activity surrounding the vehicle in question* and elected to stop and seize the car solely because someone who may have been appellant was seen leaving the location to be searched and getting in the back seat of the car carrying “kind of like bags.” This should be contrasted to the

approach to stopping the vehicle of interest that same night driven by co-defendant Cornish, as officers used a minor traffic violation to justify the initial stop of that vehicle. R. 418, ll. 19 – 25. Absent a similar pretextual traffic violation, the stop here was conducted based solely upon the existence of the search warrant and not any reasonable suspicion of *ongoing criminal activity* envisioned under Terry v. Ohio, 392 U.S. 1 (1968).

The “fear” of destruction of evidence would not justify a Terry stop as that exception to the 4th Amendment is itself, like Terry, an exception to the warrant requirement. Therefore, even if an “exigent circumstance” of “imminent destruction of evidence” could justify police action when someone drives away from a place to be searched, no such exigent circumstances existed in this case *as there was no ongoing criminal activity or public emergency* that would fall within the typical exigent circumstance fact pattern. The limitation of this lack of emergency is mirrored in Bailey:

The need to prevent flight, however, if unbounded, might be used to argue for detention of any regular occupant regardless of his or her location at the time of the search, e.g., detaining a suspect 10 miles away, ready to board a plane. Even if the detention of a former occupant away from the premises could facilitate a later arrest if incriminating evidence is discovered, “the mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment.” Mincey v. Arizona, 437 U.S. 385, 393, 98 S. Ct. 2408, 57 L.Ed.2d 290.

Bailey, 568 U.S. at 199.

This Court’s opinion correctly notes the initial stop and seizure here unlawfully extended the reach of the search warrant under Bailey v. United States, 568 U.S. 186 (2013). However, in justifying the improper seizure of the automobile, this Court incorrectly finds justification as an investigatory stop under Terry v. Ohio, 392 U.S. 1 (1968). As noted above and in his Briefs to this Court, the improper stopping of the vehicle in which appellant was a passenger and the

subsequent search and seizure of the two bags inside the vehicle was unlawful and may not be cured by the end result. Simply put, “[i]n law, the ends do not justify the means.” State v. Frasier, 437 S.C. 625, 637, 879 S.E.2d 762, 768 (2022) (quoting State v. Adams, 409 S.C. 641, 763 S.E.2d 341 (2014)). The evidence seized from the two bags, including the ammunition, casings, and white t-shirt, should have been suppressed. This Court should reconsider its opinion that the observations of a person fitting the general description of a suspect in an ongoing criminal investigation leaving a place to be searched under a search warrant justifies a Terry stop of a vehicle over a mile away from the location to be searched. Allowing a Terry stop of a vehicle because a passenger resembles a suspect in an already completed crime that police are investigating would impermissibly expand the concept of “ongoing criminal activity” to make such phrase meaningless. It would improperly expand the already generous authority law enforcement has in stopping vehicles for non-criminal offenses.

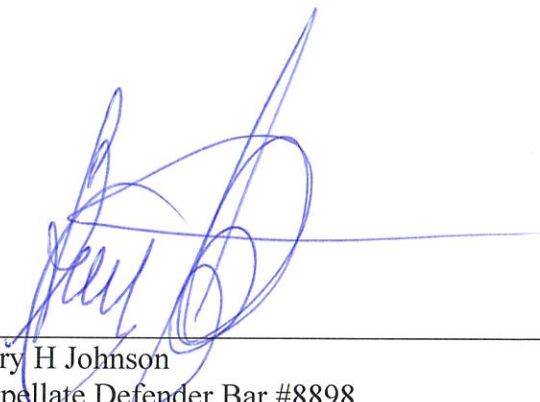
“An exception to the Fourth Amendment rule prohibiting detention absent probable cause must not diverge from its purpose and rationale.” Bailey, 568 U.S. at 194. Terry is an exception to the Fourth Amendment to allow law enforcement the opportunity to stop person who create a “reasonable suspicion” of ongoing criminal activity to allow intervention before a crime occurs. The expansion of Terry to allow “investigative stops” of vehicles because an occupant may be a person of interest in a completed crime diverges from the exceptions purpose and rationale. Moreover, the South Carolina Constitution, with an express right to privacy provision included in the article prohibiting unreasonable searches and seizures, favors an interpretation offering a higher level of privacy protection than the Fourth Amendment.” State v. Forrester, 343 S.C. 637, 645, 541 S.E.2d 837, 841 (2001). “[T]he federal Constitution sets the floor for individual rights while the state constitution establishes the ceiling.” Id. at 647, 541 S.E.2d at 842. Thus, “[t]he

focus in the state constitution is on whether the invasion of privacy is reasonable, regardless of the person's expectation of privacy" in the place searched. State v. Weaver, 374 S.C. 313, 322, 649 S.E.2d 479, 483 (2007). "By articulating a specific prohibition against 'unreasonable invasions of privacy,' the people of South Carolina have indicated that searches and seizures that do not offend the federal Constitution may still offend the South Carolina Constitution." Id.

Here, the action of law enforcement in ignoring the geographic restrictions of their search warrant to stop the car in which appellant was a passenger was a violation of both the United States Constitution and South Carolina's Constitution. This Court should reconsider its opinion of the validity of law enforcement's authority to stop a vehicle in the circumstances presented in the present case.

CONCLUSION

For the reasons stated above, appellant petitions for rehearing pursuant to Rule 221(a) SCACR, and requests this Court reconsider its opinion and grant appellant a new trial with suppression of the evidence improperly seized during the traffic stop and the search of Apartment 27A.



Gary H Johnson
Appellate Defender Bar #8898

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 18th day of December 2025.

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STATE OF SOUTH CAROLINA
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Honorable Debra R. McCaslin, Circuit Court Judge

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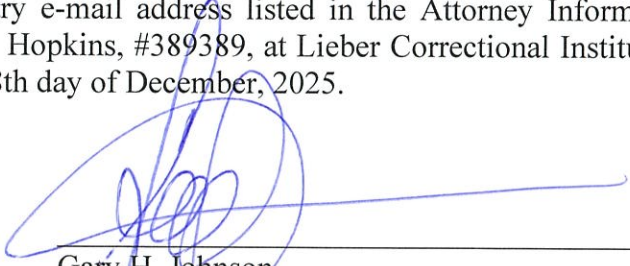
JUSTIN TYLER ELLAREE HOPKINS,

APPELLANT

APPELLATE CASE NO. 2022-001567

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Tommy Evans, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Justin Tyler Ellaree Hopkins, #389389, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 18th day of December, 2025.



Gary H. Johnson
Appellate Defender
SC Bar #8898

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

Bast, Daniel

From: Bast, Daniel
Sent: Thursday, December 18, 2025 2:16 PM
To: tommyevansjr@scag.gov
Cc: Johnson, Gary; BrandyRankin@scag.gov
Subject: 2022-001567 - The State v. Justin Tyler Ellaree Hopkins
Attachments: 2022-001567 - The State v. Justin Tyler Ellaree Hopkins - Petition for Rehearing.pdf

Good afternoon,

Attached is a copy of the petition for rehearing in the above referenced case which will be filed today, December 18, 2025, with the Court of Appeals.

All the best,

Daniel Bast
Administrative Assistant
South Carolina Commission on Indigent Defense
Division of Appellate Defense
(803) 734-1330