

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Lexington County
Honorable Debra R. McCaslin, Circuit Court Judge

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

JUSTIN TYLER ELLAREE HOPKINS,

PETITIONER

Opinion No. 6126 (S.C. Ct. App. Filed December 3, 2025)

APPELLATE CASE NO. 2026-000488

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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INDEX

INDEX i

ARGUMENT IN REPLY

The State’s Return commits the same error as the Court of Appeals,
using information and evidence solicited during trial to cure the
defect in the original warrant.....1

CONCLUSION.....3

ARGUMENT IN REPLY

The State's Return commits the same error as the Court of Appeals, using information and evidence solicited during trial to cure the defect in the original warrant.

In response to the argument that the search warrant for Apartment 27A was defective because the statements supporting probable cause failed to make any connection between petitioner and that specific apartment number (rather than the general connection made between petitioner and the entire Landmark Apartment Complex), the State argues evidence admitted during trial cured this deficiency.

During their investigation law enforcement found out through the manager of the Landmark Apartments that the Petitioner lived in the apartment that was leased to his half-brother. The manager Kim Herlong became aware that the Petitioner has been living in that apartment since the previous Thanksgiving. (R. p. 544 l. 6-8; p. 545 l. 15-10). Ms. Herlong had a discussion with the Petitioner that he would take over the apartment that next January once his half-brother's lease ran out. (R. p. 546 l. 1-3).

State's Return p. 17.

This information was all admitted during trial, as indicated by the Record citations. At no point in reading the probable cause affidavit supporting the search of Apartment 27A will this Court see those factual details. R. 830-31. Information not contained in the probable cause affidavit or supplied to the magistrate through oral testimony is irrelevant to the determination of probable cause. See State v. Weston, 329 S.C. 287, 494 S.E.2d 801 (1997) (finding earlier arrest warrants supporting probable cause could not cure a defective search).

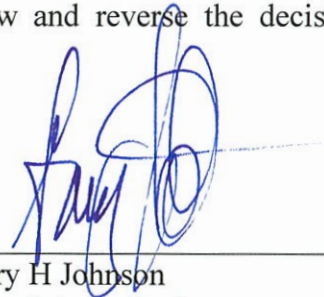
Moreover, the State's Return makes the conclusory assertion that the "the affidavit referenced the apartment records and other information law enforcement had gathered to support

that the Petitioner lived in that apartment.” State’s Return p. 18. Tellingly, there is no citation to the probable cause affidavit or any oral supplementation that connected petitioner with Apartment 27A other than the description of the place to be searched. The State has assumed that since they eventually proved that connection the warrant was sufficient. A reading of the probable cause affidavit (there is no indication in the Record of any effort to supplement the probable cause assertions through oral testimony) admittedly established probable cause that petitioner was connected to the crime being investigated and was in some way connected to the Landmark Apartment complex. It completely omits any reference to a connection with the place to be searched (Apartment 27A). As noted in the Petition for Certiorari, at the time of the search warrant one Maxie Jacobs leased Apartment 27A. Law enforcement made no effort to provide that information to the court in the probable cause statement. Certainly, a warrant to search Jacobs’ apartment due to a belief that petitioner committed a crime and lived in the same apartment complex would not have established probable cause. That is in essence what is present in the probable cause affidavit.

The Court of Appeals and the State in its Return both committed the same error when examining this issue. They both excuse the state’s assumption that a connection between petitioner and the place to be searched was made. As noted by this Court in connection with a different setting, assumptions cannot satisfy the state’s burden to establish fundamental obligations (such as waiver or, in this case, probable cause). State v. Garvin, No. 2025-000969, 2026 WL 945692, at *3 (S.C. Apr. 8, 2026).

CONCLUSION

For the reasons set for in the Petition for Certiorari and raised herein, petitioner respectfully requests that this Court grant review and reverse the decision of the Court of Appeals.



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This 10th day of April, 2026.