

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY

Court of Common Pleas

The Honorable Eugene C. Griffith, Jr.

Circuit Court Case No. 2024-CP-36-00087

Appellate Case No. 2024-001360

Abdellah El Farissi,
Appellant,
v.
Newberry College,
Respondent.

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SC Court of Appeals

APPELLANT PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Appellant respectfully petitions for rehearing of Unpublished Opinion No. 2026-UP-389, filed July 29, 2026, because the opinion appears to overlook or misapprehend material statutory issues that were expressly presented in Appellant's Initial Brief and addressed in Respondent's Initial and Final Briefs. In the alternative, Appellant respectfully requests clarification of the Court's analysis regarding those statutory issues.

ARGUMENT

I. The Court's opinion does not expressly address the statutory exception contained in 18 U.S.C. § 2511(2)(d).

18 U.S.C. § 2511(2)(d):

*"It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception **unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.**"*

The Court affirmed the dismissal after concluding that because former student-athlete Nastassia Chamoun was a party to the recorded conversation, "there was consent and no unlawful interception occurred."

Appellant respectfully submits that this conclusion addresses only the general one-party-consent rule contained in 18 U.S.C. § 2511(2)(d).

However, the same subsection also provides that one-party consent does not apply:

"unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State."

18 U.S.C. § 2511(2)(d).

Appellant expressly quoted and relied upon this statutory exception in his Initial Brief (Appellant's Initial Brief, p. 5), arguing that Respondent's reliance upon the one-party-consent provision was incomplete because it omitted the exception immediately following it.

The Court's opinion, however, does not discuss that statutory exception or explain why Appellant's allegations failed to implicate it.

Accordingly, Appellant respectfully requests rehearing to determine whether this statutory issue was overlooked or misapprehended within the meaning of Rule 221, SCACR.

II. The parties fully briefed these statutory issues.

This Petition does not rely upon any issue raised for the first time after briefing.

Rather, the issues presented herein were fully before the Court throughout this appeal.

Appellant's Initial Brief separately argued that Respondent violated 18 U.S.C. §§ 2511(1)(c) and (d) by intentionally disclosing and using the contents of the recorded communication after it had been obtained.

Respondent expressly acknowledged those arguments, stating:

"Appellant's Initial Brief contends that Respondent then improperly used and further disclosed the recording in violation of Sections 2511(1)(c) and 2511(1)(d) of the FWA." (Respondent's Initial Brief, p. 6.)

Respondent then addressed those statutory provisions in both its Initial Brief (pp. 6-8) and its Final Brief (pp. 6-8), arguing that the disclosure and use were lawful because the underlying interception was lawful.

Thus, there can be no dispute that both parties presented these statutory issues to the Court.

Although the opinion resolves the appeal under the one-party-consent provision, it does not expressly address either the criminal-or-tortious-purpose exception contained in § 2511(2)(d) or the parties' arguments concerning §§ 2511(1)(c) and (d).

Appellant respectfully submits that these issues were material to the disposition of the appeal and warrant rehearing under Rule 221.

III. Rehearing is appropriate under Rule 221, SCACR.

Rule 221 permits rehearing where the Court has overlooked or misapprehended a material question of law or fact.

Appellant respectfully submits that this Petition does not seek to relitigate the appeal or merely express disagreement with the Court's decision.

Rather, Appellant respectfully requests that the Court determine whether the statutory issues discussed above, issues expressly presented by both parties throughout this appeal, were overlooked or misapprehended in the Court's analysis.

If the Court concludes that those issues were not overlooked, Appellant respectfully requests clarification of how the criminal-or-tortious-purpose exception contained in 18 U.S.C. § 2511(2)(d), together with Appellant's related arguments under 18 U.S.C. §§ 2511(1)(c) and (d), affect the Court's analysis affirming dismissal under Rule 12(b)(6), SCRCF.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court grant this Petition for Rehearing pursuant to Rule 221, SCACR, withdraw Unpublished Opinion No. 2026-UP-389, reconsider the statutory issues identified herein, and issue a substituted opinion addressing the criminal-or-tortious-purpose exception contained in 18 U.S.C. § 2511(2)(d) together with Appellant's related arguments under 18 U.S.C. §§ 2511(1)(c) and (d).

REQUEST FOR ORAL ARGUMENT

Appellant respectfully requests that, should the Court determine additional consideration is appropriate, it exercise its discretion to permit oral argument pursuant to Rules 215 and 218, SCACR.

Rule 215, SCACR, recognizes that an appellate court may decide a case without oral argument when it determines that oral argument would not aid the Court in resolving the issues presented. Conversely, where oral argument would assist the Court, the Court retains discretion to permit it.

The South Carolina Supreme Court has likewise recognized that, although no party possesses an absolute right to oral argument, "neither due process nor any other provision of law requires oral argument in a given case. Each judge or appellate panel is entitled to make the decision in each case whether oral argument would be helpful." *Stasi v. Sweigart*, 434 S.C. 239, 258, 863 S.E.2d 669, 679 (2021).

Because this Petition identifies statutory issues that were fully briefed by both parties but appear not to be expressly addressed in the Court's opinion, Appellant respectfully submits that oral argument may assist the Court in determining whether those issues were overlooked or misapprehended within the meaning of Rule 221, SCACR.

Accordingly, Appellant respectfully requests that, if the Court concludes that further discussion would aid its consideration of the issues presented, it exercises its discretion to permit oral argument.

Respectfully submitted,

August 7th, 2026

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Proof of Service

I certify that I have served the Appellant Petition for Rehearing on Newberry College by serving a copy of it to the attorney of record, Sheila M. Abron, via electronic and U.S. Mail at her office located at 1320 Main St. Suite 750, Columbia, South Carolina 29201.

August 7th, 2026

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