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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Greenville County
Honorable Benjamin H. Culbertson, Circuit Court Judge
Appellate Case No. 2014-001956

THE STATE,

Respondent,

vs.

EMMANUEL MARQUEZ RODRIGUEZ,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly denied Appellant's motion to suppress the heroin discovered in his luggage at a bus stop because the officers validly obtained consent to conduct a sniff search of the passenger bus Appellant was travelling on during a consensual encounter with the bus's driver at a scheduled stop for the bus, developed a probable cause basis to believe drugs were present on the bus after a drug-detection dog alerted on the bus's luggage compartment, and validly obtained consent from Appellant to search his luggage after Appellant exited the bus following the drug-detection dog's alert.

STATEMENT OF THE CASE

In April of 2013, Appellant Emmanuel Marquez Rodriguez was arrested after a large quantity of heroin was discovered inside of his luggage at a bus stop. In April of 2014, the Greenville County Grand Jury indicted Appellant for one count of trafficking in heroin in an amount equal to or greater than twenty-eight grams. On September 8, 2014, a jury trial was commenced in the Greenville County Court of General Sessions with the Honorable Benjamin H. Culbertson, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a forty-year term of imprisonment along with a $200,000 fine. Appellant then filed a timely notice of appeal.

STATEMENT OF FACTS

Shortly before midnight on April 16, 2013, several officers from the South Carolina Highway Patrol responded to the parking lot of a gas station and restaurant located off of Interstate 85 in Greenville, South Carolina, after receiving information from a Drug Enforcement Agency federal task force agent indicating an individual was possibly transporting a load of heroin on a La Cubana passenger bus that made scheduled stops at that location for passenger drop-offs and pick-ups. (R. pp. 4-5; p. 75; p. 77; p. 83; pp. 114-115; p. 129; pp. 133-134). Roughly fifteen minutes later, a La Cubana bus stopped in the parking lot for a scheduled stop, and the driver of the bus began exiting the vehicle.[1] (R. pp. 5-7; p. 78; State's Ex. # 1 (Recording of Incident)). When he did so, Trooper Justin Rogers approached the driver and introduced himself. (R. pp. 5-8; pp. 78-79; State's Ex. # 1). During their ensuing conversation, Trooper Rogers explained to the driver drug traffickers were known to regularly use passenger buses to covertly transport illicit substances and asked if he would permit them to conduct a sniff search of the bus using a drug-detection dog.[2] (R. pp. 9-10; pp. 79-80; State's Ex. # 1). The driver then immediately consented to the sniff search and opened up the luggage compartment of the bus for the officers.[3] (R. pp. 9-10; pp. 80-81; p. 120; State's Ex. # 1).

After the driver provided consent for the sniff search, Corporal Brad Dowis, who was positioned nearby, retrieved his drug-detection dog, Tigger, from his vehicle and

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[1] Based on the recording of the encounter, the La Cubana bus appears to have stopped in the parking lot at or just before 12:10 a.m. on April 17, 2013. (State's Ex. # 1).

[2] Notably, while speaking with Trooper Rogers, the driver stepped off the bus and closed its door at approximately 12:12 a.m. (R. pp. 31-32; p. 83; State's Ex. # 1). However, none of the officers present at the scene asked the driver to do so. (R. pp. 31-32; p. 83; State's Ex. # 1).

[3] Significantly, the driver provided consent for the sniff search roughly three minutes into his encounter with Trooper Rogers at approximately 12:13 a.m. (State's Ex. # 1).

walked Tigger around the bus for roughly a minute or two.[4] (R. p. 8; p. 10; p. 81; p. 115; pp. 120-121; State's Ex. # 1). When Tigger reached the luggage compartment of the bus, he alerted to the presence of drugs by sitting on top of a large pile of luggage.[5] (R. p. 12; p. 84; pp. 121-122). Based on Tigger's alert, Trooper Rogers concluded he had probable cause to believe drugs were hidden on the bus. (R. p. 12). At that point, the officer advised the driver of the alert, indicated he needed to identify who the various pieces of luggage stored on the bus belonged to, and asked the driver to have the passengers exit the bus one by one. (R. p. 12; p. 84; State's Ex. # 1).

Thereafter, over the course of the next thirty to thirty-five minutes, the passengers exited the bus individually, and Trooper Rogers asked each of them to identify their luggage for him as they got off the bus. (R. pp. 12-14; p. 86; State's Ex. # 1). During that unloading process, Appellant Emmanuel Marquez Rodriguez exited the bus after roughly sixteen or seventeen other passengers and presented his luggage claim ticket to Trooper Rogers when asked if he had any luggage.[6] (R. p. 15; p. 87). Appellant then personally retrieved his own luggage, which none of the other passengers had done, and tightly clutched it to his body while exhibiting signs of an abnormal level of nervousness. (R. pp. 15-16; p. 20; pp. 87-89). Based on Appellant's behavior, Trooper Rogers decided to ask him a few questions and inquired about his travel plans. (R. p. 16; p. 90; State's Ex. # 1). During their conversation, Appellant claimed he was travelling to Philadelphia

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[4] In addition to Trooper Rogers, Corporal Dowis, and Tigger, one other uniformed officer was also present at the bus stop when the bus arrived along with two unmarked law enforcement vehicles and one semi-marked law enforcement vehicle. (R. p. 5; pp. 29-30; p. 78).

[5] Notably, Tigger alerted within six minutes of Trooper Rogers initially approaching the bus based on the fact the recording from the bus stop shows an officer walk a drug-detection dog over to the bus at 12:15 a.m. and move the dog away from the bus at 12:16 a.m. (State's Ex. # 1).

[6] Roughly twenty to twenty-five passengers were on the La Cubana bus when it arrived at the bus stop. (R. pp. 10-11; p. 87).

from Atlanta for two weeks to perform in some "drag shows" and to meet up with some friends. (R. p. 16; p. 90; State's Ex. # 1). However, Appellant stated he did not know where he was going to in Philadelphia, did not know the names of any of the locations where he was going to perform, and did not know where his friends lived. (R. p. 16; pp. 90-91; State's Ex. # 1). Trooper Rogers then asked Appellant if he had any weapons, marijuana, cocaine, or methamphetamines in his luggage, and Appellant responded he did not. (R. p. 18; pp. 91-92; State's Ex. # 1). However, when asked if he had any heroin in his luggage, Appellant immediately looked down, tried to pull the sleeve of his jacket over his knuckles, denied he knew what heroin was, and asked Trooper Rogers what he meant. (R. p. 18; pp. 92-93; State's Ex. # 1).

In light of Appellant's suspicious responses and behavior, Trooper Rogers asked him to step away from the other passengers, and the two moved towards the front of the bus.[7] (R. p. 21; p. 93; State's Ex. # 1). Trooper Rogers then advised Appellant his "story was not adding up," and he again asked Appellant if he had anything illegal in his luggage. (R. p. 22; p. 96; State's Ex. # 1). After Appellant again denied he had any illegal items, Trooper Rogers asked Appellant if he would consent to a search of his luggage. (R. p. 22; p. 96; State's Ex. # 1). Appellant then responded by immediately and unhesitatingly granting Trooper Rogers permission to search and offering his luggage to the officer. (R. p. 22; p. 96; p. 109; State's Ex. # 1). Thereafter, Trooper Rogers searched Appellant's luggage and located several bags of heroin hidden underneath an altered portion of the luggage's inner material.[8] (R. pp. 22-23; p. 97; p. 101). Appellant

[7] Based on the recording from the bus stop, Trooper Rogers asked Appellant to step away from the other passengers at approximately 12:55 a.m. (State's Ex. # 1).

[8] Notably, the heroin was wrapped in plastic covered with axle grease in an apparent attempt to mask the heroin's odor from a drug-detection dog. (R. pp. 22-23; p. 101).

was then quickly placed under arrest and admitted he was paid two thousand dollars to drop off the heroin-filled suitcase in Philadelphia. (R. pp. 24-25; p. 127; pp. 129-130).

Subsequently, Appellant was indicted for trafficking in heroin, and he proceeded to trial. (R. pp. 206-207). At the outset of trial, the solicitor noted the trial judge needed to preliminarily address the propriety of the search that led to the discovery of Appellant's hidden stash of heroin before proceeding forward with the trial. (R. pp. 2-3). In response, the trial judge conducted an in limine hearing on the matter, a recording of the events that occurred at the bus stop was played in the courtroom, and Trooper Rogers testified about the circumstances of his encounter with Appellant that led to his discovery of the hidden heroin.[9] (R. pp. 4-36).

Following the presentation of that evidence, defense counsel moved to suppress the incriminating evidence discovered in Appellant's case. (R. p. 46). In support of that motion, defense counsel asserted all of the passengers on the bus, including Appellant, were seized when the driver of the bus closed its door approximately two minutes after he parked the bus and began speaking with the officers, and he noted none of the passengers exited the bus at that time. (R. p. 48; pp. 53-54; pp. 59-62). Additionally, defense counsel argued the seizure was unlawful because the officers did not have reasonable suspicion of criminal activity in light of the fact they had only received a vague anonymous tip from the D.E.A. that had not been sufficiently corroborated to establish its reliability. (R. pp. 48-49; pp. 51-53). Furthermore, defense counsel argued the officers unlawfully arrested Appellant during the encounter and unlawfully searched his luggage

[9] In addition to Trooper Rogers, Agent Charles Cloninger, a federal drug task force agent working for the D.E.A. in Atlanta, also testified during the hearing, stated he responded to the bus stop after Appellant's heroin was found, indicated he spoke with Appellant in an attempt to ascertain the source of the heroin, and recounted the incriminating statements Appellant made during their conversation. (R. pp. 38-43).

before finding his drugs, which he contended violated Appellant's Fourth Amendment rights and warranted the suppression of the evidence. (R. pp. 51-54; pp. 59-62).

In response, the solicitor asserted the officers were constitutionally permitted to approach the driver of the bus in the parking lot and attempt to engage in a consensual encounter with him even if they did not possess reasonable articulable suspicion of criminal activity at that time. (R. p. 54). Additionally, the solicitor noted the officers did not stop the bus and, instead, approached it after it had been stopped at a scheduled stopping point. (R. pp. 54-55). Likewise, the solicitor argued the passengers were not prevented from leaving the bus by the officers during the encounter and had no contact with the officers until after a drug-detection dog alerted to the presence of drugs in the luggage compartment of the bus during a sniff search conducted with the full consent of the driver. (R. pp. 55-57). Furthermore, the solicitor noted the officers had probable cause to search the entire bus, including the luggage stored in it, based on the drug-detection dog's alert, which meant Appellant's motion to suppress the heroin discovered in that luggage should be denied. (R. p. 58).

After considering the arguments of counsel, the trial judge denied the suppression motion. (R. p. 66). In denying the motion, the trial judge found the officers did not conduct a stop or seizure of the bus by approaching it after it was stopped at a scheduled stop. (R. p. 66). After that, the trial judge determined the officers validly obtained consent from the driver of the bus to conduct a sniff search of the passenger compartment. (R. p. 66). Furthermore, the trial judge found no evidence presented during the hearing suggested the passengers were held against their wills or subjected to a forced detention or seizure by the officers at the scene, including when the driver shut the

door to the bus. (R. p. 67). For those reasons, the trial judge found suppression was not appropriate in Appellant's case. (R. pp. 66-67).

Thereafter, during trial, Trooper Rogers and the other officers present at the bus stop testified about the events of April 17, 2013, that resulted in the discovery of the heroin and Appellant's arrest. (R. pp. 75-102; pp. 103-125; pp. 128-137). Likewise, Elizabeth Adkins, the expert forensic chemist who analyzed the drugs after they were recovered in Appellant's case, testified the substance found in Appellant's luggage was over two thousand grams of heroin with a purity level of 85.3 percent, and the heroin was admitted into evidence over defense counsel's objection. (R. pp. 140-144; p. 151). Furthermore, Investigator John Garrett, a federal drug task force agent working for the D.E.A. and an expert in drug transactions, testified Appellant's heroin was lethal for human consumption based on its purity level, would have needed to be diluted as a result, and would have had a street value of $500,000 to $600,000 after it had been diluted. (R. pp. 153-158).

Subsequently, at the conclusion of trial, the jury convicted Appellant of trafficking in heroin. (R. p. 203). Following the verdict, the trial judge sentenced Appellant to a forty-year term of imprisonment and a $200,000 fine. (R. p. 205).

ARGUMENT

The trial judge properly denied Appellant's motion to suppress the heroin discovered in his luggage at a bus stop because the officers validly obtained consent to conduct a sniff search of the passenger bus Appellant was travelling on during a consensual encounter with the bus's driver at a scheduled stop for the bus, developed a probable cause basis to believe drugs were present on the bus after a drug-detection dog alerted on the bus's luggage compartment, and validly obtained consent from Appellant to search his luggage after Appellant exited the bus following the drug-detection dog's alert.

Appellant contends the trial judge erred in refusing to grant his motion to suppress the heroin found hidden in his luggage at a bus stop. In support of that contention, Appellant maintains he and the other passengers on the bus were unconstitutionally seized by law enforcement officers who allegedly had no reasonable grounds to detain them. As a result, Appellant maintains his heroin, which was discovered after he provided consent to search his luggage following the allegedly illegal seizure, was inadmissible and should have been suppressed during trial. Contrary to Appellant's contentions, the law enforcement officers involved in Appellant's case did not seize Appellant and the other passengers on the bus when they approached the driver, engaged in a consensual encounter with him, and validly obtained consent from him to conduct a sniff search of the bus using a drug-detection dog. Likewise, the officers did not seize Appellant and the others by having everyone exit the bus and identify their luggage after the drug-detection dog alerted to the presence of drugs during the sniff search, and, even if they did, that seizure was fully justified in light of the fact the drug-detection dog's alert provided the officers with a particularized and objective basis to believe criminal activity was afoot at the bus stop. Thereafter, Appellant voluntarily consented to a search of his luggage, and that consent led to the valid discovery of his hidden heroin. For those reasons, the officers' discovery of Appellant's drugs was entirely proper and did not

violate Appellant's constitutional rights, and the trial judge correctly denied Appellant's suppression motion. Appellant's conviction should be affirmed.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) ("[W]e will review the trial court's ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling."). The reviewing court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, the appellate court must affirm the trial court if there is any evidence in the record to support the ruling. State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005). Critically, the appellate court will **not** reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

ANALYSIS

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The purpose of the Fourth Amendment is "to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals." United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976). However, it is

not designed "to eliminate all contact between the police and the citizenry[.]" United States v. Mendenhall, 446 U.S. 544, 553-554 (1980). Importantly, the ultimate test for evaluating contact between law enforcement officers and citizens under the Fourth Amendment is whether that contact is reasonable. See Florida v. Jimeno, 500 U.S. 248, 250 (1991) ("The touchstone of the Fourth Amendment is reasonableness."); see also Maryland v. Buie, 494 U.S. 325, 331 (1990) ("It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]").

Pursuant to the Fourth Amendment, an individual's constitutional rights are not infringed by an encounter with a law enforcement officer **unless** the individual is seized or detained by the officer and the officer does not possess reasonable, objective grounds for effectuating the seizure. Florida v. Royer, 460 U.S. 491, 497-498 (1983). Critically, "a seizure does not occur simply because a police officer approaches an individual and asks a few questions." Florida v. Bostick, 501 U.S. 429, 434 (1991). Likewise, an officer does not effectuate a seizure merely by identifying himself or herself to an individual as a law enforcement officer. Royer, 460 U.S. at 497. Instead, a seizure occurs "[o]nly when [an] officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen[.]" Terry v. Ohio, 392 U.S. 1, 16, n. 16 (1968). As a result, a law enforcement officer generally may approach a citizen in an effort to speak with or question that person without implicating the Fourth Amendment and without effectuating a seizure so long as a reasonable person under the same circumstances as the citizen would feel free to disregard the officer and leave if he or she chooses to do so. Bostick, 501 U.S. at 434.

Significantly, in United States v. Drayton, 536 U.S. 194, 199 (2002), Drayton and another man were travelling on a passenger bus while transporting a large quantity of

cocaine underneath their clothing. After the bus made a scheduled stop, three uniformed and armed police officers boarded the bus with the permission of the driver. Id. at 197. Thereafter, with one officer positioned at the rear of the bus and another officer positioned at the front of the bus near the exit, the third officer walked down the aisle and spoke with the passengers on the bus about their travel plans and luggage. Id. at 198. As he was doing so, the officer encountered Drayton and his associate, became suspicious of the two men due to the fact they were wearing heavy clothing in warm weather, and asked them if they minded if he searched their persons. Id. at 199. Both men then granted consent, and the officer ultimately discovered their hidden cocaine during his search. Id. at 199. Subsequently, Drayton and the other men sought the suppression of the cocaine as the product of an allegedly illegal seizure and search, and the United States Supreme Court ultimately granted certiorari in their cases after the Eleventh Circuit Court of Appeals reversed their convictions and determined they were entitled to suppression of the evidence. Id. at 199-200. On certiorari, the Supreme Court reversed. Id. at 200. In reversing, the Supreme Court explained law enforcement officers can approach an individual, ask questions, ask for identification, and ask for permission to search luggage without violating the individual's constitutional rights so long as a reasonable innocent person in the same situation would feel free to terminate the encounter. Id. at 201-202. With that rule in mind, the Supreme Court determined the officers did **not** seize Drayton and his associate because they did not do anything to convey to Drayton, his associate, or the other passengers on the bus they were required to answer their questions. Id. at 203. Specifically, the Supreme Court instructed:

> There was no application of force, no intimidating movement, no overwhelming show of force, no brandishing of weapons, no blocking of exits, no threat, no command, not even an authoritative tone of voice. It is

> beyond question that had this encounter occurred on the street, it would be constitutional. The fact that an encounter takes place of a bus does not on its own transform standard police questioning of citizens into an illegal seizure.

Id. at 204. Furthermore, the Supreme Court determined the facts the officers were armed and in uniform, one of the officers was positioned near the exit of the bus, and only a few passengers had ever refused to cooperate based on the officers' experience did not convert the encounter into a seizure. Id. at 205. Therefore, the Supreme Court determined the consent provided by Drayton and his accomplice was valid, and suppression of the evidence was not warranted in their cases. Id. at 207-208.

Critically, just like the officers in Drayton, the South Carolina Highway Patrol officers involved in Appellant's case were free to approach the La Cubana bus when it stopped for its scheduled stop, to speak with its driver, and to attempt to obtain consent to conduct a sniff search from him during a consensual encounter. See id. at 200 ("Law enforcement officers do not violate the Fourth Amendment's prohibition of unreasonable seizures merely be approaching individuals on the street or in other public places and putting questions to them if they are willing to listen."). In doing so, neither Trooper Rogers nor either of the other officers present at the scene did anything to convey to the driver or the passengers on the bus they were not free to leave, and the officers did not use physical force or a show of authority to restrain anyone on the bus's freedom of movement.[10] See Mendenhall, 446 U.S. at 553 ("[A] person is 'seized' only when, by

[10] During trial, defense counsel contended the officers seized Appellant and the other passengers on the bus when the driver closed the bus's door approximately two minutes into the encounter. (R. p. 48). Notably though, the officers never instructed the driver to close the door or did anything else to get him to do so. (R. pp. 31-32). Therefore, the driver's act of closing the bus's door could not constitute an unconstitutional seizure on behalf of the officers. See Skinner v. Ry. Labor Executives' Ass'n, 489 U.S. 602, 614 (1989) ("[T]he Fourth Amendment does not apply to a search or seizure, even an arbitrary one, effected by a private party on his own initiative[.]"). However, even if it somehow could be attributed to the officers, the recording from the bus stop appears to depict someone inside of the bus reopening the bus's door at roughly 12:14 a.m., which was only two minutes after the driver closed the door. (State's Ex. # 1).

means of physical force or a show of authority, his freedom of movement is restrained."). Instead, Trooper Rogers simply approached the driver, politely introduced himself, explained why he was there, and asked for consent to conduct a sniff search, which was granted within roughly three minutes of his initial contact with the driver. See Drayton, 536 U.S. at 201 ("Even when law enforcement officers have no basis for suspecting a particular individual, they may pose questions, ask for identification, and request consent to search luggage – provided they do not induce cooperation by coercive means."). As a result, the officers did not effectuate a seizure of Appellant or any of the bus's passengers in obtaining consent for the sniff search, and their actions were substantially less intrusive than the actions of the officers in Drayton that were found to be constitutionally proper.

Thereafter, the officers used a drug-detection dog to conduct a sniff search on the bus, and the dog quickly alerted to the presence of drugs in the luggage compartment of the bus within six minutes of Trooper Rogers initially approaching the driver. At that point, the officers had a probable cause basis to believe drugs were present on the bus and at least one of the passengers on the bus was involved in criminal activity. See State v. Lane, 271 S.C. 68, 72, 245 S.E.2d 114, 116 (1978) (finding the detection of the odor of drugs alone established probable cause to believe criminal activity was afoot and justified

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Therefore, it is clear the closed door did not convey to the passengers they were not free to do as they pleased under the circumstances. See Drayton, 536 U.S. at 202 (explaining the appropriate inquiry for determining if a seizure occurred on a bus is whether a reasonable innocent person would feel free to decline an officer's requests or otherwise terminate an encounter). Similarly, defense counsel contended during trial the officers seized Appellant and the other passengers on the bus because none of the passengers exited the bus during the officers' interactions with the driver. (R. pp. 48-49). However, the fact none of the passengers left the bus at the scheduled stop did not establish the passengers had been seized by the officers, particularly in light of the fact the stop occurred after midnight at a gas station in a city with which many – if not all – of the passengers may have been unfamiliar. See Bostick, 501 U.S. at 435-436 ("[W]hen a person is seated on a bus and has no desire to leave, the degree to which a reasonable person would feel that he or she could leave is not an accurate measure of the coercive effect of the encounter."); see also Drayton, 536 U.S. at 201-202 ("A passenger may not want to get off a bus if there is a risk it will depart before the opportunity to reboard. A bus rider's movements are confined in this sense, but this is a natural result of choosing to take the bus; it says nothing about whether the police conduct is coercive." (citations omitted)).

the issuance of a search warrant); see also Illinois v. Gates, 462 U.S. 213, 238 (1983) (identifying probable cause as "a fair probability that contraband or evidence of a crime will be found"); Texas v. Brown, 460 U.S. 730, 741 (1983) (instructing probable cause is a flexible, common-sense standard). In light of that particularized suspicion of criminal activity, the officers were constitutionally permitted to temporarily detain Appellant and the other passengers on the bus and to conduct a search of the bus along with the luggage being transported inside of it. See Knight v. State, 284 S.C. 138, 141, 325 S.E.2d 535, 537 (1985) ("[A] police officer may stop an automobile and briefly detain its occupants, even without probable cause to arrest, if he has a reasonable suspicion that the occupants are involved in criminal activity."); State v. Morris, 312 S.C. 116, 117, 439 S.E.2d 291, 292 (Ct. App. 1993) ("[U]nder Terry, an officer may stop an automobile."); see also Wyoming v. Houghton, 526 U.S. 295, 307 (1999) ("We hold that police officers with probable cause to search a car may inspect passengers' belongings found in the car that are capable of concealing the object of the search."); California v. Carney, 471 U.S. 386, 392-393 (1985) (recognizing the automobile exception to the warrant requirement is applicable to any vehicle that is readily mobile, including a motor home); United States v. Ross, 456 U.S. 798, 825 (1982) ("If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.").

Despite the fact they had a probable cause basis to believe at least one of the passengers on the bus was presently involved in criminal activity and was actively transporting drugs, the officers in Appellant's case nonetheless did **not** take any actions to seize the passengers on the bus following the drug-detection dog's alert. Instead, Trooper Rogers asked the driver to assist him by having the passengers individually exit

the bus and identify their luggage, and he did so without using force, threats, or a show of authority that would have conveyed to those passengers they were not free to leave. See Bostick, 501 U.S. at 439-440 ("[I]n order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' request or otherwise terminate the encounter. That rule applies to encounters that take place on a city street or in an airport lobby, and it applies equally to encounters on a bus."); cf. United States v. Ojeda-Ramos, 455 F.3d 1178, 1183-1184 (10th Cir. 2006) ("[The officer's] order to leave the bus and claim luggage was not a seizure and would not have been even if he had identified himself as a police officer. He wanted the passengers to comply, but he did not demand, intimidate, threaten or use force against them. However compulsory [the officer's] order may have appeared, it would not have left an impression upon a reasonable person that he was not 'free to leave.' After all, [the officer] required the passengers to leave the bus, not remain on it. The passengers were not only free to leave, they could have ignored [the officer's] request to claim their luggage. 'While most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to respond, hardly eliminates the consensual nature of the response.' " (citation and footnotes omitted)). Accordingly, Appellant and the other passengers on the bus were not seized simply because they were asked to exit the bus and identify their luggage.

However, even assuming Trooper Rogers's request for the passengers to exit the bus effectuated a seizure of Appellant and the others, that seizure was reasonable and warranted in light of the fact the officers had a particularized and objective basis to

believe criminal activity was afoot based on the drug-detection dog's alert on the bus's luggage compartment. See United States v. Sokolow, 490 U.S. 1, 7 (1989) ("[T]he police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause." (citation omitted)). As a result, the officers were fully justified in asking Appellant and the other passengers to exit the bus while they completed their investigation into the criminal activity revealed by the sniff search, and Trooper Rogers did not thereafter violate Appellant's constitutional rights by speaking with him and asking him for consent to search his luggage. See Bostick, 501 U.S. at 434-435 ("[E]ven when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual, . . . ask to examine the individual's identification, . . . and request consent to search his or her luggage, . . . – so long as the police do not convey a message that compliance with their requests is required." (citations omitted)); cf. Maryland v. Wilson, 519 U.S. 408, 414-415 (1997) ("[A]n officer making a traffic stop may order passengers to get out of the car pending completion of the stop."). Accordingly, once Appellant voluntarily provided consent for the search, Trooper Rogers was entirely justified in searching Appellant's luggage, and his search validly resulted in the discovery of Appellant's hidden heroin. See State v. Brown, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012) (identifying several recognized exceptions to the warrant requirement, including the consent exception).

Significantly, the officers in Appellant's case – despite the fact they had only received an anonymous tip – were not required to simply allow a large quantity of heroin to be transported through South Carolina on a passenger bus entirely unhindered. See Adams v. Williams, 407 U.S. 143, 145 (1972) ("The Fourth Amendment does not require

a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape."); see also Alabama v. White, 496 U.S. 325, 329 (1990) (recognizing an anonymous tip will seldom be sufficient to establish even reasonable suspicion). Instead, they were constitutionally entitled to investigate the tip by attempting to engage in a consensual encounter, and they engaged in such an encounter at the bus stop in an entirely reasonable manner, which ultimately led to them obtaining a probable cause basis to believe criminal activity was afoot and discovering Appellant's heroin in his luggage. See State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977) (recognizing only unreasonable searches and seizures are prohibited). For those reasons, the officers did not violate Appellant's constitutional rights during the encounter at the bus stop, and the trial judge properly denied Appellant's suppression motion. See State v. Provet, 405 S.C. 101, 107, 747 S.E.2d 453, 456 (2013) ("South Carolina appellate courts review Fourth Amendment determinations under a clear error standard. We affirm if there is any evidence to support the trial court's ruling." (citations omitted)); State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) ("When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling."). Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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August 20, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Greenville County
Honorable Benjamin H. Culbertson, Circuit Court Judge
Appellate Case No. 2014-001956

THE STATE,

Respondent,

vs.

EMMANUEL MARQUEZ RODRIGUEZ,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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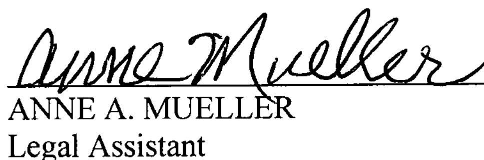
I further certify that all parties required by Rule to be served have been served.
This 20th day of August, 2015.



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