

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Greenville County

S.C. SUPREME COURT

Honorable Benjamin H. Culbertson, Circuit Court Judge

Opinion No. 2016-UP-320 (S.C. Ct. App Filed 8/18/2016)

THE STATE,

RESPONDENT,

V.

EMMANUAL M. RODRIGUEZ,

PETITIONER

APPENDIX

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Emmanuel M. Rodriguez, Appellant.

Appellate Case No. 2014-001956

Appeal From Greenville County
Benjamin H. Culbertson, Circuit Court Judge

Unpublished Opinion No. 2016-UP-320
Submitted April 1, 2016 – Filed June 22, 2016

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mark Reynolds Farthing, both of
Columbia; and Solicitor William Walter Wilkins, III, of
Greenville, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) ("In

criminal cases, the appellate court sits to review errors of law only."); *State v. Missouri*, 361 S.C. 107, 111, 603 S.E.2d 594, 596 (2004) ("When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm the trial [court's] ruling if there is *any* evidence to support the ruling."); U.S. Const. amend. IV (prohibiting unreasonable searches and seizures); *State v. Mattison*, 352 S.C. 577, 583, 575 S.E.2d 852, 855 (Ct. App. 2003) ("Evidence obtained in violation of the Fourth Amendment is inadmissible in both state and federal court."); *Florida v. Royer*, 460 U.S. 491, 497 (1983) ("[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions."); *Florida v. Bostick*, 501 U.S. 429, 434 (1991) ("So long as a reasonable person would feel free 'to disregard the police and go about his business,' . . . the encounter is consensual and no reasonable suspicion is required." (quoting *California v. Hodari D.*, 499 U.S. 621, 628 (1991))); *id.* ("Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968))); *United States v. Drayton*, 536 U.S. 194, 206 (2002) ("The Court has rejected . . . the suggestion that police officers must always inform citizens of their right to refuse when seeking permission to conduct a warrantless consent search.").

AFFIRMED.¹

HUFF, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

EMMANUAL M. RODRIGUEZ,

APPELLANT

APPELLATE CASE NO. 2014-001956

Appeal from Greenville County

Honorable Benjamin H. Culbertson, Circuit Court Judge

Unpublished Opinion No. 2016-UP-320
Filed June 22, 2016

PETITION FOR REHEARING

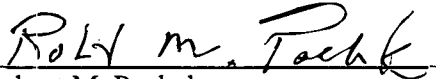
Pursuant to Rule 221(a) SCACR, this petition for rehearing is filed to point out that the opinion of this court may have overlooked or misapprehended certain factors of this case. The court has failed to address the key issue that was presented:

Whether the trial court erred in refusing to suppress heroin found in appellant’s luggage because the police acted on an anonymous tip that lacked sufficient indicia of reliability to establish reasonable suspicion for a Terry investigatory stop?

There were four uniformed officers at the scene plus a k-nine where the bus was. None of the passengers left the bus showing they did not feel they were free to leave. Appellant did not come off the bus until 40 minutes after it was stopped. The bus was seized with all of the passengers inside. There was no reliability shown of the anonymous tip and who gave it to the D.E.A. The police did not even have an accurate description of the suspect. The burden was on the State to prove that the information supplied to the D.E.A. was reliable and credible. The State did not meet that burden. They did not prove that they had a reasonable suspicion to do what they did.

Wherefore, based on the foregoing points, appellate counsel would request a hearing.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

This 7th day of July, 2016.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EMMANUAL M. RODRIGUEZ,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon Mark Farthing, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room #519, Columbia, SC 29201 and Emmanuel M. Rodriguez, #361467, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 7th day of July, 2016.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this
7th day of July, 2016.

Christian Ford (L.S.)
Notary Public for South Carolina
My Commission Expires: March 1, 2026

The South Carolina Court of Appeals

The State, Respondent,

v.

Emmanuel M. Rodriguez, Appellant.

Appellate Case No. 2014-001956

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas E. Huff J.

U. Ke J.

John D. Bute J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire

Robert M. Pachak, Esquire

Mark Reynolds Farthing, Esquire

William Walter Wilkins, III, Esquire

FILED

August 18, 2016 *ST*