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**Dec 12 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM AIKEN COUNTY  
COURT OF GENERAL SESSIONS

Hon. Jocelyn Newman  
Circuit Court Case No. 1985-GS-02-00847

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Appellate Case No.: 2023-000961

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Timothy F. Green, ..... Appellant,

v.

State of South Carolina, ..... Respondent.

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PETITION FOR REHEARING

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December 12, 2025.

## PETITION

Appellant moves this Court to grant a rehearing pursuant to Rule 221, SCACR, based on the following:

**I. THE APPLICANT’S ENTITLEMENT TO RELIEF UNDER STATE LAW WAS SUFFICIENTLY ARGUED BELOW FOR THE COURT TO UNDERSTAND AND RULE ON THE ISSUE UNDER STATE LAW.**

At the Appellant’s PCR there was extensive testimony by the State’s evidence custodians. The end result was that evidence custodians could not explain the apparent loss of the evidence or lack of a complete chain of custody. At the end of the case the facts surrounding the loss of the evidence and its documentation remained a mystery. As a result, at the hearing Appellant conceded that evidence adduced at the hearing failed to show bad faith on the part of law enforcement. App. 70. Relief under Youngblood and federal law was therefore not available. Appellant argued that relief should still be available based on the State’s unexplained loss of potentially exculpatory evidence. As Youngblood extends only to cases involving proof of bad faith on the part of the police, Petitioner presented the issue to the trial court under State law: “And I would submit that based on the fact that the State cannot explain what happened, I think my client would be entitled to relief and a new trial based on the presumption that it very well could have exculpatory value and he's been robbed of that opportunity without any explanation. So we would ask Your Honor to consider a new trial in this case.” ROA 72, l. 2-7.

Admitting that the facts failed to show the bad faith required for relief under Youngblood and federal law, Petitioner’s argument could only be understood by the trial court as being based on State law:

I think the dilemma of it comes we're at a factual black hole. We don't know

where the samples are. If they were here, I'm sure the Court would probably order the testing, but the question now becomes they are clearly gone and there is no explanation of where they went. Does that entitle the defendant to relief? And I would submit that it does simply because all of those things are out of his control. It's -- arguably, is it -- I can't really argue bad faith because we just don't know what happened to it other than it could have been negligence, could have been bad faith. It could have been anything, but I would submit that he's still entitled to relief because it could have had substantial exculpatory value. And for that reason -- and it's a Rule 29 motion. So I would ask the Court to grant the motion and give him a new trial.

ROA 77, l. 17-78, l. 7.

Appellant's argument to the trial court did not require exactitude to preserve the issue for appellate review.

The State asserts that Petitioner's argument is unpreserved. We disagree. While defense counsel could have articulated his objection more clearly, his objection adequately preserved the issue for this Court's review. *See State v. Brannon*, 388 S.C. 498, 502, 697 S.E.2d 593, 595 (2010) (“Error preservation rules do not require a party to use the exact name of a legal doctrine in order to preserve an issue for appellate review.”).

State v. Gamble, 405 S.C. 409, 747 S.E.2d 784, fn 3, (S.C. 2013).

“Error preservation rules do not require a party to use the exact name of a legal doctrine in order to preserve an issue for appellate review.” Kosciusko v. Parham, 428 S.C. 481, 506, 836 S.E.2d 362, 375 (Ct. App. 2019) (*quoting State v. Brannon*, 388 S.C. 498, 502, 697 S.E.2d 593, 595 (2010)). “Instead, a litigant is only required to fairly raise the issue to the [family] court, thereby giving it an opportunity to rule on the issue.” *Id.* (alteration in original) (*quoting Brannon*, 388 S.C. at 502, 697 S.E.2d at 595-96). While not specifically citing S.C. Const. Art. 1, Sec. 3, Appellant's argument was sufficient for the trial court to understand and rule on the issue under state law, which the trial court did. Because the issue was sufficiently presented, understood, and ruled on by the trial court on state grounds, it was adequately preserved for

appellate review.

## **II. THE HOLDING OF STATE V. REAVES DOES NOT PRECLUDE RELIEF ON STATE GROUNDS.**

This Court's decision appears to rely on State v. Reaves for the proposition that relief based on the issue of missing or destroyed evidence can only be obtained through federal law under Youngblood. This was not the holding of Reaves. On appeal Reaves did not argue the issue of missing or destroyed evidence under state law. Reaves argued the issue only under federal law, which the Court applied through Youngblood.

Importantly, the Reaves Court recognized that other States have granted relief under State law without the showing of bad faith required under Youngblood. The Court in Reaves declined to reach the issue under state law however because Reaves only argued federal law on appeal:

A number of state courts have declined to follow the bad faith standard established in Youngblood based on state law grounds. *See, e.g., State v. Ferguson*, 2 S.W.3d 912, 917 (Tenn.1999) (“Because we deem the preservation of the defendant's fundamental right to a fair trial to be a paramount consideration here, we join today those jurisdictions which have rejected the Youngblood analysis in its pure form.”); State v. Osakalumi, 194 W.Va. 758, 461 S.E.2d 504, 512 (1995) (“As a matter of state constitutional law, we find that fundamental fairness requires this Court to evaluate the State's failure to preserve potentially exculpatory evidence in the context of the entire record.”); Commonwealth v. Henderson, 411 Mass. 309, 582 N.E.2d 496, 497 (1991) (“The rule under the due process provisions of the Massachusetts Constitution is stricter than that stated in the Youngblood opinion.”). However, Reaves does not ask this Court to do so here; his argument rests solely on the Fourteenth Amendment to the United States Constitution.

State v. Reaves, 414 S.C. 118, 777 S.E.2d 213 (S.C. 2015), 127.

Unlike Reaves, Appellant has argued state law at trial and on appeal. The trial court ruled on the issue under State law. The Court should therefore consider the issue on the merits based on the arguments as set forth in the Appellant's briefs.

## **CONCLUSION**

Based on the foregoing this Court should grant a rehearing and reverse the PCR court and grant Appellant a new trial based on the arguments made in the Appellant's briefs.

Respectfully submitted,  
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