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**Jan 23 2026**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Beaufort County  
Honorable Brooks P. Goldsmith and Carmen T. Mullen, Circuit Court Judges  
Appellate Case No. 2023-000846

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THE STATE,

Respondent,

vs.

JAKAVIS GREEN,

Appellant.

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**RETURN TO  
APPELLANT'S PETITION FOR REHEARING**

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Through an unpublished decision issued on November 26, 2025, this Court affirmed Appellant Jakavis Green's convictions for third-offense-or-greater driving under suspension and a habitual traffic offender violation. State v. Green, Op. No. 2025-UP-384 (S.C. Ct. App. filed Nov. 26, 2025). In affirming, this Court analyzed Green's claim the trial judge erred by denying his suppression motion because Section 56-5-2120(B) of the South Carolina Code of Laws was purportedly unconstitutionally vague and, as a result, the deputy supposedly lacked reasonable suspicion to initiate a traffic stop of the rental vehicle Green was driving at the time. Upon analyzing the matter, this Court concluded the issue Green raised on appeal was not properly preserved for appellate review. Now, Green has petitioned for rehearing, arguing this Court erred by rejecting his constitutional challenge to South Carolina's statutory provision governing left turns on procedural grounds.

In South Carolina, issue preservation requirements are a fundamental component of appellate procedure. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004). The key purpose of those requirements is “to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review.” Queen’s Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). Through their enforcement and application, the trial court is guaranteed a chance “to rule properly after it considered all relevant facts, law, and arguments[,]” and the appellate court is provided with everything needed to properly review whatever ruling is made within the limits of the applicable standard of review. I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); see Queen’s Grant, 368 S.C. at 373, 628 S.E.2d at 919 (“The rationale for the [error preservation] rule is that until the trial court considers the matter *and makes a ruling*, an appellate court is unable to find error.” (emphasis added)).

For an issue to be preserved for appellate review pursuant to our issue preservation requirements, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004). Thus, based on those requirements, an issue—including a constitutional one—cannot ordinarily be raised or considered on appeal unless it was first presented to *and* ruled upon by the trial judge. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005); see State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) (“Appellant is limited to the grounds raised at trial.”); State v. Gee, 262 S.C. 373, 379, 204 S.E.2d 727, 729 (1974) (“Only matter that has been ruled on below can be reviewed[.]”); In re Care and Treatment of Corley, 365 S.C. 252, 258, 616

S.E.2d 441, 444 (Ct. App. 2005) (“Constitutional issues, like most others, must be raised to and ruled upon by the trial court to be preserved for appeal.”).

With that in mind, this Court stated here:

We hold the issue is not preserved. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal.”); id. at 142, 587 S.E.2d at 694 (“A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground.”); cf. State v. Neuman, 384 S.C. 395, 400-02, 683 S.E.2d 268, 270-71 (2009) (holding a constitutional issue was preserved for appellate review despite the defendant using different language in the argument at trial because the trial court’s ruling indicated it understood and ruled on the constitutional issue).

State v. Green, Op. No. 2025-UP-384 (S.C. Ct. App. filed Nov. 26, 2025). Thus, from the authorities cited, it appears this Court found the argument Green presented on appeal was not properly preserved for appellate review because the trial judge did not actually rule upon that precise argument during trial. Significantly, that finding was certainly supportable based on the facts and circumstances of Green’s trial.

More specifically, defense counsel moved toward the outset of trial to suppress all the evidence discovered as a result of the traffic stop conducted in Green’s case. (R. pp. 11-14). In response, a hearing was held on the matter. (R. pp. 11-19). During that hearing, defense counsel argued to the trial judge the language of Section 56-5-2120(B) was “just nonsensical” and did not “in any way dictate what lane of traffic a driver turning left should turn into.” (R. p. 13; p. 18). Based on that, defense counsel contended Green did not actually commit a traffic violation as needed to justify the stop, and, for emphasis, she expressly averred that was “really the crux” of the suppression motion. (R. p. 14; pp. 17-18).

Upon hearing that argument, the trial judge did not explicitly conduct any analysis of the constitutionality of Section 56-5-2120(B) and similarly did not articulate any specific rulings concerning the statute's constitutionality. (R. p. 19). Instead, the trial judge addressed what had been presented to him, expressly noted the issue before him was "reasonable suspicion," concluded the statute was unambiguous, and ruled the traffic stop that ultimately led to Green's charges for *other* offenses was supported by reasonable suspicion. (R. p. 19).

Importantly, once that ruling had been made, defense counsel did not seek to clarify her position or assert the trial judge had failed to rule on some aspect of the defense's suppression motion by not analyzing the constitutionality of Section 56-5-2120(B). (R. p. 19). And, defense counsel did not do so even though—at least in a written reply that had been filed several *years* before trial—she had previously advanced a constitutional vagueness argument. (R. p. 1; p. 19; pp. 127-130).

Now, on appeal, the crux of Green's argument is no longer centered on a contention he did not actually commit a traffic violation because the pertinent statute supposedly did not "in any way dictate what lane of traffic a driver turning left should turn into." (App. Br. pp. 1-12). Instead, after conceding the deputy's belief he had, in fact, violated Section 56-5-2120(B) was "potentially a valid interpretation of the statutory language" and was "reasonable," Green has pivoted the crux of his argument so that it is now focused on a claim South Carolina's statute governing left turns was unconstitutionally vague, which—at least in his view—rendered the traffic stop invalid and warranted the suppression of any evidence discovered as a result of it. (App. Br. pp. 5-11).

Critically though, as previously explained, the trial judge did not expressly rule on the constitutionality of Section 56-5-2120(B) when denying the suppression motion, and defense

counsel did not ask him to do so after he issued the ruling he issued. If defense counsel wanted the trial judge to rule on the constitutionality of Section 56-5-2120(B), it was incumbent upon defense counsel to clearly bring that issue—and the trial judge’s failure to rule on it—to the trial judge’s attention so a ruling could be obtained, and defense counsel certainly had an opportunity to do so during trial. See Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (recognizing a party is *required* to seek a ruling “when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review”). Nevertheless, defense counsel did not avail herself of the opportunity, and, as a result, the trial judge never explicitly ruled on whether Section 56-5-2120(B) was or was not unconstitutionally vague.

Under such circumstances, this Court could—as it appears to have done—validly find Green’s appellate challenge to the constitutionality of the statute was not properly preserved for appellate review since the trial judge did not expressly rule on that particular matter. See State v. Watts, 321 S.C. 158, 167, 467 S.E.2d 272, 278 (Ct. App. 1996) (“To be preserved for appellate review, an issue must be both presented to and passed upon by the trial court. If the issue is raised *but not ruled on*, it is not preserved for appeal.” (emphasis added)); see also Rule 220(c), SCACR (“The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.”). And, by resolving the matter on procedural grounds, this Court acted in a manner fully consistent with South Carolina courts’ “firm policy to decline to rule on constitutional issues unless such a ruling is required.” In re Care & Treatment of McCracken, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001).

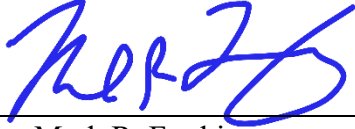
For those reasons, this Court did not commit any error by resolving Green’s case in the manner it did. However, even assuming it did not, Green—for all the reasons previously identified in the State’s Final Brief of Respondent—still would not have been entitled to any

relief on appeal because there was no valid basis for suppression in Green’s case since the deputy made an objectively-reasonable determination there was reasonable suspicion to believe Green violated a presumptively-valid statute prior to initiating the stop. (Resp. Br. pp. 1-16). 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.”); see also Jones v. State, 440 S.C. 14, 23, 889 S.E.2d 590, 595 (2023) (recognizing *all* statutes are presumed to be constitutional and valid); cf. United States v. Inocencio, 40 F.3d 716, 728 (5th Cir. 1994) (“Daniel claims that article 6701d, § 61(a) is unconstitutionally vague because it does not provide a person with adequate notice of the prohibited activity. Therefore, the argument continues, it can not provide an officer with a reasonable objective basis for the traffic stop and thus, the evidence and statements taken as a result should have been suppressed by the trial court. This argument also lacks merit. We are unconvinced that the statute is vague in any sense. Yet, even if the statute were declared unconstitutional, it would not affect the legality of the stop since Deputy Garza had probable cause to believe Daniel violated the ‘presumptively valid’ statute.” (citations omitted)); People v. Vaughn, 334 P.3d 226, 229 (Colo. 2014) (interpreting a Colorado statute that was virtually identical to Section 56-5-2120 in precisely the same way the deputy interpreted Section 56-5-2120 when concluding Green committed a traffic violation). Green’s petition for rehearing should be denied.

Respectfully submitted,

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**PROOF OF SERVICE**

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I, Mark R. Farthing, certify I have served the within Return to Appellant's Petition for Rehearing on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

Gary H. Johnson, Esq.  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, SC 29211

I further certify all parties required by Rule to be served have been served.

This 23rd day of January, 2026.



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MARK R. FARTHING  
Senior Assistant Deputy Attorney General  
Office of the Attorney General