RECEIVED
Feb 25 2026
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM AIKEN COUNTY
COURT OF GENERAL SESSIONS
Hon. Jocelyn Newman
Circuit Court Case No. 1985-GS-02-00847

Appellate Case No.: 2023-000961

Timothy F. Green, ... Petitioner,

v.

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

PETITION FOR WRIT OF CERTIORARI

J. Falkner Wilkes (SC Bar #12893)
248 Deerwood Park Drive
Oakland, MS 38948
(864) 421-4618
jfalknerwilkes@gmail.com
Counsel for Petitioner

February 25, 2026

PETITION

Questions presented for review

1. Did the state's failure to preserve potentially exculpatory evidence combined with its failure to maintain proper records constitute a violation of due process under the South Carolina Constitution?

2. Did the court of appeals err in holding that the issue was not preserved for appellate review?

Statement of the Case

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to order of commitment of the Aiken County Clerk of Court. Petitioner was tried and found guilty of murder in 1986 (1985-GS-02-847). Petitioner was sentenced to life imprisonment. Prior to the filing of the present action Petitioner pursued a direct appeal and several post conviction relief actions including one action in federal court for habeas corpus relief. (1988-CP-02-237; 1989 federal habeas; 1992-CP-02-00433; 1993-CP-02-01352; 2004-CP-02-955). None of the foregoing resulted in relief from the Petitioner's conviction or sentence.

Subsequent to the foregoing actions the legislature enacted legislation allowing for the post conviction testing of DNA evidence. *See* § 17-28-100. *Disclosure and use of test results; motion for new trial.* On November 29, 2012, Petitioner filed an application for forensic DNA testing of evidence from his original murder trial (1985-GS-02-847). An ORDER GRANTING POST-CONVICTION DNA TESTING was issued on September 16, 2014 granting post-conviction DNA testing. Petitioner was appointed counsel to represent Petitioner in the proceedings. As a result of the aforementioned Order, SLED conducted DNA testing and reported that no biological matter could be detected on the articles tested. A SUPPLEMENTAL ORDER (DNA TESTING) was issued on October 13, 2015 requiring additional testing. SLED

again conducted DNA testing and again reported that no biological matter had been found. Appointed counsel took no further action and Petitioner subsequently filed an Application for Post Conviction Relief (2017-CP-02-00064) alleging ineffective assistance of appointed counsel for failing to follow through after receiving the results of the DNA testing and actual innocence. A Conditional Order of Dismissal in the PCR was issued March 30, 2021. Prior to the issuance of a final order of dismissal the Petitioner filed the present action under Rule 29 seeking a new trial based on the SLED DNA test results. The PCR was stayed pending the resolution of the present action. On June 14, 2023 a hearing was convened on the Rule 29 Motion. As a result of the hearing the circuit court denied Petitioner's Rule 29 Motion. Petitioner appealed and the Court of Appeals affirmed in Unpublished Opinion No. 2025-UP-410. This petition follows.

Statement of Facts

Testimony from the Criminal Trial March 5, 1986

Carolyn Johnson testified that she was visiting her neighbor Elizabeth Green on September 23rd 1985. 32. According to Johnson the Petitioner joined her and Elizabeth Green at the apartment where he sat and drank some beer with them. Supp. R. 14-17. At that time three children were playing in the back room of the apartment. One of the children, three years old at the time, was the daughter of a neighbor, Phyllis Price. After Petitioner talked with Elizabeth Green and Johnson he walked into the back of the apartment. Supp. R. 19. Petitioner was the only adult in the back of the apartment. Supp. R. 19. Petitioner was in the back of the apartment for fifteen or twenty minutes. Supp. R. 19. When the Petitioner came back to where Johnson and Elizabeth Green were sitting the Petitioner was carrying Price's daughter. Supp. R. 19. The child was not moving or making any sounds. Supp. R. 20. Petitioner told Liz (Elizabeth Green) that the

child was asleep. 19. Petitioner left out the back door to take the child to Price (the child's mother). After Petitioner left she heard Price screaming. Supp. R. 19.

Hearing Price screaming Elizabeth Green and Johnson immediately ran across to Price's apartment. Supp. R. 20. Arriving almost immediately at Price's apartment she observed the child on the back porch were Petitioner had laid her down. Supp. R. 21. Petitioner asked Johnson to get a cold compress to put on her head. Supp. R. 21. Petitioner was trying to wake up the child by rubbing her face and shaking her. Supp. R. 21. Johnson also testified that she saw Green attempting to perform chest compressions on the child. Supp. R. 22. Green first told Price that the child was sleeping but when Price saw blood coming from the child's nose and mouth and started screaming Green told her that "maybe she had took some poison." Supp. R. 44, l. 23-46, l. 3. Johnson testified that she later saw blood on the wall in the room where the children had been playing at Green's apartment. Supp. R. 22. Emma Simpkins testified that she saw the Petitioner the afternoon the child died and that he had said to her that he felt as though he was being punished by God and if [the child] lived he wouldn't do anything wrong anymore. Supp. R. 34.

One of the children that was in the room playing with the deceased testified at Petitioner's trial. She was four years old at the time of trial. Supp. R. 54. She testified that she was playing with the deceased and another child. Supp. R. 54. She testified that the Petitioner was in the bathroom and the deceased walked in the bathroom. 54. When the deceased walked in the bathroom the Petitioner told her to "get out of here". Supp. R. 55, l. 15-16. When she didn't leave the Petitioner said "I'm going to beat you butt [deceased child's name] and started kicking her in the stomach. Supp. R. 55, 17-23. The child witness testified that she saw blood on the wall and that the deceased was throwing up. Supp. R. 56. Petitioner admitted that the deceased "threw

up" on his shirt but said that he never saw any blood. Supp. R. 104-105.

Testimony from Timothy Green:

3 Q. When did you first see her [deceased]?
4 A. When I came back from Phyllis's house I went to
5 Minnie's and when I come back from Minnie's, Poo and them
6 come to the corner and told me that she was back there on
7 the floor asleep.
8 Q. Did you return then to your sister's house?
9 A. After I took the little girl [deceased], I returned back -
10 I went to carry Phyllis to the hospital.'
Crim.T. 102.

10 A. When Poo called me, I went back there and I
11 picked up the little girl [deceased] and she was laying like this.
12 I picked her up and she-grabbed me around the neck and I
13 was coming out with her and I told my sister, she asked
14 me where was I going and I told her I'm going to take her
15 and I'll be right back. And when I got down the road she
16 threw some kind of fling on my shoulder and her eyes was
17 rolling back in her head and I was trying to ask her what
18 was wrong with her. I was shaking her like that because
19 you know, her eyes was going back in her head. So
20 Phyliss come to the door and she said, "Tim, what's
21 wrong?", and I said, "I don'.t know, she just threw up on
22 my shirt", 'cause there was a big stain on my shirt. She
23 went to screaming and hollering and Carolyn and my sister
24 came running and Teresa and you know, a lot of people
25 came running.
Supp. R. 104.

Forensic Investigator Steven Derrick testified that two days after the incident he received into evidence a blue shirt and a pair of trousers and a blue shirt that belonged to the Petitioner. Supp. R. 35-36. SLED forensic serologist Patsy Habben testified that she tested six different stains on the shirt and found two to contain Group O, human blood along with saliva. Supp. R. 39-40. On one sample she found it to contain human blood but could not determine the blood type. Supp. R. 40-41. Three of the samples were negative for human blood. Supp. R. 41. Three

samples were tested from the trousers with one being found to contain Group O, human blood. Supp. R. 42. Forty percent of the population has Group O blood. Supp. R. 43. Elizabeth Green, Timothy Green's sister, testified at the criminal trial that the Petitioner had blood on him from a cut on his arm. Supp. R. 94. There appears to be no clear expert testimony as to the blood type for either the deceased or Timothy Green.

Dr. Joel Sexton, forensic pathologist, testified that there were numerous bruises in the deceased abdominal region and upper chest. Supp. R. 70. Sexton testified that the something had struck the child hard enough to lacerate the small intestines, the pancreas, and liver. There were also injuries to the head which caused hemorrhaging on the surface of the brain. Supp. R. 71-72. The abdominal injuries resulted in the child's death. Supp. R. 72. Dr. Sexton testified that some of the deceased's injuries might cause vomiting. Supp. R. 76.

Stipulated facts from the Order granting post-conviction DNA testing

1. The physical evidence or biological material to be tested is available and is potentially in a condition that would permit the requested DNA testing (§17-28-90(8)(1));

2. The physical evidence or biological material to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect, or the testing itself may establish the integrity of the physical evidence or biological material (§17-28-90(8)(2));

3. The physical evidence or biological material sought to be tested is material to the issue of the applicant's identity as the perpetrator of, or accomplice to, the offense (§ 17-28-90(B)(3));

4. The DNA results of the physical evidence or biological material sought to be tested would be material to the issue of the applicant's identity as the perpetrator of, or accomplice to, the offense (§17-28-90(8)(4)).

(R. p. 2).

Testimony from the rule 29 hearing

At the Rule 29 hearing evidence showed that pursuant to the post-conviction Order for DNA testing SLED was not able to locate or identify the original samples from the criminal trial. R. 17-18; 58-70. According to SLED the original samples tested for the criminal trial no longer existed. R. 42-43. Because the original samples from the 1985 trial were believed to no longer exist, SLED expert(s) examined the shirt and trousers and tested any area that appeared to have a stain that might possibly be blood or body fluids. R. 17-19; 31. SLED conducted testing on two different occasions without any tests being positive for blood or body fluids and thus no DNA results. R. 29-30.

The original cuttings from Petitioner's clothing tested by SLED for the criminal trial could not be located at the sheriff's office, the clerk's office, or at SLED. Nor were there any records found explaining what happened to the samples. R. 60-70. In the present case the circuit court ruled that the lack of DNA found in the two post-conviction tests was not probative on the issue of guilt as the cuttings tested were different from the ones tested in the criminal trial. As to the State's inability to produce or account for the original samples the circuit court ruled that S.C. Code Section 17-28-360 provides that a custodian's failure to preserve evidence for subsequent testing, does not entitle a person to any relief from a conviction. R. 78-79.

Argument

1. <u>The state's failure to preserve potentially exculpatory evidence combined with its failure to maintain proper records constitutes a violation of due process under S.C. Const. Art. 1, Sec. 3.</u>

Petitioner sought post-conviction DNA testing to show that the blood or vomit allegedly found on his clothing were not that of the deceased. At Green's murder trial in 1986 the State

introduced evidence that blood and vomit had been found on Green's pants and shirt. The State introduced evidence of blood-typing from Green's clothing to prove that the blood and vomit were consistent with the deceased's blood-type. The blood-typing was done using cuttings from Green's clothing. Green's post-conviction DNA action sought to obtain DNA testing of the same cuttings used in his criminal trial to disprove the allegation that he had blood or bodily fluids from the deceased on his clothing. Green's post-conviction actions resulted in SLED being required to re-test the cuttings used at Green's trial. When SLED and law enforcement could not locate the original cuttings SLED tested spots of its own choosing from the Petitioner's clothing that remained in evidence. Based on this testing SLED reported it had found no biological material to support DNA testing.

While the State argued below that the results of negative tests on anything other than the original samples lacks probative value, it is the State that has prevented Green from having the original samples tested. The inability of the State to produce the original cuttings, or any records relating to their whereabouts or destruction, deprived Green of the ability to use DNA testing to prove that any blood or bodily fluids found on his clothing did not belong to the deceased. The State's failure to maintain the samples, combined with the complete lack of record keeping, constitutes gross negligence that denies Green's right to due process under S.C. Const. Art. 1. Sec. 3.

The scope of due process protection provided under the State Constitution in cases involving the loss or destruction of evidence by the State in a criminal case appears to be a novel issue in South Carolina. All reported South Carolina cases appear to address the issue under the Art. 14 of the U.S. Const. None appear to reach the issue under S.C. Const. Art. 1. Sec. 3.

Petitioner submits that this Court should reject a strict application of Youngblood's[1] bright-line test and apply a more reasoned approach under S.C. Const. Art. 1. Sec. 3, as have many other state courts have under their own state constitutions.

Under the federal due process clause Youngblood and its proginy have set forth a very minimal level of protection for defendants in cases where the government has lost or destroyed evidence in a criminal case. Youngblood held that "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." State v. Reaves, 414 S.C. 118, 777 S.E.2d 213 (S.C. 2015). Many states have found Youngblood test too burdensome on a defendant and its protection of due process insufficient. Finding the preservation of a defendant's fundamental right to a fair trial to be a paramount consideration many states have interpreted their due process clauses to provide more protection than Youngblood allows.

All reported South Carolina cases on the loss or destruction of evidence to date appear to address issues involving the State's loss or destruction of evidence only under Fourteenth Amendment and the limitations of Youngblood. In applying a Youngblood analysis under the Fourteenth Amendment this Court in Reeves commented for the first time on the potential for a different analysis under S.C. Const. Art. 1, Sec. 3. In Reeves the Court noted that a number of state courts have declined to follow the bad faith standard of Youngblood but found that Reeves had rested his argument solely on the Fourteenth Amendment to the United States Constitution. The Reeves Court was therefore unable to address the issue under the state due process clause. The issue as to the scope of protection provided by the our State constitutoin therefore appears to

[1]"Arizona v. Youngblood, 488 U.S. 488 U.S. 51, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988).

remain undecided.

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."). State v. Reaves, 414 S.C. 118, 777 S.E.2d 213 (S.C. 2015). Petitioner submits this Court should follow other states applying greater protections to a criminal defendant's right to due process.

Youngblood's requirement that a defendant prove bad faith on the part of the State is unreasonable and overly burdensome, especially as here where the State gives no explanation as to its inability to produce evidence that it admits was previously held in its custody. In the present case, other than it having been in its custody at one point, the State leaves all relevant facts concerning the whereabouts, loss, or destruction of the evidence as a complete mystery. As in the present case, the State's actions make it utterly impossible for a defendant to meet the Youngblood standard. Applying the Youngblood test in the present case fails to preserve a Green's fundamental right to due process which, as stated in Ferguson, *supra*, was a paramount concern in those states rejecting the Youngblood test.

In addressing the question of what consequences flow from the State's loss or destruction of evidence alleged to have been exculpatory the court in Ferguson rejected the State's argument that because the evidentiary nature of the evidence can never be known, the appropriate analysis should inquire into the State's bad faith (or lack of it) in the destruction of the evidence. State v. Ferguson, 2 S.W.3d 912 (Tenn. 1999). In rejecting the bad faith requirement the Court in Ferguson noted:

> Other states have recognized that A[t]here may well be cases in which the defendant is unable to prove that the State acted in bad faith but in which the loss or destruction of evidence is nonetheless so critical to the defendant as to make a criminal trial fundamentally unfair. Youngblood, 488 U.S. at 61, 109 S. Ct. at 339, 102 L. Ed. 2d at 291 (Stevens, J., *concurring in the result*). These states have rejected a pure Youngblood analysis, focusing instead on the materiality of the unavailable evidence in determining whether a due process violation has occurred. *See, e.g.*, Ex parte Gingo, 605 So. 2d 1237 (Ala. 1992); Thorne v. Department of Pub. Safety, 774 P.2d 1326 (Alaska 1989); State v. Matafeo, 737 P.2d 671 (Haw. 1990); Commonwealth v. Henderson, 532 N.E.2d 496 (Mass. 1991); State v. Osakalumi, 461 S.E.2d 504 (W. Va. 1995).

State v. Ferguson, 2 S.W.3d 912 (Tenn. 1999).

In rejecting the Youngblood analysis under its State constitution the Court in Ferguson went on to hold:

> 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. In so doing, we adopt for Tennessee a balancing approach similar to the one espoused by the Supreme Court of Delaware in Hammond v. State, 569 A.2d 81, 87 (Del. 1989).

State v. Ferguson, 2 S.W.3d 912 (Tenn. 1999)

In McMillan v. State, CR-08-1954 (Ala. Crim. App. Nov 05, 2010) the Alabama courts adopted Vermont's balancing test (*Bailey test*) set forth in State v. Bailey, 144 Vt. 86, 475 A. 2d 1045, 1049 (1984) Under the Bailey test the court considers: (1) the degree of negligence or bad

faith on the part of the government; (2) the importance of the evidence lost; and (3) other evidence of guilt adduced at trial.'..." McMillan v. State, CR-08-1954 (Ala. Crim. App. Nov 05, 2010). In McMillan the court reasoned that it is not in the interest of justice to permit the prosecution, in its unfettered discretion, to determine the favorable or unfavorable nature of potentially exculpatory evidence, and then allow the prosecution to destroy the evidence, thereby forcing the defendant to establish the favorable nature of evidence that no longer exists. McMillan v. State, CR-08-1954 (Ala. Crim. App. Nov 05, 2010).

McMillan found that the "modern trend appears to be shifting away from the bright-line test established in Youngblood in favor of a balancing test. *See, e.g.*, Deberry v. State (Del. 1983), 457 A.2d 744; Thorne v. Dep't. of Pub. Safety (Al. 1989), 774 P. 2d 1326; State v. Ferguson (Tn. 1999), 2 S.W.3d 912." The McMillan court noted that in reversing a conviction where evidence had been lost and thus untestable, the Delaware Supreme Court 'fashioned a multi-faceted analysis which, in effect, examines the type of evidence, the conduct of the police, and the significance of the evidence in the context of the total quantum of evidence available at trial. Deberry v. State, 457 A.2d 744 (Del. 1983).

In applying a more reasoned balancing test other State courts have considered several factors in determining whether a defendant's due process rights were violated by the missing evidence. This is based on the concerns that unfairness may result in situations 'in which the defendant is unable to prove that the State acted in bad faith but in which the loss or destruction of evidence is nonetheless so critical to the defense as to make a criminal trial fundamentally unfair.' Thorne v. Department of Public Safety, State of Alaska, 774 P.2d 1326 (Alaska 1989), at 1330, n. 9, *citing* Youngblood, 102 L.Ed. 2d at 291 (Stevens, J., concurring).

As pointed out in McMillan, Youngblood fails to take into account the materiality of the lost or destroyed evidence or the impact it has on the defendant's case. *See* Ferguson *at* 916-917:

> The Vermont Supreme Court, in State v. Delisle (Vt. 1994), 162 Vt. 293, 648 A. 2d 632, 643, cited the following rationale for adopting a balancing test in its prior decision of State v. Bailey (1984), 144 Vt. 86, 475 A. 2d 1045, 1049, that takes into account '(1) the degree of negligence or bad faith on the part of the government; (2) the importance of the evidence lost; and (3) other evidence of guilt adduced at trial.' The court stated: 'We believe, however, that Youngblood is both too broad and too narrow. It is too broad because it would require the imposition of sanctions even though a defendant has demonstrated no prejudice from the lost evidence. It is too narrow because it limits due process violations to only those cases in which a defendant can demonstrate bad faith, even though the negligent loss of evidence may critically prejudice a defendant. Because the Bailey test balances the culpability of the government's actions and the prejudice to a defendant, we adopt it as the state constitutional standard.'").

McMillan v. State, CR-08-1954 (Ala. Crim. App. Nov 05, 2010).

In rejecting the Youngblood analysis the Tennessee courts adopted a balancing test to evaluate the State's loss of evidence considering:

1. The degree of negligence involved;
2. The significance of the destroyed evidence, considered in light of the probative value and reliability of secondary or substitute evidence that remains available; and
3. The sufficiency of the other evidence used at trial to support the conviction.

As observed by the Court in Ferguson States as the final arbiter of the its own Constitution, are always free to expand the minimum level of protection mandated by the federal constitution. South Carolina should provide no less protection than other states provide their citizens and adopt an appropriate balancing test under the our own State constitution.

At Green's criminal trial, based on (cuttings) samples taken from Green's clothing, the State offered testimony that there was blood and vomit found Green's clothing. At trial Green denied that was any blood or vomit was on his clothing. In present Rule 29 hearing Green's

attempt to prove that there was no blood or vomit from the deceased on his clothing became an impossibility because the State could not locate and produce the actual samples relied on in the criminal trial. Nor could the State produce a chain of custody showing exactly what happened to the samples that had been tested as a part of the State's case at the criminal trial. All of which is contrary to the stipulated facts set forth in the ORDER GRANTING POST-CONVICTION DNA TESTING:

> 1. the physical evidence or biological material to be tested is available and is potentially in a condition that would permit the requested DNA testing (§17-28-90(8)(1));
>
> 2. the physical evidence or biological material to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect, or the testing itself may establish the integrity of the physical evidence or biological material (§17-28-90(8)(2));
>
> 3. the physical evidence or biological material sought to be tested is material to the issue of the applicant's identity as the perpetrator of, or accomplice to, the offense (§ 17-28-90(B)(3));
>
> 4. the DNA results of the physical evidence or biological material sought to be tested would be material to the issue of the applicant's identity as the perpetrator of, or accomplice to, the offense (§17-28-90(8)(4)).

R. p. 2.

It is a fundamental duty of the State as a custodian of evidence to safeguard the evidence and keep accurate records as to its location or disposal. Subsequent to Petitioner's conviction S.C. Code § 17-28-320 *Offenses for which evidence preserved; conditions and duration of preservation* provides in pertinent part:

> (A) A custodian of evidence must preserve all physical evidence and biological material related to the conviction or adjudication of a person for at least one of the following offenses:
>
> (1) murder (Section 16-3-10);

SC Code 17-28-320 (A)(1).

Because the State offers no information whatsoever as to when it lost or destroyed the evidence it is impossible to know whether it was lost or destroyed before or after the 2009 effective date of S.C. Code § 17-28-320, or whether it was lost or destroyed in bad faith. The lack of proper record keeping constitutes an act of gross negligence that prevents Green the ability to establish bad faith under the Youngblood test. A Youngblood analysis is therefore inadequate to protect Green's right to due process.

Given that modern DNA testing is capable of identifying a blood or saliva sample to a specific individual, the samples that were lost or destroyed are hugely significant to identifying the source of the blood or bodily fluids alleged to have been found on Green's clothing. Given that the majority of the State's case rested on the testimony of a child that was four years old at the time of trial, and therefore most likely three years old at the time of the incident, a proper weighing of all factors under a reasoned due process analysis under the South Carolina Constitution requires that Green's conviction be reversed and a new trial granted.

2. 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 Petitioner'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 Petitioner 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.

Petitioner 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.

Petitioner'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, Petitioner'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.

The Opinion of the Court of Appeals 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 in Reaves, the Petitioner 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 Petitioner's briefs.

Conclusion

Based on the foregoing the decision of the circuit court should be reversed and the Petitioner granted a new trial.

Respectfully submitted,
s/J. Falkner Wilkes
J. Falkner Wilkes, 12893
248 Deerwood Park Drive
Oakland, MS 38948
(864) 282-1292
Counsel for Petitioner

February 25, 2026.