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S.C. SUPREME COURT

**THE STATE OF SOUTH CAROLINA
In the Supreme Court**

**ON CERTIORARI TO THE SOUTH CAROLINA COURT OF APPEALS
Appeal from Spartanburg County
Circuit Court**

**J. Mark Hayes, II
Circuit Court Judge**

Supreme Court Case No.: 2020-001184

State of South CarolinaPetitioner,

v.

Kenneth Taylor Respondent.

REPLY

Pursuant to Rule 240(f), SCACR, the *Amicus Curiae* submits the following reply to the Petitioner’s March 10, 2022, return:

1. Petitioner correctly notes Rule 221, SCACR, does not explicitly authorize an amicus to file a petition for rehearing. However, Rule 218, SCACR, also does not explicitly authorize an amicus to participate in oral arguments, and this Court saw fit to order its participation. Participation of the amicus in this matter is little different than the long-standing United States Supreme Court practice of allowing an amicus to, under certain circumstances, argue “in support of the judgment

below”. See S. Shapiro, K. Geller, T. Bishop, E. Hartnett & D. Himmelfarb, *Supreme Court Practice* § 13.14, p. 13-52 (11th ed. 2019).

2. None of the cases cited in the Petitioner’s return represent a scenario where this Court has decided an issue that was unpreserved, unargued, and unnecessary (*i.e.*, an advisory opinion). *State v. Jones*, 435 S.C. 138, 866 S.E.2d 558 (2021), clarified preservation law already being considered by the Court. In *Stone v. Thompson*, 428 S.C. 79, 833 S.E.2d 266 (2019) whether to apply a new law prospectively or retroactively was part-and-parcel of the decision to create new law. Finally, the dictum cited from *State v. Gordon*, 414 S.C. 94, 777 S.E.2d 376 (2015), served only to clarify pre-existing evidence law.¹

CONCLUSION

This Court should reconsider and rescind part II of its February 23, 2022 opinion. The Court of Appeals should be affirmed.

Dated: 03/15/2022

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¹ *Gordon* also reiterated the appropriateness of the *per se* dismissal rule of *Suchenski* under certain circumstances.