RECEIVED

Jan 20 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

Honorable Michael S. Holt, Circuit Court Judge

Opinion No. 2025-UP-328 (S.C. Ct. App. Filed October 1, 2025)

Lower Court Case No. 2019-GS-26-06193

THE STATE,

RESPONDENT,

V.

COREY TYLER BUSCH,

PETITIONER

APPELLATE CASE NO. 2023-000299

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

SARAH E. SHIPE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on December 18, 2025.

QUESTION PRESENTED

Did the Court of Appeals err holding (1) the contested evidence, state's exhibit 31, toboggan hat, and state's exhibit 32, bandana, were non-fungible and (2) the state presented a sufficient chain of custody where the DNA evidence collected from the clothing items was fungible and where the state did not present testimony as to who found and collected the evidence?

STATEMENT OF THE CASE

On December 11, 2019, a Horry County grand jury indicted Petitioner for armed robbery. R. 274. On February 13, 2023, Petitioner's case was called to trial before the Honorable Michael S. Holt and a jury. R. 1. Petitioner was represented by Clay Pinkerton and Nicholas O'Neill. R. 1. The state was represented by assistant solicitors, George Debusk and Elizabeth Farmer. R. 1.

The jury found Petitioner guilty as indicted. R. 263, ll. 9-18. Judge Holt sentenced Petitioner to a term of sixteen years' imprisonment. R. 268, ll. 17-20.

The Court of Appeals affirmed Petitioner's convictions in *State v. Busch*, 2025-UP-328 (S.C. Ct. App. filed Oct. 1, 2025). Petitioner sought rehearing which was denied on December 18, 2025.

This petition for a writ of certiorari follows.

ARGUMENT

The Court of Appeals erred in holding (1) the contested evidence, state's exhibit 31, toboggan hat, and state's exhibit 32, bandana, were non-fungible and (2) the state presented a sufficient chain of custody where the DNA evidence collected from the clothing items was fungible and where the state did not present testimony as to who found and collected the evidence.

Relevant facts

At trial the state presented evidence of the September 2019, robbery at Dunkin Donuts restaurant in Horry County. Four employees were in the restaurant during the robbery. Only two employees encountered the intruder. R. 20, l. 17-21, l. 2.

Dunkin Donuts employee, Brittany Tyler, testified she saw a man on the surveillance camera walking towards the restaurant and he walked in the front door. R. 18, ll. 7-12. Brittany described him as wearing a black hoodie and a facemask and having bright colored eyes, not brown, maybe green. R. 18, ll. 7-20; 26, ll. 12-23. She never saw a gun. However, Brittany testified the man told her he had a gun, and it appeared he had a gun concealed in his sleeve. R. 19, ll. 8-17; 26, ll. 5-10. Brittany said the man demanded money. Her coworker, Heather Vanderbush, gave him the money and he left. R. 19, l. 21-20, l. 15.

Dunkin Donuts employee, Heather Vanderbush, described the man as wearing blue jeans and a hoodie, "pulled up." Heather testified his eyes were "really glassy and [] dark." R. 213, ll. 14-23. Heather stated the man entered the restaurant, "[i]t looked like he had a gun, and he was like give me all of your money." R. 213, ll. 5-6. She testified she opened the registers, she gave him all the money, he put the money in his pocket, and he left the restaurant. R. 216, l. 12-217, l. 8.

Officer William Dietzel responded to the restaurant for an armed robbery. R. 31, ll. 1-4. Dietzel determined the bloodhound tracking team should be called to the scene. Members of the team, officers Mark Johnson and James Green, brought their dogs. R. 31, l. 19-32, l. 6; 37-65.

Officer Mark Johnson testified he and his bloodhound dog, Gabby, responded to the restaurant that day. Johnson testified that during the track there were items of clothing including a "hoodie" and a "toboggan," found during the track.[1] R. 42, ll. 7-19. However, Johnson himself did not find the items and he did not know who did. R. 42, ll. 12-19; 49, ll. 4-11. Johnson testified Gabby became tired and distracted and he stopped her track. Officer James Green's dog, Bella, began in that area and continued the track. R. 44, ll. 8-24.

Officer Green and his dog, Bella, responded to the restaurant that day. R. 54, ll. 16-24. Green testified Bella picked up the track where Gabby left off and Bella tracked to a building located in an apartment complex. R. 56, ll. 9-13; 58, ll. 13-24; 59, ll. 18-25; 61, l. 24-62, l. 11. Green testified he was not the officer that found the clothing items. Green did not testify regarding who found the items. R. 64, l. 10-65, l. 7.

Objection

During Investigator Sean Wydra's testimony the state sought to admit, state's exhibit 31, toboggan hat, and state's exhibit 32, bandanna purportedly found during the track. R. 76; 81. Wydra testified "the dog [] found" the items, the items had been moved from where they were originally found, and he was not the officer that found the items. R. 71, l. 20-72, l. 11; 73, ll. 12-15; 74, l. 13-75, l. 16.

Defense counsel objected to the admission of state's exhibit 31, toboggan hat and state's exhibit 32, bandana. Counsel argued the state had not established chain of custody because no

---

[1] During Johnson's testimony state's exhibits 5-8 photographs of the items were admitted. R. 43.

officer testified as to having found these items. R. 77, ll. 14-22. Defense counsel averred none of the testifying officers found the hat or bandana. None of the testifying officers collected the hat or bandana from the ditch where the clothing items were supposedly found. R. 78, l. 19—79, l. 1.

The solicitor replied it was not "important" that Investigator Wydra was not present when the toboggan hat and bandana were found because the items were found in the same area where Wydra collected them, and he was present when the dog tracked to that area. The solicitor asserted they established the chain as far as practical under *Hatcher*[2] where they presented testimony of the officers that tracked to the area where the items were found and where they presented testimony of the officer who collected the toboggan hat and bandana. R. 77, l. 24—78, l. 11; 79, ll. 3-7.

The trial court overruled defense counsel's objection to the admission of the bandana and the toboggan hat, stating "I do feel like he's properly identified, and I'm satisfied with the state's argument." R. 79, ll. 8-11; 80, ll. 6-8; 81, ll. 15-21.

Discussion

The chain of custody in this case was insufficient for admission of the bandana and toboggan hat where none of the state's testifying witnesses found either item or could identify who had found the items. The trial court erred admitting the bandana and toboggan hat evidence over defense counsel's objection.

"[Our] Court[s] ha[ve] long held that a party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable." *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (citing *State v. Sweet*, 374 S.C. 1,

---

2 *State v. Hatcher*, 392 S.C. 86, 708 S.E.2d 750 (2011).

6, 647 S.E.2d 202, 205 (2007)); *see also Benton v. Pellum*, 232 S.C. 26, 33, 100 S.E.2d 534, 537 (1957) (stating "it is generally held that the party offering such specimen is required to establish, at least as far as practicable, a complete chain of evidence").

"Where the substance analyzed has passed through several hands the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis." *Benton*, 232 S.C. at 33–34, 100 S.E.2d at 537 (citation omitted). "Testimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility." *Sweet*, 374 S.C. at 7, 647 S.E.2d at 206 (citing *State v. Taylor*, 360 S.C. 18, 27, 598 S.E.2d 735, 739 (Ct.App.2004)). "Where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness." *Id.*

"Proof of chain of custody need not negate all possibility of tampering so long as the chain of possession is complete." *State v. Carter*, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001). "In applying this rule, [the Court] [has] found evidence inadmissible only where there is a missing link in the chain of possession because the identity of those who handled the [substance] was not established at least as far as practicable." *Id.*

In *South Carolina Dep't of Soc. Servs. v. Cochran*, 364 S.C. 621, 629, 614 S.E.2d 642, 646 (2005), this Court noted "[w]hether the chain of custody has been established as far as practicable clearly depends on the unique factual circumstances of each case." *Cochran*, 364 S.C. at 629 n. 1, 614 S.E.2d at 646 n. 1. In examining issues regarding the chain of custody, a mere suggestion that substitution could possibly have occurred is not enough to establish a break in the chain of custody. *State v. Hatcher*, 392 S.C. 86, 94, 708 S.E.2d 750, 754 (2011).

In *Hatcher* this Court analyzed whether the trial court erred in the admission of drug evidence where the state did not identify all the persons who handled the drug evidence under the following factors: the nature of the evidence, the circumstances surrounding the preservation and custody of it, and the likelihood of intermeddlers tampering with it. *Id.* at 94-95, 708 S.E.2d at 754-55. In that case this Court concluded that the standard was "whether, in the discretion of the trial court the state had established the chain of custody as far as practicable." *Id.* at 95 S.E.2d at 755.

It is entirely practicable to require the state to, at the very least, identify who found two pieces of key evidence. Here, *no one* testified as to having found this evidence. Investigator Wydra claimed the dogs tracked to the items but neither of the officer dog handlers testified they discovered or that their dog tracked to this evidence. Additionally, no testifying law enforcement officers knew who had found this evidence and moved it from where it was found to where it was later collected.

In its opinion, the Court of Appeals held the trial court did not abuse its discretion by admitting the toboggan hat and bandana in evidence. *State v. Busch*, Op. No. 2025-UP-328 (S.C. Ct. App. Filed Oct. 1, 2025). Specifically, the Court held, "the items are non-fungible evidence because they are readily identifiable." *Id.* Additionally, the Court held the state demonstrated a sufficient chain of custody for the evidence "because a detective testified the items were 'essentially in the same condition as when collected.'" *Id.* citing *State v. Freiburger*, 366 S.C. 125, 134, 620 S.E.2d 737, 741-42 (2005).

Firstly, the DNA evidence taken from the toboggan hat and bandana was fungible. Secondly, Investigator Wydra could not know if the clothing items were in the same condition, because Wydra did not find the items and he did not know who found them.

In *Freiburger* this Court held the chain of custody established by the state at trial was sufficient such that the gun was admissible. *State v. Freiburger*, 366 S.C. 125, 620 S.E.2d 737 (2005). Initially, this Court found Freiburger's objection as to chain of custody was not preserved for review but nonetheless found the evidence properly admitted. *Id.* at 134, 620 S.E.2d 737, 741. Citing *State v. Glenn,* 328 S.C. 300, 305–306, 492 S.E.2d 393, 395 (Ct.App.1997), the Court reasoned "[if the offered item possesses characteristics which are fairly unique and readily identifiable, and if the substance of which the item is composed is relatively impervious to change, the trial court is viewed as having broad discretion to admit merely on the basis of testimony that the item is the one in question and is in a substantially unchanged condition." *Id* (emphasis added). Lastly, the Court found, "[g]iven the serial number and markings on the gun, and the fact that a gun is a non-fungible item," the chain of custody was sufficient. *Id.*

Freiburger is distinct from Petitioner's case in significant aspects. Notably, the chain of custody issue was not preserved for review in *Freiburger*. *Id.* There is no preservation problem in Petitioner's case. The evidence at issue is distinct and was utilized differently by the state at trial. In *Freiburger*, during a search incident to arrest, defendant was found with a gun on his person matching the gun used in a murder. *Id.* at 130-131, 620 S.E.2d 737, 739. The *Freiburger* gun was sent for firearms identification. The gun was not analyzed for DNA. At defendant's trial, an expert opined the gun was the weapon used in the murder. *Id.* at 130-131, 620 S.E.2d 737, 739. Here, the evidence was a toboggan hat and bandana found by an unknown person who did not testify at Petitioner's trial. The toboggan and bandana were swabbed and tested for DNA.

The bandana and toboggan hat were critical evidence the state used to tie Petitioner to this robbery through DNA testing of the items. R. 157-159. The state's expert testified that a swab from the bandana showed a DNA profile of one individual that was 190 octillion times more likely that Petitioner contributed than if an unidentified, unrelated individual contributed. R. 156, l. 14-157, l. 20. The expert testified a swab from the hat showed a mixture of three individuals and was 27 octillion times more likely that Petitioner and two unidentified, unrelated individuals contributed than if three unidentified, unrelated individuals contributed. R. 158, l. 17, 159, l. 7.

Even if this Court finds the toboggan hat and bandana are non-fungible, the DNA evidence *gleaned* from those items is fungible. As mentioned in the Court of Appeal's opinion, the *Freiburger* gun was readily identifiable "given the serial number and markings." *Freiburger*, at 134, 620 S.E.2d 737, 741. Here, while the items were readily identifiable as a toboggan and a bandana, the items were not so *unique* because toboggans and bandanas are common clothing items worn by many people. Notwithstanding the fact that DNA evidence is fungible, it is arguable whether toboggan fabric and bandana fabric are "relatively impervious to change."

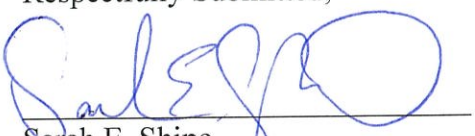
Regardless, it is proper to require the state to, at the very least, identify the officer who found two pieces of key evidence. No one testified they found this evidence. The trial court erred by summarily overruling Petitioner's objection to the evidence where the state's witnesses admitted they did not know who purportedly found and moved these critical pieces of evidence. Investigator Wydra claimed the dogs tracked to the items. However, neither of the dog handlers testified they discovered this evidence or that their dog tracked to this evidence. Furthermore, none of the testifying officers even knew who found this evidence and moved it from where it was originally found to where it was later collected.

The chain of custody in this case was legally insufficient for admission of the bandana and toboggan hat given the identity of the person who found the evidence was wholly unknown and the trial court erred in admitting the evidence over Petitioner's objection.

CONCLUSION

By reason of the foregoing arguments, a writ of certiorari should be issued to allow full briefing on these issues.

Respectfully Submitted,



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 20th day of January, 2026.