

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

COREY TYLER BUSCH,

APPELLANT

APPELLATE CASE NO. 2023-000299

Appeal from Horry County

Honorable Michael S. Holt, Circuit Court Judge

Opinion No. 2025-UP-328

PETITION FOR REHEARING

RECEIVED
Oct 14 2025
SC Court of Appeals

On October 1, 2025, this Court affirmed appellant's conviction and sentence where appellant argued the trial court erred by admitting state's exhibit 31, toboggan hat, and state's exhibit 32, bandana, because the state failed to establish a sufficient chain of custody. *State v. Busch*, Op. No. 2025-UP-328 (S.C. Ct. App. Filed Oct. 1, 2025). Appellant respectfully requests rehearing pursuant to Rule 221(a), SCACR, considering the significant points overlooked and/or misapprehended by this Court, discussed below.

In its opinion this Court 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, this Court held, “the items are non-fungible evidence because they are readily identifiable.” *Id.* Additionally, this 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).

In *Freiburger* the South Carolina Supreme 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, the 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.* 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 appellant’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 appellant’s case. Also, the evidence at issue is distinct and was utilized by the state in a different way. 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 not analyzed for DNA but was instead sent for firearms identification. At trial, an expert gave the opinion it 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 trial. The toboggan and bandana were swabbed and tested for DNA.

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

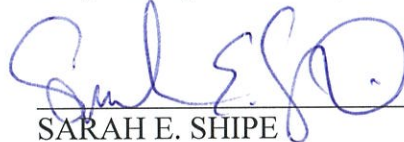
Even if this Court finds the evidence here, toboggan and bandana, are non-fungible the evidence gleaned from those items, DNA evidence, is fungible. As mentioned in the Court's opinion, the Freiburger gun was readily identifiable "given the serial number and markings." *Freiburger*, at 134, 620 S.E.2d 737, 741. Here, while the evidence was 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. Moreover, it is arguable whether toboggan fabric and bandana fabric are "relatively impervious to change," notwithstanding that fact DNA evidence is fungible.

Regardless, it is proper to require the state to, at the very least, identify the officer who found two pieces of key evidence. Here, *no one* testified as to having found this evidence. The trial court erred by summarily overruling appellant's objection to the evidence where the state's witnesses admitted they did not know who purportedly found and moved these critical pieces

evidence. Investigator Wydra claimed the dogs tracked to the items but neither of the dog handlers testified they discovered, or that their dog tracked, to this evidence. Additionally, no testifying law enforcement officers even *knew* who found this evidence and moved it from where it was found to where it was collected as evidence.

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

Respectfully Submitted,



SARAH E. SHIPE
Appellate Defender

This 14th day of October, 2025.

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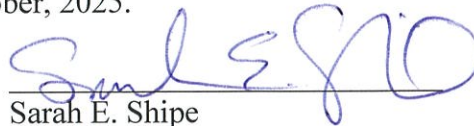
COREY TYLER BUSCH,

APPELLANT

APPELLATE CASE NO. 2023-000299

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-entitled case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Corey Tyler Busch, #300933, at MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472, this 14th day of October, 2025.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

Leverett, Scott

From: Leverett, Scott
Sent: Tuesday, October 14, 2025 3:40 PM
To: Mark Farthing
Cc: Caroline Collins; Shipe, Sarah
Subject: 2023-000299 - State v. Corey T. Busch - Petition for Rehearing
Attachments: 2023-000299 - State v. Corey T. Busch - Petition for Rehearing.pdf

Dear Mr. Farthing,

Attached please find a copy of the petition for rehearing in the above referenced case that is being filed today with the Court of Appeals.

-Scott Leverett
Admin. Asst. for Sarah Shipe
Appellate Defense

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