

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Dorchester County
Honorable Robert J. Bonds, Circuit Court Judge

HERBERT LEROY HOLMES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Opinion No. 2026-UP-096 (S.C. Ct. App. Filed February 25, 2026)

APPELLATE CASE NO. 2026-001166

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on April 20, 2026. Suppl. App. 59.

QUESTION PRESENTED

Whether the Court of Appeals erred in affirming the admission of decades-old DNA evidence, where there were significant problems with the chain of custody to include evidence from the rape kit going missing, the whereabouts of the evidence at times being unclear, a problematic 1993 inventory, and questions regarding the storage of the evidence and who handled it, since the integrity of the evidence was not ensured?

STATEMENT OF THE CASE

During the May term of 2011, a Dorchester County Grand Jury indicted Petitioner, Herbert Holmes, for first-degree criminal sexual conduct and kidnapping. Petitioner was tried before the Honorable Diane Goodstein and a jury, from April 22 – 25, 2013. Mitchell Farley and Ash Chisholm represented Petitioner. Glenn Justice and Phil Giese prosecuted the case. Petitioner was convicted as indicted. Petitioner was sentenced to serve consecutive terms of life imprisonment for kidnapping and thirty years for first-degree criminal sexual conduct. App. 574 – 577; App. 1; App. 427, l. 20 – 428, l. 4; App. 578 – 579; App. 438, l. 3 – 439, l. 3.

Trial counsel attempted to directly appeal but the notice of appeal was defective—the notice stated counsel was “not aware of any exceptions to Rule 203.” Therefore, the court of appeals issued an order dismissing the appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR. App. 541 – 546; App. 547.

On November 21, 2017, Petitioner filed an application for post-conviction relief (PCR). On January 4, 2022, the State made its return and partial motion to dismiss. A hearing was held in the matter on May 19, 2022, before the Honorable Robert J. Bonds. Christopher Geel represented Petitioner. Samantha Weidauer represented the State. On September 19, 2022, the PCR court issued an order granting Petitioner a belated direct appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), but denying post-conviction relief. App. 441 – 447; App. 448 – 461; App. 462; App. 550 – 573.

Petitioner served his Brief of Appellant pursuant to *White v. State*, as well as a Petition for Writ of Certiorari. On August 18, 2023, this Court transferred the case to the Court of Appeals pursuant to Rule 243(l), SCACR. On February 25, 2026, the Court of Appeals affirmed the PCR court’s finding that Petitioner did not knowingly and intelligently waive his right to a

direct appeal, proceeded with a review of the direct appeal issue pursuant to *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986), and affirmed the trial court. It denied certiorari as to his ineffective assistance of counsel claim. *Holmes v. State*, Op. No. 2026-UP-096 (S.C. Ct. App. filed February 25, 2026). Suppl. App. 40 – 43. Petitioner served his Petition for Rehearing March 12, 2026, and rehearing was denied. Suppl. App. 44 – 58; Suppl. App. 59.

This Petition for Writ of Certiorari to the Court of Appeals follows.

ARGUMENT

The Court of Appeals erred in affirming the admission of decades-old DNA evidence, where there were significant problems with the chain of custody to include evidence from the rape kit going missing, the whereabouts of the evidence at times being unclear, a problematic 1993 inventory, and questions regarding the storage of the evidence and who handled it, since the integrity of the evidence was not ensured.

Relevant facts

In late October of 1984, P.R. (Complainant) was working at a bookstore in Summerville when a black man with a “nondescript,” “very common face” came into the store. The man robbed Complainant at gunpoint and ordered her into a back room where he raped her. The case would be tried twenty-nine years later, with the prosecution relying entirely on DNA evidence to identify the perpetrator. App. 1; App. 77, ll. 5-7; App. 82, l. 17 – 88, l. 15; App. 321, l. 14 – 335, l. 10; App. 404, ll. 3-6.

Shortly after the rape, Complainant was taken to the emergency room. App. 88, l. 23 – 90, l. 22; App. 131, l. 5 – 132, l. 17. Two nurses working in the trauma unit were present for Complainant’s sexual assault examination. They turned over a checklist of the evidence collected to Detective Knight. Due to the passage of time, neither nurse would remember Complainant’s exam at trial. App. 99, l. 14 – 109, l. 4; App. 120, ll. 6-24. State’s Exhibit #8 is the checklist which specified the items of evidence collected.¹ App. 582.

¹ The collected evidence was listed as: 1) Clothing: hose, bra, panties, slip, skirt, blouse; 2) Chux x 2; 3) Photos: full length; 4) R & L fingernail scrapings; 5) Pubic hair combings; 6) Pubic hair pluckings; 7) Vaginal washing without fixative; 8) Vaginal swab for ABO; 9) Woods lamp + swab; 10) Filter paper with saliva; 11) Other evidence: oral washings without fixative, oral ABO, rectal ABO. App. 582.

This evidence would go back and forth from the Dorchester County Sheriff's Office's locations to SLED multiple times over the years in an attempt to solve the crime. The case remained a "mystery" for many years until DNA recovered from the evidence linked Petitioner to the crime. App. 77, ll. 20-25; App. 91, l. 22 – 92, l. 12. As will be discussed below, there were multiple problems with the chain of custody of the critical DNA evidence. While some of the problems were minor discrepancies, other problems were significant.

Complainant believed the rape occurred on October 24, 1984, and not October 25, 1984. However, Nurse Vevon noted the envelope of pubic hair combings was labeled October 25, 1984. Detective Knight also testified the crime occurred on October 25, 1984. App. 107, l. 3 – 109, l. 4; App. 135, ll. 2-14; App. 83, l. 24 – 94, l. 4; App. 93, l. 20 – 94, l. 15.

Detective Knight waited outside the hospital room until he was handed the evidence collected during the exam. He received a blue plastic bag containing other bags with the complainant's clothes, and the rape kit, which was a sealed box full of envelopes and samples. Knight signed State's Exhibit #8, the checklist, that he received the items. Detective Knight was the Sheriff's son. According to Knight, only three men had keys to the evidence locker: his father, Sheriff Knight (Sheriff); Captain Ernest Moultrie; and Lieutenant Dale Nevins. Detective Knight said he kept the evidence until he turned it over to Lieutenant Nevins. Knight said the evidence locker was a storage room with a deadbolt. App. 132, l. 9 – 143, l. 24; App. 582; App. 100, l. 23 – 117, l. 18; App. 123, l. 10 – 127, l. 25.

Captain Moultrie's testimony about who had keys to the evidence locker was the same—Moultrie said he had a key to the evidence locker along with the Sheriff and Nevins. Lieutenant Nevins's testimony was in agreement—Nevins said he, Moultrie, and the Sheriff had a key to the evidence locker. However, Lieutenant Earl Asbell's testimony about the evidence locker

differed. According to Lieutenant Asbell, “Each individual detective—I handled my own evidence. Lieutenant Nevins handled his. My office was separate from his and I had a storage room in there that I locked my evidence in.” App. 150, l. 22 – 152, l. 7; App. 154, l. 12 – 155, l. 3; App. 201, ll. 9-15.

Lieutenant Nevins agreed he received the evidence in this case from Knight and put it in the evidence locker. According to Nevins, he personally made two trips to SLED in January of 1985—he took the rape kit on January 2, 1985, and he took the rest of the evidence on January 31, 1985. State’s Exhibit #18 and State’s Exhibit #19 reflect that Nevins took the evidence to SLED in two batches on two trips during January of 1985. *See* App. 583 – 584. Court’s Exhibit #1 is a stipulation by the parties of what items were taken to SLED by Nevins in January 1985. *See* App. 581.

Kenneth Bogan, who was qualified as an expert in DNA analysis, worked at SLED for many years. He did all of the testing on the evidence in this case. Bogan was the analyst who tested the evidence originally when it came to SLED in 1985. As part of that initial round of testing, Bogan took a cutting from the panties that were collected. In 1988, Bogan again checked the evidence and determined not to do further testing at that time. In 2009, Bogan performed additional testing on the evidence when it came back to SLED once again. App. 299, l. 12 – 335, l. 10.

When the evidence originally went to SLED in 1985, it went in two batches. App. 249, l. 8 – 253, l. 20; App. 583; App. 584; App. 581. Some of the evidence came back to SLED in 1988, but not all of it. App. 585; App. 587; App. 253, l. 21 – 255, l. 13. In the 1980’s, Bogan had necessarily removed certain items of evidence from the sexual assault kit for testing, including vaginal wash, vaginal swab, oral swab, rectal swab, saliva, and oral wash. Notably,

when items were resubmitted to SLED in 2009, the oral wash was “not found.” According to Bogan, this was not because anyone at SLED lost it but because someone beforehand “must have mislabeled it or forgotten to put it in there or taken it out or something.” App. 332, l. 4 – 333, l. 1; App. 269, l. 1 – 270, l. 11. When Bogan received the evidence in 1985, he took cuttings from the clothing. After taking cuttings, he put them into smaller envelopes. He repackaged and resealed the envelopes before they were returned to the county. App. 309, l. 8 – 310, l. 14. Regarding the rape kit, Bogan stated the items would have gone back to the Sheriff’s office in the original package, but at some point at least some of the items were taken out of the original package. App. 336, l. 5 – 337, l. 2. Regarding the clothing, Bogan stated he would have resealed it in the original packaging after he was done analyzing it and sent it back to the Sheriff’s office. App. 339, l. 20 – 344, l. 15.

Bogan was asked why there was no “signature of person receiving evidence” signed on the SLED request for analysis forms from the 1980’s. Bogan said he did not know, but that at the time, “[t]he secretaries would call the analyst and ask them to come up and pick up the evidence.” The forms were also time stamped as received by SLED. Bogan did not think he was required to sign the forms in 1985. Bogan believed the secretary at that time was Susie Wilson. App. 249, l. 8 – 250, l. 24; App. 258, l. 260, l. 13.

Lieutenant Nevins said a Sergeant Salvely, now deceased, picked some of the evidence back up from SLED in 1985 and returned it to the Sheriff’s Office. App. 155, l. 7 – 161, l. 9. Evidence in the case was also transported back to the Sheriff’s Office from SLED by an Officer Joseph Rivers on April 28, 1988. Rivers brought the evidence back along with evidence from ten or fifteen other cases. App. 162, l. 18 – 166, l. 16. Mr. Bogan, the SLED analyst, believed at least some of the evidence had gone back to the Sheriff’s Office in 1985. It was unclear whether

he thought all of it had. App. 263, ll. 19-24; App. 307, l. 17 – 310, l. 19. The whereabouts and handling of the evidence that linked Petitioner to the crime are thus unclear during the mid-1980's.

In 1988, the Sheriff's Office sent some evidence in the case back to SLED when a man named Barry Daniels became a suspect. Nevins took the evidence to SLED in 1988. State's Exhibit #22 is Nevins's 1988 request to SLED and it has a stamp from SLED saying the evidence was received by its chemistry lab on July 21, 1988. *See* App. 585. Regarding what testing was done at SLED in 1988, Mr. Bogan, the analyst returned the evidence without further testing because he did not believe enough material was present for the existing technology to be of use. App. 315, l. 14 – 316, l. 19. Those items were some of the items from the rape kit but not all. App. 582; App. 585; App. 587; App. 310, l. 20 – 316, l. 19; App. 311, l. 13 – 313, l. 8.

After being received by SLED in July of 1988 after Nevins took it there, evidence returned to the Sheriff's Office in 1989. Officer Emory Rush testified that he transported the batch of unspecified evidence in this case, along with evidence from seven other cases, from SLED back to the Sheriff's Office on December 19, 1989. State's Exhibit #23 is the form Rush signed, which documented that he retrieved evidence from SLED in 1989. This evidence was in a 9 x 12 envelope. *See* App. 586. Back at the Sheriff's Office, Emory Rush gave evidence to Nevins. App. 196, l. 22 – 199, l. 8.

In 1993, Lieutenant Nevins left the Sheriff's Office, and Lieutenant Earl Asbell became the evidence custodian. When Asbell took custody of the evidence, the two men signed off on an inventory of the evidence locker. The inventory sheet was five pages long. The only mention of the evidence in this case on that inventory is listed on page three at item nineteen—a “box of miscellaneous envelopes” with eight different people's names listed on it. The only thing listed

as being in the box were “envelopes.” The inventory did not mention any bags or kits. App. 201, l. 16 – 202, l. 20; App. 166, l. 22 – 168, l. 12; App. 209, l. 24 – 211, l. 14; App. 398, l. 21 – 399, l. 8. As seen, the evidence as given to the Sheriff’s Department at the hospital originally consisted of a “bag” containing clothing and “a sealed box full of envelopes and samples,” i.e., the rape kit. App. 133, l. 2 – 136, l. 14. A bag and a sealed box are not the same things as envelopes. The evidence was not put all together until 2009, when SLED put it all inside the same bag. App. 304, ll.1-13.

In 1993, Asbell moved the evidence to a different evidence storage room. In 1994, the Sheriff’s Office moved, and the evidence from the evidence room was boxed up, packed on a truck, and moved to the new office over the course of a couple of days. Others were involved in the moving, but Asbell supervised. Asbell did not remember who helped with the move, but believed it was a detective. Asbell said he would have noticed if something appeared to be tampered with. App. 204, l. 1 – 206, l. 16; App. 212, l. 20 – 213, l. 19.

Asbell decided to resubmit the evidence to SLED in 2009. When Asbell filled out the request for SLED to test the evidence, one of the items he sent to SLED was oral wash. Officer Buster Edwards transported it there and retrieved it back. App. 203, ll. 1-24; App. 206, l. 19 – 215, l. 6; App. 225, l. 16 – 233, l. 16; App. 384, l. 23 – 385, l. 18. However, the oral wash had gone missing, as discussed above.

The break in the case began in 2009. Bogan opined that when he re-tested the cutting from the panties in 2009, he found DNA that was a mixture of at least two individuals. He got a partial profile from a major contributor, who was an unidentified male. The minor contributor to the mixture was consistent with Complainant. At a later time, a known standard for Petitioner was submitted. Bogan opined that the “DNA profile that I developed from that major contributor

from the panties, matched the DNA profile of Herbert Holmes. The probability of randomly selecting a unrelated of unrelated individuals [sic] having a DNA profile matching that major contributor is approximately 1 in 350 billion.” App. 320, l. 6 – 324, l. 24; App. 335, ll. 1-10.

However, when Bogan received the evidence in 2009 and obtained the critical DNA mixture, in addition to something being missing, something was mislabeled. Bogan noted the receipt said the cutting from the panties and the cutting from the skirt were both labeled N. Bogan stated Item N was the cutting from the panties and Item M was the cutting from the skirt. As seen, Bogan matched Petitioner’s DNA to the cutting from the panties. Bogan stated it was only the receipt that was mislabeled, not the items themselves. App. 270, l. 12 – 272, l. 5. When Bogan identified the evidence at trial, the blue plastic bag had the clothes in it, which were in brown paper bags within the blue bag. App. 325, l. 15 – 329, l. 11. A manila envelope contained pubic hair combings and pluckings but no longer contained washes, swabs or saliva as Bogan believed he had previously taken those items out to resubmit for analysis at a later date and “the items were separated.” App. 332, ll. 4-25. When Bogan received the cuttings from the panties and skirt from the Sheriff’s Department in 2009, they were not in the blue bag, they were in envelopes. App. 356, l. 23 – 357, l. 12.

Petitioner moved to exclude the DNA evidence, citing to *State v. Hatcher*, 392 S.C. 86, 708 S.E.2d 750 (2011), and arguing the State had not proven chain of custody as far as practicable, since much was left to conjecture. App. 273, l. 25 – 295, l. 13; App. 246, l. 8 – 248, l. 17. Petitioner cited the following facts to support exclusion due to an incomplete chain of custody.

- First, a discrepancy in the testimony about whether the rape occurred on October 24 or 25, 1984. Complainant was certain the crime occurred on the 24th but others' testimony was that it occurred on the 25th.² App. 275, ll. 19-25.
- Second, when the evidence was collected during the sexual assault examination, “neither one of the nurses was able to say for sure who collected the evidence and who labeled it, if they were both there.” App. 276, ll. 2-16.
- Third, no one at SLED signed they received the evidence when it was delivered by Lt. Nevins in January of 1985. *See* App. 583 – 584. (State’s Exhibit #18 and State’s Exhibit #19 are the forms Nevins submitted to SLED and the “signature of person receiving evidence” line is blank.) Counsel argued that since these were SLED’s own forms, they should have followed “their own protocol.” Moreover, testimony about how the evidence got from Nevins to Bogan while at SLED was speculative. App. 276, l. 25 – 278, l. 9.
- Fourth, it was unclear when the evidence was returned from SLED in 1985; whether it all came back in the same batch or whether it was returned in two batches (which is how it was delivered). App. 278, l. 14-20.
- Fifth, when the evidence went back up to SLED in 1988, once again no one at SLED signed receipt of the evidence, as shown by State’s Exhibit #22 and State’s Exhibit #33. (State’s Exhibit #33 is the second page of State’s Exhibit #22). *See* App. 585; App. 587. Testimony differed on whether the evidence was returned to the Sheriff’s Office in 1988 or 1989. App. 278, ll. 20-22.
- Sixth, the State presented conflicting testimony on how evidence was stored while at the Sheriff’s Office. Nevins, Moultrie, and Knight agreed the evidence was kept in a locker

² While this is minor discrepancy, it illustrates the difficulties with establishing decades-old facts.

and only Nevins, Moultrie, and the Sheriff had a key. Asbell said each of the detectives kept his own evidence. App. 279, ll. 16-23.

- Seventh, when Nevins left the office and Asbell took custody of the evidence, the inventory of the evidence locker was incomplete as to this case. The only mention of the evidence in this case on the inventory was the inclusion of P.R.'s name along with seven other people's names listed as a "box of miscellaneous envelopes." The inventory did not mention any bags of clothes, kits, swabs, cuttings, or vials. Counsel argued this was "a documented break in the chain." App. 279, l. 23 – 281, l. 1.
- Eighth, the evidence was boxed up and moved from the old Sheriff's Office to the new Sheriff's Office and it was unclear who helped Asbell move the evidence. App. 281, ll. 1-14.
- Ninth, when the evidence went back to SLED in 2009, the receipt for the cuttings from the panties and skirt was mislabeled—an item was marked N but should have been marked M. Also, the oral wash had disappeared. App. 281, l. 16 – 283, l. 9.
- Tenth, a lack of testimony about the standard operating procedure for chain of custody at SLED or the Sheriff's Office. App. 284, l. 1 – 287, l. 2.

The court denied the motion. It ruled that discrepancies about the date of the rape went to weight, that Nurse Schafer remembered how the evidence was collected, and that Nevins and Moultrie were clear about their procedure and who had access to the evidence. The court found the chain was clear as to the hospital, the Sheriff's Office, and SLED, noting the same analyst at SLED did the analysis each time. The court noted the oral wash disappeared, but found any problems went to weight and not admissibility. App. 295, l. 14 – 298, l. 19.

The DNA was the only evidence linking Petitioner to the crime. He was convicted as indicted and sentenced to consecutive terms of life for kidnapping and thirty years for first-degree criminal sexual conduct. App. 427, 1. 21 – 428, 1. 4; App. 438, 1. 3 – 439, 1. 3.

The Court of Appeals affirmed, concluding the chain of custody was sufficient because “the State identified nearly every individual who handled the DNA evidence, and each witness who testified indicated the evidence was properly sealed and secure when it was received.”

Holmes v. State, Op. No. 2026-UP-096 at 2. Suppl. App. 41. The opinion continued,

The only unidentified individuals in the chain of custody were receptionists at the South Carolina Law Enforcement Division (SLED) who accepted deliveries of the items; however, agent Kenneth Bogan—a SLED analyst who tested the evidence on every occasion it was transported to the agency—testified that when the items were delivered, he picked up the items from the secretaries, filled out the intake forms, and observed that the items were sealed and lacked evidence of tampering.

Holmes v. State, Op. No. 2026-UP-096 at 3. Suppl. App. 42. The Court of Appeals concluded,

Although there were discrepancies with the documentation of some of the State’s evidence—the Victim testified her assault occurred the day prior the hospital’s records; and inventory sheet mistakenly listed cuttings from Victim’s skirt as item “N” instead of “M”; and an oral wash, which had been previously found to lack DNA samples, was unaccounted for after SLED’s initial analyses of the evidence—we hold these discrepancies did not render the evidence inadmissible but rather goes only to its weight as credible evidence.

Holmes v. State, Op. No. 2026-UP-096 at 3. Suppl. App. 42.

Discussion

“[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. Sweet*, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007) (citing *Benton v. Pellum*, 232 S.C. 26, 33, 100 S.E.2d 534, 537 (1957)).

“We have consistently held complete chain of evidence must be established as far as practicable,

tracing possession from the time the specimen is taken from the human body to the final custodian by whom it is analyzed.” *S.C. Dep’t of Soc. Servs. v. Cochran*, 364 S.C. 621, 628–29, 614 S.E.2d 642, 646 (2005) (citing *State v. Carter*, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001)). “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.” *Cochran*, 364 S.C. at 627, 614 S.E.2d at 645 (citing *Benton*, 232 S.C. at 33–34, 100 S.E.2d at 537). “Generally, we will uphold the chain of custody if the safeguards instituted ensure the integrity of the evidence, even if every person associated with the procedure is not personally identified.” *Id.*, 364 S.C. at 629, 614 S.E.2d at 646.

“Accordingly, if the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill-motive.” *Sweet*, 374 S.C. at 6, 647 S.E.2d at 205–06 (citing *State v. Taylor*, 360 S.C. 18, 25, 598 S.E.2d 735, 738 (Ct. App. 2004)). “Testimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility.” *State v. Pulley*, 423 S.C. 371, 377, 815 S.E.2d 461, 464 (2018) (citing *Sweet*, 374 S.C. at 7, 647 S.E.2d at 206). “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.* (citing *Sweet* at 7, 647 S.E.2d at 206). “Proof of chain of custody need not negate all possibility of tampering so long as the chain of possession is complete.” *Id.* (citing *State v. Carter*, 344 S.C. at 424, 544 S.E.2d at 837). “In applying this rule, we have 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.* (cleaned up). A brief time discrepancy (fourteen minutes) is not fatal to chain of custody where each person who possessed the sample is identified. *State v. Rowell*, 436 S.C. 54, 60-65, 870 S.E.2d 175, 178-80 (Ct. App. 2022).

The trial judge’s discretion regarding chain of custody and admission of evidence “must be reviewed in the light of the following factors: the nature of the article, the circumstances surrounding the preservation and custody of it, and the likelihood of intermeddlers tampering with it.” *State v. Hatcher*, 392 S.C. 86, 94–95, 708 S.E.2d 750, 754–55 (2011) (cleaned up). “If upon the consideration of such factors the trial judge is satisfied that in reasonable probability the article has not been changed in important respects, he may permit its introduction in evidence.” *Hatcher*, 392 S.C. at 95, 708 S.E.2d at 755 (citing *Gallego v. United States*, 276 F.2d 914, 917 (9th Cir. 1960)).

“Evidence is still required as to how the item was obtained and how it was handled to ensure that it is, in fact, what it is purported to be.” *Id.* “While the admission of evidence is within the discretion of the trial judge, we have held that it is an abuse of discretion to admit the results of a blood alcohol test where the identity of those who sealed, labeled, and transported the blood sample is not established.” *State v. Cribb*, 310 S.C. 518, 522, 426 S.E.2d 306, 309 (1992). “[W]here there is evidence to establish the identity of those who have handled the evidence and the manner in which it was handled, a weakness in the chain merely raises a question of credibility, not admissibility.” *Taylor*, 360 S.C. at 24, 598 S.E.2d at 737. “The State need not establish the identity of every person handling fungible items in all circumstances; rather, the standard is whether, in the discretion of the trial judge, the State has established the chain of custody as far as practicable. This determination will necessarily depend on the unique factual circumstances of each case.” *Hatcher*, 392 S.C. at 95, 708 S.E.2d at 755.

The State failed to establish the chain of custody on the DNA evidence as far as practicable. The problems with the chain were significant. Some discrepancies could be seen as minor (i.e., the discrepancy in testimony about the date the evidence was collected or which nurse collected the evidence, or who helped Lt. Asbell move the evidence in 1993).

However, other problems with the chain were consequential. There was conflicting testimony on whether the evidence was returned to the Sheriff's Office by Officer Rivers in 1988 or Officer Rush in 1989, or at least, it was unclear which items were returned at which time. The status of where the evidence, including the panties and cutting from the panties, was at various times in 1988 and 1989 was thus unclear. The State did not establish who had access to the evidence at the Sheriff's Office before 1993, since some officers said only three people had keys to one evidence locker, while another officer said each officer maintained his own evidence. The State did not reasonably identify the persons handling the evidence and the manner of handling. *Sweet*, 374 S.C. at 6, 647 S.E.2d at 205–06.

There were documented breaks in the chain such as the missing oral wash. Although the Court of Appeals relied on Bogan's testimony the items of evidence lacked evidence of tampering, Bogan also said the oral wash went missing and he stated it did not go missing at SLED. Therefore, something necessarily did compromise the integrity of the evidence. That something compromised the evidence at a critical point—just before the critical DNA extraction from the panty cutting in 2009. The oral wash was listed on Asbell's 2009 request to SLED but Bogan stated that when he opened the evidence in 2009 at SLED, there was no oral wash. The evidence from this case could not have remained securely stored and sealed if one of the items went missing. The State failed to show safeguards ensured the integrity of the evidence. *S.C. Dep't of Soc. Servs. v. Cochran*, 364 S.C. at 627-29, 614 S.E.2d at 645-46.

The critical evidence that connected Petitioner to the crime, the cutting from the panties, was not listed on the inventory created when the evidence was transferred to a new custodian: this evidence was not identified on the 1993 inventory, there was only a notation regarding a box of “miscellaneous envelopes” containing evidence from eight cases including this one. The inventory did not mention any bags or kits. The evidence as received from the hospital originally consisted of a blue bag containing clothing and a sealed box full of envelopes and samples. Bogan took cuttings from the clothing, put them in envelopes, and then put things back into their original packaging, which would have been the blue bag. Individual items were taken out of their original packaging when they were taken back to SLED back at various times with at least one item going missing. The evidence in this case leaves to conjecture who had the evidence and what was done with it between the taking and the analysis. *S.C. Dep’t of Soc. Servs. v. Cochran*, 364 S.C. at 627, 614 S.E.2d at 645.

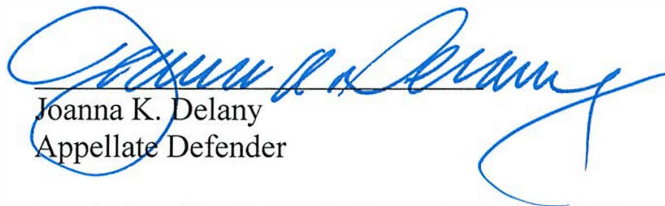
Additionally, the receipt listing the cutting from the panties was mislabeled N instead of M. SLED apparently had a protocol upon receipt of the evidence in 1985 and 1989, since their request for analysis forms had a space for a signature, but these were left blank. The identity of the person at SLED who took the evidence from Lt. Nevins and gave it to Analyst Bogan during the various deliveries was not established. There was a lack of information on how the evidence was returned from SLED after its initial 1985 review. All of these circumstances demonstrate the State did not establish how the evidence was handled to demonstrate it was what it was purported to be. *See Hatcher*, 392 S.C. at 95, 708 S.E.2d at 755 (Evidence is required “as to how the item was obtained and how it was handled to ensure that it is, in fact, what it is purported to be.”).

The State did not reasonably demonstrate the manner of the evidence's handling and failed to identify each person who handled the evidence. At multiple points over the years the evidence was transported or stored with evidence from other cases. The Court of Appeals erred in concluding the evidence was admissible. *State v. Hatcher*, 392 S.C. at 94–95, 708 S.E.2d at 754–55. The State did establish a sufficient chain of custody. *State v. Sweet*, 374 S.C. at 6, 647 S.E.2d at 205. Much was left to conjecture. *S.C. Dep't of Soc. Servs. v. Cochran*, 364 S.C. at 627-29, 614 S.E.2d at 645-46.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and order full briefing on the issue presented.

Respectfully Submitted,



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This 18th day of June, 2026.