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Nov 20 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Fairfield County

Honorable Brian M. Gibbons, Circuit Court Judge

Opinion No. 2025-UP-365

THE STATE,

RESPONDENT,

V.

TIMOTHY JAMES THOMPSON,

APPELLANT.

APPELLATE CASE NO. 2022-000397

PETITION FOR REHEARING

On July 2, 2025, this Court issued an unpublished opinion denying the trial court erred in allowing a key witness to testify remotely during appellant's trial. *See State v. Thompson*, No. 2022-000397 (S.C. Ct. App. Nov. 5, 2025). The basis for the ruling was, in essence, that it is not an abuse of discretion in allowing a witness to testify remotely when there is some evidence demonstrating the witness was unable to travel to court without a risk to health.

Pursuant to Rule 221(a), SCACR, Timothy James Thompson requests that this Court grant rehearing because this Court has diminished a fundamental aspect of appellant's

confrontation right and inherent due process protections in favor of a non-compelling interest of a third-party.

The law has long acknowledged “that there is something deep in human nature that regards face-to-face confrontation between accused and accuser as ‘essential to a fair trial in a criminal prosecution.’” Coy v. Iowa, 487 U.S. 1012, 1017 (1988) (quoting Pointer v. Texas, 380 U.S. 400, 404 (1965)). That element of essential fairness is at the heart of the Confrontation Clause guarantee that an accused to be confronted with the witnesses against him. U.S. Const. amend. VI.

The Supreme Court has acknowledged narrow circumstances involving “competing interests, if ‘closely examined,’ may warrant dispensing with confrontation at trial.” Maryland v. Craig, 497 U.S. 836, 848 (1990). However, these competing interests must not make a defendant's right to confront accusatory witnesses subservient to the whims and vagaries of others but must only be discarded when “necessary to further an important public policy and only where the reliability of the testimony is otherwise assured.” Craig, 497 U.S. at 850.

The Craig exceptions have been applied most often for minor victims of sexual abuse. Here, the witness was neither a minor nor traumatized by the prospect of testifying before the accused. Instead, the personal convenience of the witness based upon pain and discomfort were the alleged “important public policy” that justified depriving appellant of his fundamental right to confront the witnesses against him. While the witness asserted during trial that he had a “ruptured” disk in his back that caused him pain and discomfort, there was no medical evidence presented that traveling the short distance from his location near the Courthouse to appear in person would create a threat to the witness’s health. R. 149, l. 12- 150, l. 10.

To the contrary, the witness had on March 11, 2022, claimed that he could not travel from Pennsylvania shortly before trial due to a doctor's advice:

THE COURT: Tell me why you're not able to come to South Carolina.

MR. BELL: Because the doctor won't let me call – come because of my breathing heavy and my health condition.

R. 3, ll. 21-24

However, by the start of trial on March 21, 2022, witness Bell had not only traveled all the way from Pennsylvania to Fairfield County but had in fact moved his residency. R. 153, ll. 20-23. This long move occurred after the trial court had ruled that the witness Bell could testify remotely from Pennsylvania based upon this same back condition and the witness' claim that he could not fly under doctor's orders due to his health conditions. R. 3, ll. 21-24. While the trial court's original ruling regarding an elderly witness with health conditions who would have required extensive travel may have satisfied the limited Craig exceptions, that same witness being within the same county as the courthouse after already having made the long move from Pennsylvania to South Carolina would not be on level of an important public policy that justified ignoring the confrontation rights of the appellant.

In essence, the trial court placed the physical convenience of the state's key witness over the constitutional guarantee that appellant be able to confront the witnesses against him. Depriving an accused of this protected right requires a greater showing than a witness claiming physical pain and discomfort. While the trial court could have made accommodations for Bell in terms of the time of his testimony (early morning, late afternoon) depending on when Bell generally felt better, the trial court instead abused its discretion in allowing video testimony over appellant's objection.

Appellant respectfully requests that this Court review its determination that “the circuit court did not abuse its discretion in allowing the witness to testify remotely because there was evidence demonstrating the elderly witness was unable to travel to court without a risk to his health.” State v. Thompson, No. 2022-000397 (S.C. Ct. App. Nov. 5, 2025). To the contrary, the only evidence that Bell’s health was at risk was associated with physical pain in his back. A problem that had not prevented him from moving from Pennsylvania to Fairfield County in the 10 day period between the trial court’s original order and the start of trial. This setting simply does rise to a necessary step that furthers “an important public policy” as contemplated in Craig.



Gary H. Johnson
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ATTORNEY FOR APPELLANT

This 20th day of November 2025.

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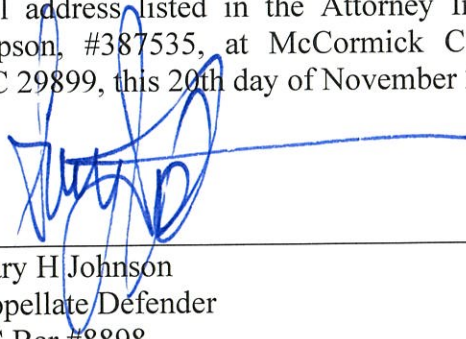
TIMOTHY JAMES THOMPSON,

APPELLANT.

APPELLATE CASE NO. 2022-000397

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-referenced case has been served upon J. Anthony Mabry, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Timothy James Thompson, #387535, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 20th day of November 2025.



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ATTORNEY FOR APPELLANT

Bast, Daniel

From: Bast, Daniel
Sent: Thursday, November 20, 2025 2:12 PM
To: amabry@scag.gov
Cc: Johnson, Gary; ddalessio@scag.gov
Subject: 2022-000397 - The State v. Timothy James Thompson
Attachments: 2022-000397 - The State v. Timothy James Thompson - Petition for Rehearing.pdf

Good afternoon,

Attached is a copy of the Petition for Rehearing in the above referenced case which will be filed today, November 20, 2025, with the Court of Appeals.

All the best,

Daniel Bast
Administrative Assistant
South Carolina Commission on Indigent Defense
Division of Appellate Defense
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