

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Jan 20 2026

S.C. SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Fairfield County
Honorable Brian M. Gibbons, Circuit Court Judge

Unpublished Opinion No. 2025-UP-365
(S.C. Ct. App. Submitted October 23, 2025-Filed November 5, 2025)

Lower Court Case No. 2020-GS-20-399; 2020-GS-20-400

THE STATE,

RESPONDENT,

V.

TIMOTHY JAMES THOMPSON,

PETITIONER.

APPELLATE CASE NO. 2022-000397

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

GARY H. JOHNSON
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

INDEX..... i

CERTIFICATE OF COUNSEL1

QUESTION PRESENTED2

STATEMENT OF THE CASE.....3

ARGUMENT

The Court of Appeals improperly diminished a fundamental aspect of appellant’s right to confront the witnesses against him and his inherent due process protections afforded by face to face confrontation before the jury in favor of a non-compelling interest of a third-party witness by allowing the witness to testify over remote video feed while in the same county as trial.....6

CONCLUSION.....11

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 improperly diminish a fundamental aspect of appellant's confrontation right and the inherent due process protections afforded by face to face confrontation before a jury in favor of a non-compelling interest of a third-party witness by allowing the witness to testify over remote video feed while in the same county as trial?

STATEMENT OF THE CASE

Appellant was indicted at the December 8, 2020, term of the Fairfield County Grand Jury for the offenses of the murder of Bruce Gibbs¹ and hit-and-run involving death as to the victim Bruce Gibbs. R. 416. Appellant's case was called to trial on March 21, 2022, before the Honorable Brian M. Gibbons, and a jury. William Frick represented appellant. Riley Maxwell and Henry McMaster, Jr. were the assistant solicitors. R. 9.

Victim, "Bruce Gibbs," was hit and run over by an automobile in the early morning hours of September 6, 2020, in Winnsboro. While driving on Columbia Road near Eleventh Street in Winnsboro, Fairfield County sheriff's deputy Alan McCoy noticed an automobile that appeared to be driving with only its fog lights on. R. 32, ll. 13-22. When McCoy drove closer to this vehicle, he noticed it had a flat tire on the back right side. R. 33, l. 1 - 34, l. 16. Shortly after this, McCoy heard over his police radio that a 911 call had identified "a juvenile laying in the roadway." McCoy then drove towards the "burned down" part of Winnsboro where the body was apparently in the road. R. 36, l. 23 - 38, l. 20.

McCoy noticed a body lying in the road, which was that of victim Bruce Gibbs. McCoy checked the victim's pulse and found none. He retrieved the victim's wallet to find his identification, and he noticed the victim's tennis shoes and cellphone laying nearby. R. 40, l. 15 -42, l. 16.

Highway patrolman Tyler Holland arrived and found some of the victim's personal items and observed tire tracks going through the grass and a vehicle part that had been left behind at the scene of the hit-and-run. R. 70, l. 13 - 71, l. 19. Holland said the MAIT team was also called in to investigate. R. 74, ll. 9-13.

¹ Sometimes referred to as Bruce Johnson.

Earlier that evening, a fish fry was held on Doty Street near Eleventh Street in Winnsboro. It apparently started at about three p.m. Miranda Sawyer was good friends with Felicia Johnson. Felicia's son, Bruce, was the victim in this case. Miranda remembered the Saturday, September 5, 2020, fish fry which many people attended. R. 91, l. 21 - 94, l. 3. Miranda said the fish fry lasted from about three in the afternoon to ten o'clock that night. The decedent and his girlfriend, Nikki Thompson were at this event along with Appellant, who went by the name "Gus." R. 94, ll. 2-21.

Miranda remembered that Nikki and Bruce were having an argument near the mailbox on the road that evening, they were only arguing orally and there was no physical action involved. Miranda said that appellant went to the scene of the argument and said "Bruce, Bruce, Bruce. I'm tired of you arguing with my sister." The victim, Bruce, responded "I'm tired of you always in our business. Stay out of our business." Miranda maintained that appellant then said he was going to get Bruce. Bruce apparently responded "we can do it one-on-one. We can get it now. We can do it one-on-one." R. 96, l. 2 - 97, l. 18. Appellant then left the party and walked towards his father's house. R. 97, ll. 22-23. Miranda also testified that appellant drove a black Impala. R. 97, l. 25 - 98, l. 1. Felicia Johnson also testified that appellant drove a black Impala on the night of the fish fry. R. 111, ll. 1-6.

The state's case was an effort through circumstantial evidence to tie appellant to the 2004 Chevy Impala which police believed was the car involved in the hit-and-run causing the death of Gibbs. A key witness in this effort was Tommy Bell. Despite being in the same county as trial, Bell was allowed to testify "remotely" and told the jury appellant came over to visit his house to get a gun on the night of the hit-and-run and admitted he intended to kill Gibbs. R. 157, ll. 12 - 158, ll. 25.

The jury found appellant guilty of both offenses. R. 404, l. 21- 405, l. 2. Judge Gibbons sentenced appellant to life imprisonment for murder and imposed a ten-year concurrent sentence for hit-and-run involving death. R. 414, ll. 1-7.

On direct appeal, appellant argued that the trial court committed reversible error by allowing state's witness Tommy Bell to testify remotely for his personal convenience even though Bell was located in Fairfield County where appellant's trial was being held. In an unpublished opinion, the Court of Appeals found no error noting 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). Appellant sought rehearing which was denied by the Court of Appeals on December 18, 2025.

This petition for certiorari follows.

ARGUMENT

The Court of Appeals improperly diminished a fundamental aspect of appellant's right to confront the witnesses against him and his inherent due process protections afforded by face to face confrontation before the jury in favor of a non-compelling interest of a third-party witness by allowing the witness to testify over remote video feed while in the same county as trial.

The Sixth Amendment of the United States Constitution provides for a defendant's right "to be confronted with the witnesses against him." U.S. Const. amend. VI. This right is contained in South Carolina's constitution as well. S.C. Const. art I, § 14. It is codified in S.C. Code Ann. §17-23-60 (1976 as amended): "Every person accused shall, at his trial, be allowed to be heard by counsel, may defend himself and shall have a right to produce witnesses and proofs in his favor and to meet the witnesses produced against him face to face."

Though this right has been interpreted in numerous contexts, federal jurisprudence has made clear that the clause encompasses the "literal right to 'confront' the witness at the time of trial." California v. Green, 399 U.S. 149, 157 (1970). This right is in part predicated on the notion that "[i]t is always more difficult to tell a lie about a person 'to his face' than 'behind his back.'" Coy v. Iowa, 487 U.S. 1012, 1019 (1988). Courts have "never doubted, therefore, that the Confrontation Clause guarantees the defendant a face-to-face meeting with witnesses appearing before the trier of fact." Id., 487 U.S. at 1016.

As with any right, it is not an absolute.² Limited exceptions have been created that allow available witnesses to skip the rigors of appearing before the defendant and the jury to present

² For example, "a criminal defendant has the right to confront the author of a report only if the author of the report is a 'witness'—one who 'bear[s] testimony'—against the accused." State v. Eng., 443 S.C. 49, 58, 902 S.E.2d 385, 390 (2024).

testimony as recognized in Maryland v. Craig, 497 U. S. 836 (1990); *see also* Coy v. Iowa, 487 U.S. 1012 (1988); State v. Murrell, 302 S.C. 77, 393 S.E. 2d. 919 (1990). The rationale behind this limited exception simply does not apply in this case.

It is always more difficult to tell a lie about a person “to his face” than “behind his back.” In the former context, even if the lie is told, it will often be told less convincingly. The Confrontation Clause does not, of course, compel the witness to fix his eyes upon the defendant; he may studiously look elsewhere, but the trier of fact will draw its own conclusions. Thus the right to face-to-face confrontation serves much the same purpose as a less explicit component of the Confrontation Clause that we have had more frequent occasion to discuss the right to cross-examine the accuser; both “ensur[e] the integrity of the fact-finding process.”

Coy v. Iowa, 487 U.S. 1012, 1019–20 (internal citations omitted).

A confrontation on a television screen is not the same as a physical face-to-face confrontation. While the video in this case appears to be very far from the best quality due to technical issues, video technology itself cannot replicate when the witness stands face-to-face and allows the jury to observe and judge demeanor and weigh credibility. 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. at 1017 (*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.

A “defendant's right to confront accusatory witnesses may be satisfied absent a physical, face-to-face confrontation at trial only where denial of such confrontation is necessary to further an important public policy and only where the reliability of the testimony is otherwise assured.” Maryland v. Craig, 497 U.S. at 850. These narrow circumstances involving “competing interests, if ‘closely examined,’ may warrant dispensing with confrontation at trial.” Id., 497 U.S.

at 848. However, these competing interests must be both compelling from a public policy perspective and not make a defendant's right to confront accusatory witnesses subservient to the whims and vagaries of others.

The Craig exceptions have been applied most often for minor victims of sexual abuse when there is evidence a direct appearance before the defendant and a jury would traumatize the minor. With the advent of remote video technology, the mere “convenience” of witnesses as an additional basis for such testimony would make the exception swallow the rule.

In the present case, witness Bell was neither a minor nor traumatized by the prospect of testifying before the accused. Instead, his personal convenience to accommodate his pain and discomfort were the alleged “important public policy” that justified depriving appellant of his fundamental right to confront the witnesses against him.

Bell asserted during trial that he had a “ruptured” disk in his back that caused him pain and discomfort, but 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 his 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 the 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.

The Supreme Court warned of the dangers of allowing general convenience of the witness as such reliance would make the exception the new rule:

The State can hardly gainsay the profound effect upon a witness of standing in the presence of the person the witness accuses, since that is the very phenomenon it relies upon to establish the potential "trauma" that allegedly justified the extraordinary procedure in the present case. *That face-to-face presence may, unfortunately, upset the truthful rape victim or abused child; but by the same token it may confound and undo the false accuser, or reveal the child coached by a malevolent adult.* It is a truism that constitutional protections have costs.

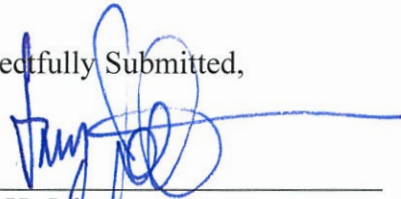
Coy, 487 U.S. at 1020. Here, the lower court has allowed the “upset” witness to avoid face-to-face confrontation without due regard to the fundamental impact that burden has on the right of appellant.

Appellant respectfully requests that this Court review the Court of Appeal’s decision 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. This same physical infirmity had not prevented Bell 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.

CONCLUSION

As this is both a novel question before this Court (whether a witnesses convenience is sufficient to justify allowing remote testimony before a jury rather than in person), implicates a substantial constitutional question (confrontation rights and due process), and is a scenario likely to be repeated, this Court should grant certiorari to clarify the scope of the narrow exception that allows for remote testimony over the objection of a defendant during a criminal jury trial.

Respectfully Submitted,



Gary H. Johnson
Appellate Defender
SC Bar #8898

ATTORNEY FOR PETITIONER

This 20th day of January, 2026.