RECEIVED
Mar 12 2026
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to
Court of Appeals
Appeal from Fairfield County
Honorable Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2026-000109

THE STATE,

RESPONDENT,

v.

TIMOTHY JAMES THOMPSON,

PETITIONER.

RETURN TO PETITION
FOR A WRIT OF CERTIORARI

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY JANE BROWN
Senior Assistant Deputy Attorney General

DANIELLE DIXON
Assistant Attorney General
S.C. Bar No. 73999

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

INDEX

QUESTIONS PRESENTED

Petitioner's Questions

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?

Respondent's Counterstatement of Questions

Did the Court of Appeals properly find the trial court did not abuse its discretion in allowing a seventy-six-year-old witness who was in pain from a herniated back disk to testify remotely?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections serving a life sentence. In December 2020, the Fairfield County Grand Jury indicted Petitioner for murder and hit-and-run involving death following the death of Bruce Gibbs (Victim). At trial, the State presented overwhelming evidence that Petitioner struck and killed Victim—who was walking on the side of the road—with his black Chevy Impala around 1:00 a.m. on September 6, 2020. Critically, videos from home surveillance cameras in the area showed Victim walking down the road when a dark early-model car with round brake lights passed Victim in the opposite direction at a normal rate of speed, turned around, returned at an accelerated speed, and ran off the road—striking Victim. The car did not stop but continued driving in the direction of a nearby POPS convenience store. (State's Ex. 13). According to the MAIT investigation, Victim was struck on the sidewalk or in the grass of a yard; the vehicle that stuck Victim did not lose control before impact and was traveling approximately 47-48 mph at the time of impact in a 35 mph zone; the vehicle left the road, first striking a curb before hitting Victim; and all of the vehicle's tires had left the road prior to impact with Victim. (R. 31-79, 123-48, 252-334).

Around the time of impact, another car—later identified as Kelvin Sampson's car—is seen in the video passing the area and almost stopping. (State's Ex. 13; R. 287-99). At trial, Sampson—who was friends with Petitioner—recalled being in the area that evening and seeing a dark Chevy Impala, consistent with the one he saw Petitioner driving earlier that evening, driving "wide open." Sampson testified the car swerved off the road, and Sampson believed it hit a fence. Sampson did not see the car hit Victim. Sampson explained the Impala was jerking back and forth as if trying to regain control after it went off the road, and Sampson almost stopped his car to avoid being hit. Sampson further testified Petitioner had stopped by his home between midnight and 1:00 a.m. that

morning asking for a gun, but Sampson told him he didn't have a gun. Sampson testified Petitioner left in his black Chevy Impala. (R. 183-92).

Deputy Al McCoy testified he was patrolling the area shortly after 1:00 a.m. when he saw an early-model dark or black Chevy Impala. Deputy McCoy noticed the window tinting was "bubbling up" or coming off the windows, the rear passenger-side tire was flat, and the car did not have hubcaps on the passenger-side tires. At 1:14 a.m., shortly after seeing the Impala, Deputy McCoy responded to a dispatch of a dead body in the road in the same area where he had seen the Impala. (R. 31-38, 42).

Around 1:26 a.m., Deputy Jonathan Harris was patrolling nearby and responded to a call of a stranded motorist. Deputy Harris noticed a man on the side of the road changing a flat tire on an older model black Chevy Impala; the man informed Deputy Harris he did not need assistance. Deputy Harris left, but his car camera recorded the encounter, and the recording was played for the jury at trial. (R. 240-51; State's Ex. 9).

Police retrieved surveillance footage from the nearby POPS convenience store that showed Petitioner driving a dark early-model Impala into the parking lot shortly before 1:00 a.m. Surveillance footage also captured him entering the store. (R. 225-30, 235; State's Ex. 8).

Later that day, police located Petitioner's black Chevy Impala abandoned at a truck stop near Interstate 20 in Columbia. Police noticed damage to the front grill and hood, and bleach running down the sides of the car—as if someone had poured bleach on it. Police found a bottle of bleach in the back of the car. The car's window tinting was bubbling and the passenger-side tires were missing rims—similar to the car Deputy McCoy observed earlier that night. Critically, the front passenger side headlight was held in place by a tie wrap, and a broken clip found at the scene matched the clip of the front passenger headlight. Petitioner later turned himself in. Although he

denied hitting Victim, he admitted he was driving his Impala both before and after the crime, and he left his car at the truck stop. He also admitted he was upset or agitated that night, and it took him three hours to calm down. (R. 193-208, 220-24, 228-29, 252-334, 359-60, State's Ex. 18).

In addition to the foregoing, the State presented evidence that Petitioner had gotten into an argument with Victim the prior evening at a fish fry. (R. 91-120, 166-83). Specifically, Miranda Sawyer and Annie Roach both testified they heard Petitioner approach and threaten Victim after Victim and Petitioner's sister (who was dating Victim) were arguing. (R. 91-97, 166-69). Victim's mother, Felicia Johnson, heard about the argument and took her son inside. (R. 104-09). Petitioner left in his black Chevy Impala by 10:00 p.m. (Tr. 98).

The State also called witness Tommy Bell, Victim's grandfather who was also friends with Petiitoner.[1] According to Bell, Petitioner stopped by his home between 11:00 and 11:30 p.m. the night of the fish fry, threatened to kill Victim, and asked Bell for a gun. Bell stated he did not have a gun and instead encouraged Petitoiner to talk to Johnson—who would straighten everything out with Victim. However, Thompson refused and left in his Chevy Impala between 12:00 and 12:30 a.m. Bell attempted to notify Johsnon, but Johnson did not receive the voice mail until after Victim was killed. Bell was interviewed by police on September 15 and provided a similar video-recorded statement, a portion of which was played by the defense for impeachment.[2] (R. 153-65, 236).

Petitioner did not testify or present a defense. The jury convicted him as indicted, and Judge Gibbons sentenced him to concurrent terms of life imprisonment for murder and ten years for hit-and-run, death resulting. This appeal followed.

---

[1] Bell was allowed to testify virtually over Petitioner's objection.

[2] Specifically, Bell initially told police the threat occurred on a Thursday, whereas at trial he testified it occurred on a Saturday. (R. 372).

ARGUMENT

The Court of Appeals properly found the trial court did not abuse its discretion in allowing a seventy-six-year-old witness who was in pain from a herniated back disk to testify remotely.

In his Petition for Certiorari, Petitioner's primary contention now seems to be *not* that allowing an elderly person with health issues to testify remotely violates the Confrontation Clause[3]—which was his primary contention in his Brief to the Court of Appeals. Rather, he argues for the first time in his Petition for Rehearing and his Petition for Certiorari that the trial court erred in finding Bell's health conditions prevented him from attending court because Bell had moved from Pennsylvania to South Carolina in the ten days prior to trial—which he insinuates must mean Bell could have attended trial. However, this Court should not grant certiorari based on an argument that was not properly presented to the Court of Appeals—especially when this argument does not constitute a "special and important reason[]" for certiorari review. See Rule 242(b), SCACR (providing a writ of certiorari "will be granted only where there are special and important reasons"). Further, the Court of Appeals properly found the trial court did not abuse its discretion in allowing Bell to testify remotely when evidence supported the finding that Bell was an elderly person whose medical condition prevented him from attending court. In reaching its decision, the Court of Appeals properly considered *Maryland v. Craig*, 497 U.S. 836 (1990). Likewise, Petitioner *was* afforded his constitutional rights, as guaranteed by *Craig*. Finally, the State presented overwhelming evidence of Petitioner's guilt such that any error in allowing Bell

[3] More specifically, Petitioner avers, "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." (Pet. 9).

to testify remotely was harmless beyond a reasonable doubt.

Although the Sixth Amendment Confrontation Clause guarantees criminal defendants the right to face-to-face meetings with witnesses at trial, this right is not absolute. *Maryland v. Craig*, 497 U.S. 836, 844 (1990). Rather, the Clause's preference for face-to-face confrontation "must occasionally give way to considerations of public policy and the necessities of the case." *Id.* at 848 (quoting Mattox, 156 U.S. at 243). "The central concern of the Confrontation Clause is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact." *Id.* at 845. Thus, the essence of the right to confrontation "includes the right to observe, cross-examine, and have the jury view the demeanor of the witness." *Id.* at 842. "The combined effect of these elements of confrontation—physical presence, oath, cross-examination, and observation of demeanor by the trier of fact—serves the purposes of the Confrontation Clause by ensuring that evidence admitted against an accused is reliable and subject to the rigorous adversarial testing . . . ." *Id.* at 846. Under the foregoing policy, "a defendant's right to confront accusatory witnesses may be satisfied absent a physical, face-to-face confrontation at trial [1] only where denial of such confrontation is necessary to further an important public policy and [2] only where the reliability of the testimony is otherwise assured." *Id.* at 850.

a. Petitioner's arguments regarding the sufficiency of the evidence were not properly presented to the Court of Appeals and thus should not be considered as a basis for granting certiorari.

In his Petition for Writ of Certiorari, Petitioner frames the Court's decision to allow Bell to testify remotely as one of "mere convenience" and "personal convenience" to Bell. He further asserts the trial court erred in basing its finding on testimony from Bell and sheriff deputies rather than requiring Bell to submit medical evidence of his condition. Finally, he attempts to undermine

the testimony supporting the trial court's decision by asserting Bell had moved from Pennsylvania to South Carolina ten days before trial—which he insinuates must mean Bell could have travelled to the courthouse for trial. (Pet. 8-9). These arguments, however, are not in Petitioner's brief to the Court of Appeals and thus were not properly presented to the Court of Appeals. Thus, these arguments should not be considered by this Court in determining whether to grant certiorari.

In his Brief to the Court of Appeals, Petitioner argued the limited exceptions to the Confrontation Clause set forth in *Craig*, *Coy v. Iowa*, 487 U.S. 1012 (1988), and *State v. Murrell*, 302 S.C. 77, 393 S.E.2d 919 (1990) did not apply here. (App. 22-25). Although he noted Bell was located in the same county as the trial, he did not take issue with the sufficiency of the evidence supporting the trial court's decision. In other words, Petitioner's brief to the Court of Appeals was purely legal—does the Confrontation Clause create an exception to in-person testimony in a situation such as this when an elderly witness has a medical condition that prevents him from traveling? In his brief, Petitioner did not challenge the *sufficiency* of the evidence supporting the trial court's decision.

Petitioner raised his argument regarding the sufficiency of the evidence for the first time in his Petition for Rehearing. Specifically, for the first time he argued the trial court's finding lacked supporting medical evidence and insinuated the witness's recent move necessarily meant he could attend court to testify. (App. 83-84). However, these arguments could have been raised in his brief and thus were not proper to raise for the first time in a Petition for Rehearing. Because they were not properly presented to the Court of Appeals, they should not be considered by this Court as a basis for granting certiorari.

b. The Court of Appeals applied the proper law, and its findings are supported by the record.

In affirming, the Court of Appeals found the trial "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." (App. 80). More specifically, the Court of Appeals found:

> Although the witness was within the county on the day of the trial, the trial court allowed the witness to testify via remote communication technology based on his advanced age and the 'risk to [his] health and safety." The witness testified under oath that his health prevented him from traveling and agents of the court sent to transport him to the courthouse confirmed he was in too much pain to be moved. Accordingly, the trial court's finding of necessity does not lack evidentiary support.

This finding by the Court of Appeals is supported by testimony from Bell that he had a ruptured lower lumbar disc in his back that was "upset" and prevented him from attending court. Likewise, Keith Lewis from the Sheriff's Department informed the trial court that he, Julie Hall, and Bill Dove—also from the Sheriff's Department—were with Bell and had attempted to transport him to the courthouse: "We tried to get him up out of his chair, but he's in a lot of pain when he tries to move. And he says he's been sitting here at this table for a good while this morning." (R. 149-50). Bell was 76 years old at the time of trial. (R. 153). Here, where the trial court's findings are supported by the evidence, the Court of Appeals properly found the trial court did not abuse its discretion in allowing Bell to testify remotely.

Further, in reaching this conclusion, the Court of Appeals properly relied on *Craig* as well as *State v. Davis*, 371 S.C. 170, 638 S.E.2d 57 (2006), and *State v. Carter*, 433 S.C. 352, 857 S.E.2d 910 (2021), *cert. dismissed as improvidently granted*, Aug. 10, 2022 (S.C. Sup. Ct), *cert. denied,* Jan. 9, 2023 (U.S. Sup. Ct.). Likewise, jurisdictions addressing this issue have concluded that health conditions that prevent a witness from attending court constitute sufficient public policy

considerations to allow virtual testimony under *Craig*,[4] and Petitioner has not cited any case from any jurisdiction that has held otherwise.

Finally, although Petitioner does not address this issue, the evidence supports that the reliability of Bell's testimony was otherwise assured. *See Craig*, at 846 ("The combined effect of these elements of confrontation—physical presence, oath, cross-examination, and observation of demeanor by the trier of fact—serves the purposes of the Confrontation Clause by ensuring that

---

[4] *See, e.g., White v. State*, 116 A.3d 520 (Md. Ct. App. 2015) (finding out-of-state witness with debilitating back condition could testify remotely); *Spinks v. State*, 260 A.3d 726, 732-34 (Md. Ct. Spec. App. 2021) (permitting witness to testify remotely where he had been at trial but had to leave on emergency due to terminal illness of his mother); *People v. Wrotten*, 923 N.E.2d 1099, 1100 (Ct. App. N.Y. 2009) (finding 85-year-old witness in poor health who could not travel could testify remotely); *Bush v. State*, 193 P.3d 203, 214 (Wyo. 2008) (finding witness with coronary failure could testify remotely); *State v. Oliver*, 112 N.E.3d 573, 580-82 (Ohio Ct. App. 2018) (finding husband who had undergone liver transplant and needed dialysis and his caretaker-wife could testify remotely because of necessity but wife's sister could not because she was only inconvenienced by testifying in person); *Horn v. Quarterman*, 508 F.3d 306, 317 (5th Cir. 2007) (concluding on federal habeas review the state court did not unreasonably apply federal law in permitting terminally ill witness whose doctor advised against travel to testify remotely); *Harrell v. Butterworth*, 251 F.3d 926, 931 (11th Cir. 2001) (finding state court's conclusion that an important public policy existed to allow virtual testimony was not contrary to federal law when one of the witnesses was in poor health and could not travel from Argentina to the United States, the witnesses were "absolutely essential" but lived beyond the subpoena power of the court, and it was in the state's interest "to expeditiously and justly resolve criminal matters"), *cert denied*, 535 U.S. 958 (2001); *State v. Sewell*, 595 N.W.2d 207, 211-13 (Minn. Ct. App. 1999) (affirming remote testimony when witness had undergone surgery and his doctor informed the court the witness would risk paralysis if he traveled to Minnesota); *Stevens v. State*, 234 S.W.3d 748, 781-83 (Tex. Ct. App. 2007 (finding 75-year-old witness with tenuous health conditions documented by cardiologist could testify remotely); *Lipsitz v. State*, 442 P.3d 138, 144 (Nev. 2019) (finding victim admitted into an out-of-state treatment center for prolonged period could testify remotely); *Cervantes v. State*, 594 S.W.3d 667, 671 (Tex. App. 2019) (finding breast-feeding mother with four other children could testify remotely); *United States v. Benson*, 79 Fed. Appx. 813, 820-21 (6th Cir. 2003) (finding "elderly and infirm witness" could testify remotely); *State v. Johnson*, 2006WL507073 (Mont. Sup. Ct. 2026) (finding 86-year-old out-of-state witness who accompanied wife to dialysis three times a week and cared for two adopted children under the age of ten could testify remotely); *State v. Tate*, 969 N.W.2d 378 (Minn. Ct. App. 2022) (finding investigator exposed to COVID and under quarantine could testify remotely); *State v. Camacho*, 960 N.W.2d 739, 754-56 (Neb. 2021) (finding remote testimony necessary where witness tested positive for COVID).

evidence admitted against an accused is reliable and subject to the rigorous adversarial testing . . . ."); *id.* at 850 ("[A] defendant's right to confront accusatory witnesses may be satisfied absent a physical, face-to-face confrontation at trial [1] only where denial of such confrontation is necessary to further an important public policy and [2] only where the reliability of the testimony is otherwise assured."). Here, Bell was placed under oath (R. 149, 152-53), the jury was able to observe his demeanor through video, and counsel was able to cross-examine Bell—including by later playing a portion of Bell's statement to police to impeach his testimony that the threat occurred on a Saturday (the same night as a fish-fry) rather than a Thursday (what Bell initially told police). (R. 148, 161-64, 236-37). Although there was a brief technical issue during cross-examination, counsel was able to continue cross-examination without further issue. (R. 163-64). On balance, nothing suggests the virtual appearance prevented Petitioner from cross-examining Bell to the extent he sought to cross-examine him. *See Craig*, 497 U.S. at 845 ("The central concern of the Confrontation Clause is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact."). Here, the trial court properly found an important public policy exception based on Bell's advanced age and health, and the reliability of Bell's testimony was otherwise assured. Thus, the Court of Appeals properly found the trial court did not abuse its discretion in allowing Bell to testify virtually.

c. Given the overwhelming evidence of guilt submitted by the State and the cumulative nature of Bell's testimony, any error in allowing this remote testimony was harmless beyond a reasonable doubt.

Even without considering Bell's testimony, the State presented overwhelming evidence of Petitioner's guilt. Further, although Petitioner frames Bell as a "key witness," his testimony was largely cumulative to the testimony of other witnesses presented by the State. Thus, any error in

his virtual testimony was harmless beyond a reasonable doubt.

"A violation of a defendant's Sixth Amendment right to confront the witness is not per se reversible error; instead, this Court must determine whether the error was harmless beyond a reasonable doubt." *State v. Davis*, 371 S.C. 170, 181, 638 S.E.2d 57, 63 (2006). "[W]hether an error is harmless depends on the particular circumstances of the case." *Id.* "Error is only harmless when it could not reasonably have affected the result of the trial." *Id.* at 181-82, 638 S.E.2d at 63 (internal quotation marks omitted).

At trial, the State presented overwhelming evidence that Petitioner struck Victim in his Chevy Impala. Critically, the State found Petitioner's Impala abandoned at a truck stop with damage to the hood and a broken clip around the headlight that matched a clip found at the scene of the collision. (R. 193-208, 220-24, 228-29, 252-334, 359-60). Police introduced surveillance from a nearby gas station showing Petitioner getting out of an Impala about 15-20 minutes before Victim was struck. (R. 42, 225-30, 235; State's Ex. 8). Although Sampson did not identify Petitioner as the driver of the Impala he saw at the time of the collision, he identified the vehicle as an Impala similar to Petitioner's Impala and testified he saw Petitioner earlier that night driving his Impala. (R. 183-92). Sawyer also testified Petitioner was driving his Impala that night. (Tr. 98). Finally, although he denied hitting Victim, Petitioner himself admitted to police that he was driving his Impala that evening and he left it at the truck stop. (State's Ex. 18). The foregoing constitutes overwhelming evidence that Petitioner did, in fact, hit Victim in his Chevy Impala.

Further, the overwhelming evidence showed the impact was *not* accidental. Critically, a video depicted the vehicle passing Victim, turning around, and accelerating before swerving off the road to hit Victim. The MAIT team concluded Victim was struck on the sidewalk or in the grass of a yard; the vehicle that stuck Victim did not lose control before impact and was traveling

approximately 47-48 mph in a 35 mph zone; the vehicle left the road, first striking a curb before hitting Victim; and all of the vehicle's tires had left the road prior to impact with Victim. (R. 31-79, 123-48, 252-334). Finally, Sawyer and Roach both testified they saw Petitioner arguing with and threatening Victim earlier that evening, and Sampson testified Petitioner stopped by his house between midnight and 1:00 a.m. that morning looking for a gun. (R. 91-97, 166-69, 183-92). Petitioner himself told police he was upset or agitated that night, and it took him three hours to calm down. (State's Ex. 18). The following constitutes overwhelming evidence that the collision was not accidental, but rather that Petitioner intentionally swerved his vehicle to hit Victim—thus acting with malice aforethought.

Finally, the crux of Bell's testimony was that Petitioner stopped by his home around 11:00-11:30 p.m. that evening, threatened to kill Victim, was looking for a gun, and left in his Chevy Impala. (R. 153-57). However, this testimony was cumulative to the testimony of other witnesses. Specifically, Sawyer and Roach testified they saw Petitioner argue with and threaten Victim earlier that evening, and Sampson testified Petitioner stopped by his home between midnight and 1:00 a.m. looking for a gun. (R. 91-97, 166-69, 183-92). Finally, Sawyer and Sampson both testified Petitioner was driving his Impala that night, and Petitioner admitted the same to police. Thus, the critical portion of Bell's testimony—that Petitioner threatened to kill Victim, was looking for a gun, and was driving his Impala that evening—was already before the jury. Due to the cumulative nature of Bell's testimony and the other overwhelming evidence of guilt submitted by the State, any error in allowing Bell's virtual testimony was harmless beyond a reasonable doubt.

CONCLUSION

Based on the foregoing, this Court should deny the Petition for a Writ of Certiorari.

Respectfully Submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY JANE BROWN
Senior Assistant Deputy Attorney General

DANIELLE DIXON,
Assistant Attorney General
State ID No. 73999

s/Danielle Dixon

OFFICE OF ATTORNEY GENERAL
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

March 12, 2026.