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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Fairfield County

Honorable Brian M. Gibbons, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

TIMOTHY JAMES THOMPSON,

PETITIONER.

APPELLATE CASE NO. 2026-000109

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REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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## ARGUMENT IN REPLY

In its Return to the Petition for Certiorari, the State contends that petitioner has fundamentally altered the argument presented to the lower court and the Court of Appeals in the present petition. “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.” (State’s Return p. 5). The state’s return implies some new argument regarding Bell’s physical condition is being made for the first time before this Court.

This represents a fundamental misrepresentation of the Record before the trial court and the briefs submitted to the Court of Appeals. Contrary to the State’s assertion that the physical condition of Bell (and his recent travel from Pennsylvania to South Carolina) was not argued as an element concerning the propriety of allowing him to testify through remote video rather than in person, these issues were a central component of trial counsel’s objection and the argument presented to the Court of Appeals. When the issue concerning allowing Bell to testify through remote video feed was first before the lower court, Bell was in Pennsylvania. R. p. 2, l. 1 – 3, l. 12. During this pretrial hearing while Bell was in Pennsylvania, he reported an inability to fly due to health concerns. R. p. 3, l. 16 – 5, l. 13. Petitioner’s counsel objected:

MR. FRICK: Your Honor, I am concerned. First, we just had some technical issues right there. I am concerned about my client's right to full confrontation. I mean, I understand I can cross-examine Mr. Bell over the technology, but I would prefer it to be in person if possible.

R. 5, ll. 16 – 20. At the start of trial, petitioner’s counsel renewed his objection with the trial court noting “you’re protected in the record on that.” R. 10, ll. 2 – 6. During trial and just before

Bell testified, petitioner's counsel renewed the objection pointing out that Bell had now already traveled from Pennsylvania and was in South Carolina. R. 148, ll. 12-22. At this point, the trial court inquired about any efforts that were made to have Bell come to the physical courthouse to testify. R. 149, 16 – 150, l. 9.

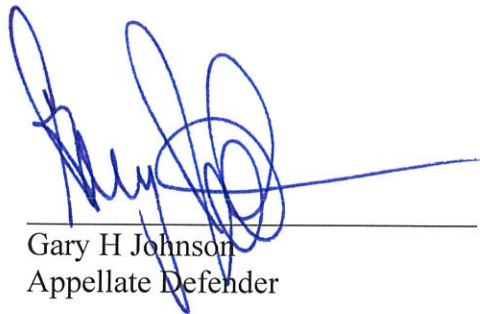
Petitioner's Final Brief to the Court of Appeals referenced each of these areas of the Record. The question presented to the Court of Appeals in the Final Brief was "Whether the court erred by allowing state's witness Tommy Bell to testify remotely, where he was located in Fairfield County where appellant's trial was being held, since appellant was entitled to live confrontation with this key state's witness?" As rephrased for this Court in the Petition for Certiorari, "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?" Petitioner's Final Brief cited and discussed the impact of Maryland v. Craig, 497 U.S. 836 (1990) and Coy v. Iowa, 487 U.S. 1012 (1988), as discussed in the Petition for Certiorari.

The State's assertion that there is a fundamental difference between the facts and argument before the trial court, the Court of Appeals, and presented to this Court lacks support in the Record and the filings on appeal. The state's argument that Bell's physical presence in Pennsylvania under an alleged doctor's order not to fly may have satisfied the limited *Craig* exceptions, as Petitioner acknowledged in the Petition for Certiorari, fundamentally changed when Bell made the long trip from Pennsylvania to Fairfield County, South Carolina. This acknowledgement that some factual scenarios not involving minors may satisfy the *Craig* exceptions in no way alters the fundamental argument presented to the trial court, the Court of

Appeals, or this Court in the Petition for Certiorari. The Court of Appeals improperly diminished a fundamental aspect of appellant's confrontation right afforded by face to face confrontation in favor of a non-compelling interest of a third-party witness by allowing the witness to testify over remote video not supported by an important public policy.

## CONCLUSION

As argued in the Petition for Certiorari, the proper standard and use of video testimony over objection due to the Confrontation Clause is an issue that will likely recur and the lower courts require guidance on balancing convenience and its impact on a substantial constitutional question (confrontation rights). In its Return, the state has attempted to avoid answering this question by improperly asserting the argument has fundamentally altered or changed from that presented to the Court of Appeals.



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This 23rd day of March, 2026.