

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Fairfield County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY JAMES THOMPSON,

PETITIONER.

APPELLATE CASE NO. 2026-000109

BRIEF OF PETITIONER

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

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ISSUE PRESENTED

Whether the lower courts improperly diminished a fundamental aspect of petitioner'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?

STATEMENT

Petitioner 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. Petitioner's case was called to trial on March 21, 2022, before the Honorable Brian M. Gibbons, and a jury. William Frick represented petitioner. 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. The hit and run was captured on video, though the exact make and model of the vehicle involved was not clear.² Law enforcement witnesses noted the break lights of the vehicle were consistent with a Chevrolet Impala sedan. R. 293, ll. 10 - 24.

While driving on Columbia Road near Eleventh Street in Winnsboro, Fairfield County sheriff's deputy Alan McCoy noticed an automobile (identified as an older Chevrolet Impala) that appeared to be driving with only its fog lights on. R. 32, ll. 13-22; 35, 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 (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

¹ Sometimes referred to as Bruce Johnson.

² State's Exhibit 13 was transported to the Court of Appeals and made part of the Record on Appeal and is available for review by this Court.

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. The only physical evidence of the vehicle involved in this hit and run was a white plastic clip. R. 310, l. 1 - 312, l. 11.³

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 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. Bruce (the decedent) and his girlfriend, Nikki Thompson, were at this event along with petitioner (also known 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 petitioner went to the scene of the argument and said "Bruce, Bruce, Bruce. I'm tired of you arguing with my sister." R. 96, l. 2 - 97, l. 18. The victim, Bruce, responded by saying "I'm tired of you always in our business. Stay out of our business." Miranda maintained that petitioner 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. Petitioner then left the party and walked towards his father's house. R. 97, ll. 22-23. Miranda also testified that petitioner drove a black Impala automobile. R. 97, l. 25 - 98, l. 1. Felicia Johnson also testified that petitioner drove a black Impala on the night of the fish fry. R. 111, ll. 1-6.

³ Investigators claimed this clip would have secured a headlight in its housing and petitioner's Impala was missing such a clip when it was found. R. 314, l. 18 - 315, l. 2. Investigators also found bleach had been applied to portions of petitioner's automobile and it had front end damage. R. 196, l. 5 - 197, l. 6.

The state's case was an effort through circumstantial evidence to tie petitioner to the Chevy Impala which police believed was the car involved in the hit-and-run causing the death of Gibbs.⁴ 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 petitioner 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 petitioner guilty of both offenses. R. 404, l. 21- 405, l. 2. Judge Gibbons sentenced petitioner 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, petitioner 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). Petitioner sought rehearing which was denied by the Court of Appeals on December 18, 2025.

This Court granted certiorari and directed the parties to brief the potential impact of Pitts v. Mississippi, 607 U.S. 1 (2025) on the issue presented. This Brief of Petitioner follows.

⁴ Other Chevrolet Impala automobiles were owned and driven by various witnesses, including a dark blue one. R. 115, ll. 10 – 16. In a fifteen mile radius of the accident scene, there were "a couple hundred" dark colored Chevrolet Impalas. R. 231, l. 22 – 232, l. 9.

STANDARD OF REVIEW

Appellate review of a constitutional question typically "involves a two-step analysis. This dual inquiry means we review the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion . . . is a question of law subject to de novo review." State v. Frasier, 437 S.C. 625, 633–34, 879 S.E.2d 762, 766 (2022). 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. 836, 850 (1990).

ARGUMENT

The lower courts improperly diminished a fundamental aspect of petitioner'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.

A. How the lower court and the Court of Appeals erred in allowing Bell to testify remotely rather than travel the few miles to the courthouse.

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.⁵ Limited exceptions have been created that allow available witnesses to skip the rigors of appearing before the defendant and the jury to present 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. “The simple truth is that confrontation through a video monitor is not the same as physical face-to-face confrontation. As our sister circuits have recognized, the two are not constitutionally equivalent.” United States v. Yates, 438 F.3d 1307, 1315 (11th Cir. 2006). 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

⁵ 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).

(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 be confronted with the witnesses against him in a face to face setting before the jury. 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.

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. “We reiterate, for the benefit of the trial judges of this state, that in order to support the decision to utilize CCTV, case-specific findings must be set forth including references to testimony demonstrating the child witness will in fact be traumatized, not merely by testifying in a courtroom, or in front of a crowd of people or relatives, but by the presence of the particular defendant.” State v. Bray, 342 S.C. 23, 32, 535 S.E.2d 636, 641 (2000). 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. As then Justice Scalia warned during attempts to adopt video technology in limited circumstances during criminal trials:

As we made clear in Craig, *supra*, at 846–847, a purpose of the Confrontation Clause is ordinarily to compel accusers to make their accusations in the defendant's presence—which is not equivalent to making them in a room that contains a television set beaming electrons that portray the defendant's image. Virtual confrontation might be sufficient to protect virtual constitutional rights; I doubt whether it is sufficient to protect real ones.

207 F.R.D. 89, 94 (2002) (commenting on decision not to recommend alteration to Rule 26, FRCP).

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, Bell 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. At this stage, the trial court ruled pre-trial that Bell could be allowed to testify remotely over petitioner's objection. R. 5, ll. 16 – 23.

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 to South Carolina entirely. 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 petitioner. The physical distance between the trial court and Bell on March 11, 2022, along with his professed inability to fly under doctor's order, are fundamentally different facts than what was presented at trial and alter how this Court would evaluate the decision of the lower court and the Court of Appeals. Simply put, these facts matter in the determination of an important public policy. Conversely, *the absence of these facts at the time of trial matter*. Bell was no longer hundreds of miles away from the Courthouse. He was within the same County. Bell no longer needed to worry over flying to South Carolina from Pennsylvania, officers were on hand at his residence a few miles from the courthouse to transport him to court.

THE COURT: What is your current health situation right now? Why can't you come to court?

MR. BELL: I've got -- I've got my back -lower lumbar disc in my back is ruptured. So that's why and my back is all upset and I can't go to court.

THE COURT: All right. And who is sitting there with you?

MR. BELL: We've got two -- there's a --

MR. LEWIS: Judge, it's myself Keith Lewis, Julie Hall and we've got Bill Dove from the sheriff's office, he had a WiFi hotspot that we need.

THE COURT: Did y'all attempt to try to get him in the car to bring him up to the courthouse.

MR. LEWIS: Yes, sir. 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.

THE COURT: Thank you. Based upon my prior ruling, I'm going to allow this witness to testify over the objection of the defense. I'm gonna allow this witness to testify remotely via my virtual courtroom. We'll just deal with the sound issues, the acoustics issues, the best we can.

R. 149, l. 10 – 150, l. 8.

This effort to comply with the confrontation rights of the petitioner falls well short of the requirements set forth in Craig. In the scenario presented here, where a non-child witness testifies through video or other manner that does not involve face to face confrontation, "[t]he vast majority of those courts have chosen to apply *Craig* to both one- and two-way videoconferencing; only the United States Court of Appeals for the Second Circuit has formulated a standard distinct from *Craig's* necessity test to govern the constitutionality of two-way video testimony." State v. Rogerson, 855 N.W.2d 495, 501 (Iowa 2014). Examples of the Craig application to the present facts and how the decision of the lower courts here was in error can be found in decisions from other jurisdictions.

In Bush v. State, 193 P.3d 203 (Wyo. 2008), the Wyoming Supreme Court evaluated a trial court's decision to allow remote testimony from an elderly man with significant health concerns and his wife who the trial court felt would be greatly stressed to be apart from her gravely ill husband. In approving of the public policy concerns due to grave health issues as to the husband, the Wyoming Supreme Court noted the trial court was presented evidence from the witness' physician that "he suffered from congestive heart failure with severe left ventricular dysfunction, cardiomyopathy, chronic renal failure, and anemia of chronic disease, and his condition was profoundly poor." Bush, 193 P.3d at 214. Based upon the nature of the medical evidence supporting the danger to the witness' health that in person appearance in a different state may cause, the Wyoming Supreme Court found the Craig exception applicable to his testimony.

Importantly, this same exception was denied to the mere convenience and emotional needs of the witness' spouse, whose video testimony should not have been allowed:

We have found no cases in which any court has considered whether circumstances such as these were sufficient to show testimony by video conference was necessary to further an important public policy. We hold that the district court erred in allowing Mrs. Martin to testify by video teleconference. However, the error was harmless because her testimony was cumulative of her husband's testimony.

Id., 193 P.3d at 216.

In White v. State, 116 A.3d 520 (Md. Ct. Spec. App. 2015), a key witness was unable to fly from Arizona to Maryland for live testimony after her treating neurologist documented that the witness was "not cleared from a medical neurosurgical standpoint for flying or traveling." Id., 116 A.3d at 541. In finding an important public policy justification existed for allowing the witness to testify through two way video feed despite confrontation concerns, the Maryland Court of Special Appeals found:

We are persuaded that the combined public policy justifications of resolving cold cases and simultaneously protecting the physical well-being of a significant witness are sufficient under *Craig* to warrant the absence of Ms. Hostetler's in-court testimony in this case. This was not a case in which the witness was merely unwilling to travel, as in *Yates*; in fact, she had flown back to Maryland to testify in other cases and had intended to comply with the subpoena she received for this case. It was not until the earlier flight exacerbated her nerve condition that she could not—pursuant to her doctor's order—return to Maryland for Appellant's trials.

Id., 116 A.3d at 547.

In United States v. Yates, 438 F.3d 1307 (11th Cir. 2006), the 11th Circuit Court of Appeals reviewed the "convenience" of having witnesses from Australia testify over live video feed rather than travel to the United States to appear in person. In rejecting the "convenience" and

"expeditious" assertions supporting such use of technology, the 11th Circuit Court of Appeals noted:

All criminal prosecutions include at least some evidence crucial to the Government's case, and there is no doubt that many criminal cases could be more expeditiously resolved were it unnecessary for witnesses to appear at trial. If we were to approve introduction of testimony in this manner, on this record, every prosecutor wishing to present testimony from a witness overseas would argue that providing crucial prosecution evidence and resolving the case expeditiously are important public policies that support the admission of testimony by two-way video conference.

Id., 438 F.3d at 1316.

In essence, in the present case, the trial court placed the physical convenience of the state's key witness over the constitutional guarantee that petitioner be able to confront the witnesses against him. Depriving an accused of this protected right required a greater showing than a witness claiming physical pain and discomfort. While the trial court could have made accommodation 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 petitioner'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 courts have allowed the “upset” witness to avoid face-to-face confrontation without due regard to the fundamental impact that burden has on the right of petitioner without required showing of an important public policy. This Court should reverse this error and provide guidance on the proper balance between the convenience of a witness and the confrontation rights of an accused. In the case of claimed medical issues, factors such as distance of travel and medical support for claimed infirmities would be factors that may support important public policy concerns that justify alternative means of presenting witness testimony if the technology is in place that reduces the impact of the witness' physical absence from court. Those factors and that balancing did not take place in this case.

This error of the lower court in allowing the remote testimony absence such a showing was further compounded by the technical defects in the presentation of Bell's testimony. The judge told the jury that there were some problems with acoustics, “there’s reverberations, nobody knows what’s happening, we’re going to try to make the best of it so listen carefully. Even though this witness is appearing virtually, it’s as if—for your purposes, you are to consider his testimony and give it the weight and credibility you believe it deserves even though he may not physically be present testifying. I’ve already ruled on that as a matter of law. So, I want you to imagine that he is sitting in this witness stand like everybody else testifying. I’m going to swear him in and he’s going to be asked questions and I’m hoping this will go smoothly with reverberations and the acoustics, we’ll try and make the best of it.” R. 152, ll. 1-17.

There were disruptions in the feed during cross-examination.

Q. (By Mr. Frick) Let's see. Gus was over at your house. He left about midnight; correct?

A. (Audio disruption.)

(By Mr. Frick) All right. Mr. Bell, we're still working on this thing.

Q. Can you hear me again?

A. Yes, sir.

Q. Okay. Thank you. So you didn't have any concerns when really when Gus said what you say he said; right?

A. Well, I don't because -- (unintelligible.)

R. 163, ll. 11 – 21. There were disruptions at the start of Bell's testimony. R. 153, ll. 15 – 19. As the trial court warned, the quality of the presentation was problematic. R. 152, ll. 1-17.

This failure on the technical side compounded the trial court's error in favoring Bell's comfort and convenience.

B. Prejudice under Pitts v. Mississippi, 607 U.S. 1 (2025).

In granting certiorari, this Court directed the parties to brief the impact of Pitts v. Mississippi, 607 U.S. 1 (2025) on the question presented. In Pitts, the Supreme Court noted the role prejudice would play in evaluating violations of the confrontation clause in this setting: "Even constitutional errors are sometimes subject to a 'harmless-error' rule and do not require a new trial if the prosecution can show 'beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.'" Id. at 6 (*quoting* Chapman v. California, 386 U.S. 18 (1967)). The Supreme Court in Pitts noted that "under the Sixth Amendment, neither state screening statutes, nor the 'generalized finding[s]' on which they are premised, are enough to overcome a defendant's right to face-to-face confrontation." Id., 607 U.S. at 4. Importantly, a showing of harmlessness beyond a reasonable doubt in this setting rests on the State.

"The Sixth Amendment's guarantee of the right to confront one's accuser is most certainly compromised when the confrontation occurs through an electronic medium." United States v.

Yates, 438 F.3d 1307, 1315 (11th Cir. 2006). The import of Pitts regards when this level of "compromise" rises to the level of prejudice requiring reversal.

This inquiry revolves around the importance of the witness to the presentation of guilt (a key fact witness like Bell would be viewed in a different light of prejudice than a chain of custody witness). When viewed in this light, the greater the role the witness plays in a determination of guilt, a finding of prejudice would be difficult for the state to overcome "beyond a reasonable doubt" that the error did not contribute to the verdict.

Here, the State relied upon Bell's testimony in closing. "Around 11:00, 11:30 p.m., Gus goes to Tommy Bell's house. And he tells Tommy Bell, 'I got no problem with you. Nothing against you, but I'm gonna kill your grandson tonight.'" R. 351, ll. 3 – 6. "You heard from Mr. Bell that when Thompson came to his house that night and made those threats, he was driving his black Impala." R. 358, ll. 7 – 9. "A couple other things about his statement. He calls Tommy Bell his best friend. They used to live next door to each other before Thompson moved. And it's Mr. Bell who says, again, that Gus came to his house saying, 'I'm gonna kill your grandson.'" R. 360, ll. 4 – 8. "He again, makes explicit threats showing his malice towards Mr. Gibbs, when he talks to Tommy Bell . . ." R. 361, ll. 2 -4.

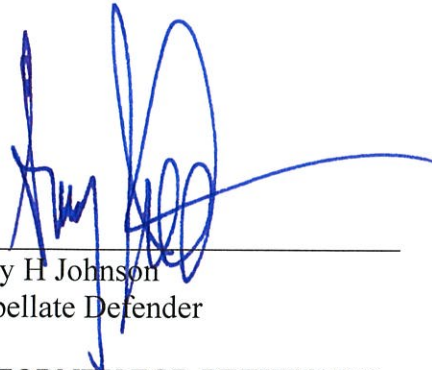
A claim that overwhelming evidence of guilt exists apart from Bell's testimony requires ignoring the lack of physical evidence tying petitioner's vehicle to striking Gibbs and the number of vehicles of similar make and color in a fifteen mile radius of the accident location. Petitioner concedes there was circumstantial evidence that supported the jury's verdict. He was in the vicinity of the accident and drove a car that had similar lights to the vehicle involved. Petitioner's vehicle had a damaged tire on the evening in question that he changed after the accident. Petitioner's vehicle was found with front end damage. There was evidence of earlier confrontation between

petitioner and Gibbs. However, it was Bell that tied those pieces of circumstantial evidence into a direct threat to kill Gibbs on the night of the hit and run. That alleged direct threat to kill Gibbs required no leap in logic by the jury. It did not require the jury to consider the possibility that one of the other two hundred or so cars of similar make and model in a fifteen mile radius may have created reasonable doubt.

The Bell testimony was central to the State's case against petitioner and, as such, required the right of "face-to-face confrontation" to "ensur[e] the integrity of the fact-finding process." Coy v. Iowa, 487 U.S. at 1019–20. Under Pitts v. Mississippi, 607 U.S. 1 (2025), the violation here is subject to harmless error if the State can demonstrate beyond a reasonable doubt that the violation did not contribute to the jury's verdict. The nature of Bell's testimony here negates any such claim.

CONCLUSION

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" was based upon a fundamental diminishment of petitioner's confrontation right. State v. Thompson, No. 2022-000397 (S.C. Ct. App. Nov. 5, 2025). The only evidence that Bell's health was at risk was associated with physical pain in his back, and 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. This Court should clarify the scope of the narrow exception that allows for remote testimony for the convenience of a witness over the objection of a defendant during a criminal trial and reverse petitioner's conviction and remand this matter for a new trial.



Gary H Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of June, 2026.