No. 24-1159

In the Supreme Court of the United States

JEFFREY CLYDE PITTS,
Petitioner,

v.

THE STATE OF MISSISSIPPI,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Mississippi

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should review the Mississippi state courts' rejection of petitioner's Confrontation Clause challenge to his four-year-old daughter's testimony that he sexually abused her, when the trial proceedings satisfied confrontation's essential elements, the trial court determined that a screen procedure was necessary to protect the child witness from trauma, and independent evidence—including witness testimony, statements to authorities, and a videotaped forensic interview of the child witness—overwhelmingly established petitioner's guilt.

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The Mississippi Supreme Court's opinion (App.1a-43a) is reported at 405 So. 3d 1238. The Mississippi Court of Appeals' opinion (App.44a-107a) is reported at 405 So. 3d 20.

JURISDICTION

The Mississippi Supreme Court entered judgment on March 20, 2025. App.1a, 32a. The petition for certiorari was filed on May 9, 2025. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

STATEMENT

1. In May 2020, petitioner Jeffrey Clyde Pitts spent the weekend with AGC, his four-year-old daughter. App.2a. Days later, AGC told her mother and grandmother that she "saw" petitioner's "gina" and it was "this big." App.2a, 50a. (As her mother explained, AGC knew "the anatomically correct words to describe female anatomy" but not "the male anatomy." App.2a.) When AGC was later asked where this happened, she said that "she saw 'it' when she and [petitioner] were in bed taking an afternoon nap" and that petitioner "was naked." *Ibid.* AGC said that she had "touched" petitioner's "'vagina'" and that petitioner "'put his finger in my vagina, in my gina and in my bootie and he made it go real fast.'" App.2a-3a. AGC repeated "several times" that petitioner "put his finger in her 'bootie' and vagina," and that "'it kind of burned a little like when [petitioner] put his finger in my gina.'" App.3a.

AGC's mother reported this to the state child-protection agency, the sheriff's office, and the local police department. App.3a. Police "followed up" by

(among other things) contacting the Child Advocacy Center and observing a "forensic interview" that a trained social worker conducted with AGC. *Ibid.* In that videotaped interview, AGC disclosed that petitioner "'dug his finger in [her] vagina'" while she was "'trying to sleep,'" that when petitioner "'was done he said touch mine, touch mine,'" and that "no one else had ever done such acts" to her. App.3a-4a.

2. In August 2020, a grand jury indicted petitioner for sexual battery. App.4a, 45a; *see* Miss. Code Ann. § 97-3-95(1)(d) (an adult "is guilty of sexual battery if he or she engages in sexual penetration with: ... (d) A child under the age of fourteen (14) years of age").

The case went to trial. App.4a. Before testimony began, the trial court held a hearing under Mississippi Rule of Evidence 803(25) on the admissibility of AGC's descriptions of petitioner's sexual misconduct to others—including her mother, her grandmother, and the social worker. App.4a-5a, 45a-46a. That rule excepts from the bar on hearsay a "statement by a child of tender years" that "describ[es] any act of sexual contact" if, "after a hearing," the court "determines that the statement's time, content, and circumstances provide substantial indicia of reliability" and the child "testifies" or is "unavailable" and "other evidence corroborates the act." Miss. R. Evid. 803(25); *see id.* advisory comm. note (listing "sufficient indicia of reliability" factors). The trial court heard testimony on AGC's statements from her mother, her grandmother, and the social worker who conducted the forensic interview; reviewed the mother's and grandmother's written statements; watched AGC's videotaped interview; and considered argument from counsel. App.4a, 45a-46a. The court then "analyz[ed] each and every"

tender-years "factor" and ruled that "most" of the factors proved that AGC's "statements" had "substantial indicia of reliability" and thus were "admissible." App.4a-5a, 45a-46a; *see* App.85a-86a.

At trial, AGC testified as a witness for the State. App.8a-10a, 49a. Before she took the stand, the State moved to put a "screen" in front of her "to protect her from the trauma of having to look at [petitioner] while she testified." App.49a; *see* App.5a. The court held a hearing on that motion. App.5a-8a, 49a, 53a-54a, 67a, 70a-71a. The State argued that AGC had a "right" to a screen under state law; that the screen was necessary because AGC was "a four-year-old child" and "her guardian[ ]" "believe[d] that it will be difficult" for her "to testify" while petitioner "is staring at her"; and that "the screen would be effective in preventing AGC from becoming distracted due to her young age." App.6a-7a; *see* App.54a, 67a; Miss. Code Ann. § 99-43-101(2)(g) ("a child shall have" the right to testify with "the use of a properly constructed screen" that permits "the judge and jury to see the child … but would obscure the child's view of the defendant or the public or both"). The defense objected, claiming that a screen would violate petitioner's "right to confrontation" and that the State wanted to keep AGC from showing "affection" for petitioner in front of the jury. App.6a. The trial court considered this Court's decisions in *Coy v. Iowa*, 487 U.S. 1012 (1988), and *Maryland v. Craig*, 497 U.S. 836 (1990), and state law. App.7a, 70a-71a. The court then ruled that a screen could be used but "only" if there also was a "zoom" video in place "so that the defendant c[ould] observe the witness" during her testimony. App.7a; *see* App.49a, 67a.

During AGC's testimony, a "screen" was "set up" so that petitioner could not "be seen from the witness stand," the testimony could be "hear[d] through the court speakers," and a "zoom video" was "set up" for petitioner to "view the child as she testifie[d]." App.54a (quotation marks omitted); *see* App.7a. Petitioner had "unfettered access to his attorney at all times" while AGC testified, and he could "hear the child's testimony live and view her" on a monitor "in real-time." App.71a. And the "jury, judge, and defense attorney" could "view" AGC in-person and see "her demeanor at every moment during every word of her testimony." *Ibid.*

AGC testified on direct examination that "she slept in her own bed" at her mother's house but "when she stayed at [petitioner's] residence, she slept with him in his bed"; that petitioner "touch[ed] her the last time that she stayed with him" in her "'bootie'" and "'vagina'"; that petitioner had put "'his finger'" on the "'inside' of her vagina" "'a few times'"; that "it felt '[n]ot good' when [petitioner] put his finger in her vagina"; that this was a "different occurrence" than when petitioner "put diaper cream on her"; and that nobody else had "ever touched her" in her vagina as petitioner had. App.8a-9a; *see* App. 49a. The defense's cross-examination sought to prove that AGC was "confus[ed]," that she would "tell big stories and exaggerate," and that "her memory was incomplete." App.9a. AGC confirmed on cross-examination that "she loved her father" and "wanted to see" him. *Ibid.* But when defense counsel pressed AGC to explain why she did not get "to see" petitioner "anymore," she said it was "'[b]ecause he did a bad thing to me.'" *Ibid.* AGC added that she "'thought'" her mother would be "'mad'" about petitioner's acts so AGC did not tell her

mother "right away"; that she "'already knew'" that petitioner had done a "bad thing to her" when she first "'told [her] momma'"; and that it "'did hurt'" when petitioner "put his finger in her vagina." App.9a-10a. AGC further testified that she wanted to "'go live with'" petitioner and "'will just sleep somewhere else'" when she is with him, but she again confirmed that "'[h]e just did *that*, but—he really did,'" that nobody "told her" to say "that [petitioner] really did '*that*,'" and that she "'already knew it because [she had] been to his house.'" App.10a (emphases added). When asked on redirect examination to explain "what '*that*' meant," AGC responded: "'I don't want him to put it in my vagina again.'" *Ibid.* (emphasis added).

The State called four other witnesses. App.49a-50a. Two police officers testified on their investigation, on AGC's mother's report of sexual abuse, and on their efforts to schedule AGC's forensic interview. App.49a. AGC's grandmother testified that AGC said she "'saw'" petitioner's "'gina'" and that it was "this big," and that AGC repeated those statements to her mother. App.49a-50a. AGC's mother testified that AGC told her essentially "'the same story'" about petitioner's "'vagina'" and said "'it was like an elephant trunk,'" which led her to report AGC's statements to state and local authorities. App.50a.

The defense called petitioner and six family-and-friend witnesses. App.50a-52a. Petitioner claimed that, when AGC stayed with him in May 2020, she said that her "'vagina itches really bad'" so petitioner "slathered" on some diaper cream that "just went on the inside of her crease," "on and up kind of over her mound and then down the side of her leg," and not "anywhere near her opening." App.51a. He also said

he "alerted" AGC's mother about the "itching" and diaper-cream "application" when he dropped AGC off after the weekend. *Ibid.* Five of petitioner's family members testified that he loved his children, that he was a "'good parent,'" and that they "never observed" petitioner "mistreating children." App.50a-52a. Petitioner's neighbor added that "she saw 'nothing' out of the ordinary" on "the weekend in question." App.51a.

The defense also called a Child Advocacy Center employee to testify about AGC's forensic interview. App.52a. Through that witness, the defense had the videotape of the forensic interview admitted "into evidence." *Ibid.* The video "was played to the jury in its entirety." App.3a. During the interview, AGC told the social worker that "'[w]hen I was trying to sleep'" petitioner "'dug his finger in my vagina, [and] ... when he was done he said touch mine, touch mine.'" App.3a-4a, 73a-74a. AGC denied that "anyone told her what to say during the interview." App.4a. The defense also introduced the written statements given by AGC's mother and grandmother in reporting petitioner's acts to authorities. App.73a; *see* App.3a.

The jury convicted petitioner of sexual battery. App.52a. He was sentenced to 30 years in prison with 10 years suspended and ordered to register as a sex offender. *Ibid.*

3. The Mississippi Court of Appeals affirmed. App.44a-87a. It reached two conclusions relevant here.

First, the court of appeals rejected petitioner's Confrontation Clause challenge to the screen procedure used for AGC's testimony. App.53a-72a. The court of appeals ruled that the trial court's use of

the screen aligned with this Court's decisions in *Coy v. Iowa*, 487 U.S. 1012 (1988), and *Maryland v. Craig*, 497 U.S. 836 (1990). App.53a-72a.

In *Coy*, this Court held that the Confrontation Clause "guarantees [a] defendant a face-to-face meeting with witnesses," but the Court observed that "exceptions" may "exist" "when necessary to further an important public policy." 487 U.S. at 1017, 1021. In *Craig*, this Court held that face-to-face confrontation is not required when, for example, a trial judge makes "a proper finding of necessity" that a child witness needs protection and orders a procedure that "preserves the essence of effective confrontation" by "subjecting" the child's testimony to "rigorous adversarial testing." 497 U.S. 836 at 857.

The court of appeals ruled that the trial court's decision to allow a screen comported with *Craig* and so did not "violate[ ]" petitioner's "confrontation rights." App.72a. After observing that the State had an important interest in protecting child-abuse victims, *Craig* approved the use of a "one-way" television procedure for child-witness testimony outside the courtroom (at least) where a trial court makes a "case-specific" finding that the child would be emotionally "traumatized" by the "presence of the defendant." App.60a-63a (discussing 497 U.S. at 841-56). Following those guideposts, the court of appeals determined here that the State had a strong interest in protecting child-abuse victims, as shown by its statutory standards on child testimony (App.66a-67a); that this statutory framework expressly preserves a defendant's "right to be confronted with [adverse] witness[es]" and "balance[s]" a defendant's rights with "certain protective rights" for child witnesses (App.66a-67a (quotation marks omitted));

that the trial court was "aware of the statute and the requirements of *Craig* and *Coy*" (App.71a); that the trial court asked about the "necessity of the screen," heard concerns about potential "trauma" to AGC from testifying with petitioner "'staring'" at her, and "clear[ly]" "made a finding of necessity" (App.67a n.11); and that, even with the screen in place, petitioner was afforded "each of the essential elements" of confrontation during AGC's testimony (App.71a-72a).

Second, the court of appeals held that, even if the trial court's screen procedure were error, it was harmless beyond a reasonable doubt. App.72a-75a. The court focused its "'assessment of harmlessness'" on "'the remaining evidence'" besides AGC's trial testimony. App.74a (quoting *Coy*, 487 U.S. at 1021-22) (emphasis omitted). Among such proof, petitioner "himself" introduced the "most incriminating evidence" at trial: the written statements of AGC's mother and grandmother and AGC's videotaped "forensic interview," which the jury saw at the defense's request. App.73a. That evidence, the court ruled, was "[s]ubstantial" and admissible independent of AGC's trial testimony, and could not be "ignore[d]" by "speculat[ing]" about petitioner's "trial strategy." App.74a-75a.

Judge Wilson, joined by one judge and in part by another judge, dissented from these rulings. App.87a-103a. Judge Wilson believed that the trial court's "use of a screen" conflicted with *Coy* and *Craig* and that the trial court made no findings on the necessity of the screen. App.95a-97a. Judge Wilson added that he disagreed with the court of appeals' alternative harmless-error ruling. App.98a-103a. Although a "jury could certainly find" that AGC's statements in

her forensic interview—which petitioner admitted at trial—were "truthful and credible," Judge Wilson thought that the court of appeals could not "consider" that evidence if AGC's trial testimony was inadmissible. App.101a-102a.

4. The Mississippi Supreme Court granted certiorari and affirmed. App.1a-32a.

The supreme court rejected petitioner's argument that the trial court's screen procedure "violated" the Confrontation Clause because the court made no "specific finding" that AGC would have suffered "emotional trauma" from testifying without a screen. App.11a; *see* App.11a-32a. The supreme court held that the use of the screen honored petitioner's confrontation rights and aligned with this Court's precedents, for two main reasons. App.14a-32a.

First, the supreme court determined that the trial court's use of the screen procedure met the essential elements of confrontation and thus assured the reliability of AGC's testimony. App.14a-17a, 28a-30a. The supreme court recognized that "a full and complete cross examination" is "the most sacred element of confrontation," App.17a (collecting cases), and that this Court has "defined" the "elements of confrontation" as testimony "'under oath'" and "'subject to cross-examination'" that allows the "'jury'" to "'observe the demeanor of the witness,'" App.16a (quoting *California v. Green*, 399 U.S. 149, 157 (1970)); *see* App.14a-17a. The "screen" procedure used here, the supreme court ruled, "satisfied" these elements. App.28a. AGC testified "under oath in real time" and was aware of the "seriousness of telling the truth"; she was "subjected to a full, fair, and complete cross-examination"; her "demeanor" and "quality,

age, education, understanding, behavior, and inclination" were "observable to the jury and to the trial judge"; and petitioner was able "to observe" AGC's testimony "via Zoom video" and to "assist his counsel while AGC was vigorously cross-examined." App.28a-29a (emphases omitted).

Second, the supreme court rejected petitioner's claim that the trial court's procedure conflicted with *Coy* or *Craig*. App.20a-26a. The supreme court explained that *Craig* ruled that face-to-face "'confrontation'" is not an "'indispensable element of the Sixth Amendment's guarantee'" and that a defendant's rights may be met by a different procedure where "'necessary to further an important public policy'" and "'the reliability of the testimony is otherwise assured.'" App.26a (quoting 497 U.S. at 849-50) (emphasis omitted). Those features were present here where the state constitution's victims-rights provision and statutes required courts to "protect victims' rights," address live courtroom testimony, and preserve defendants' "right to be confronted" with witnesses and "cross-examine" child witnesses (App.19a-20a (discussing Miss. Code Ann. §§ 99-43-1, -101(2)(g), -101(5)(d)); App.26a-28a) and "[e]very element of the right to confrontation was satisfied" at trial (App. 28a; *see* App.28a-30a). And, the supreme court ruled, the trial court's screen ruling aligned with this Court's decisions in *Coy* and *Craig*: *Coy* involved a factual dispute over the perpetrator's identity whereas petitioner's identity was not in dispute (App.22a); *Craig* assessed a different statutory procedure where witness testimony occurred outside the presence of the judge, jury, and defendant (App.23a, 25a); and *Craig*

recognized that "face-to-face confrontation" is not an "absolute" right (App.24a (emphasis omitted)).

Justice Maxwell, joined by two other justices, concurred in the judgment and explained that he would have "dismiss[ed]" the case "as improvidently granted." App.32a.

Justice King dissented. App.32a-43a. He believed that the case required reversal because the trial court ordered the screen only due to the "mandatory command of" the State's screen-procedure statute (Miss. Code Ann. § 99-43-101(2)(g)), because the case was "similar[ ]" to *Coy*, and because there was no "individualized evidence" for "a public policy exception as outlined in *Craig*." App.34a; *see* App.42a-43a. Justice King thought that an excerpt from the trial court's tender-years hearing showed that AGC had a positive "emotional attitude" toward petitioner (App.34a-35a) and that, under *Craig*, no "evidence of necessity" supported "a case-specific finding" that petitioner's "presence in the courtroom would be the source of trauma to" AGC (App.41a).

REASONS FOR DENYING THE PETITION

Petitioner asks this Court to grant review to decide "[w]hether the Confrontation Clause permits the use of a screen at trial that blocks a child witness's view of the defendant, without any individualized finding by the trial court that the screen is necessary to prevent trauma to the child." Pet. i. This case does not present that question, the state courts' rulings are correct and do not conflict with this Court's or any appellate court's precedents, and this case is a poor vehicle for plenary review or for resolving the narrow,

fact-bound question the petition purports to present. The petition should be denied.

1. The question that petitioner asks this Court to decide is not presented. The trial court determined that using a screen was needed to protect AGC from trauma. *Contra* Pet. i, 2, 19, 22. And that court did not allow the screen simply because "the prosecutor" asked for it or because it appeared to be "mandatory" under state law. *Contra* Pet. 2, 4-5, 19, 22, 26.

a. Petitioner claims that the trial court allowed the prosecution to use a screen for AGC's testimony without" making "any" "individualized finding" on its necessity. Pet. i, 2, 19, 22. That is not so. The trial court allowed a screen after determining that it was needed under the circumstances to protect AGC, a four-year-old witness in a sexual-assault case.

Before ruling on the use of a screen, the trial court had considered extensive evidentiary submissions, argument by counsel, and authorities cited by the parties. App.4a-7a, 67a, 70a-71a. The court had already conducted a complete evidentiary hearing on the reliability of AGC's out-of-court statements. App.4a-5a, 85a-86a. The court had reviewed testimony and written statements from AGC's mother and grandmother and reviewed the hour-long videotaped forensic interview of AGC herself. App.4a-5a; *see* App.101a-102a. When the State later requested a screen, the prosecutor maintained that AGC had a "right" to a screen under Miss. Code Ann. § 99-43-101(2)(g), but the prosecutor also explained that a screen was necessary in this case given AGC's age, her guardian's concern that it would be "difficult" for her to "testify" while petitioner "is staring at her," and the risk of AGC "becoming distracted" by

petitioner's presence. App.6a-7a; *see* App.54a, 67a. The defense disputed the need for a screen and objected on "confrontation" grounds. App.6a. The trial court considered all this, the relevant state statute, and this Court's decisions in *Coy v. Iowa*, 487 U.S. 1012 (1988) and *Maryland v. Craig*, 497 U.S. 836 (1990), before ruling that a "screen" could be used with a "video" to ensure that petitioner could "observe the witness." App.7a, 70a-71a. As the court of appeals explained, the record thus shows that the trial court "was aware of the statute and the requirements of *Craig* and *Coy*" (App.71a) and it is "clear" that "the judge made a finding of necessity"—even if it did not recite the "magic words" of a "specific finding" (App.67a n.11). So this case does not involve the lack of "any individualized finding" that petitioner claims the Confrontation Clause demands. *Contra* Pet. i.

b. Petitioner also claims that the trial court ordered the screen only because "the prosecutor" asked for it and because a screen was "mandatory" under state law. Pet. 2, 4-5, 19, 22, 26. That is incorrect. The prosecutor did argue that the screen-procedure statute does not require "proof" that AGC was "scared of the defendant." App.6a. And the trial court observed that the statute "appears to be mandatory." App.7a. But the trial court did not order a screen solely on that basis. It considered several factors in allowing the screen procedure. As explained, it heard evidence and argument on the reliability of AGC's out-of-court statements and was aware of the requirements of this Court's precedents before ruling. *See* App.4a-7a, 67a, 70a-71a. And as the state appellate courts observed, the statutory framework also says that defendants "'shall be afforded the rights applicable to defendants during

trial, including ... the right to be confronted with [adverse] witness[es]" and "the right to cross-examine [a] child [witness]." App.20a (quoting Miss. Code Ann. § 99-43-101(5)(d)); *see* App.66a-67a. As the court of appeals noted, that framework "contemplates and incorporates the importance of confrontation rights of the defendant" and "balance[s] the defendant's rights" with "certain protective rights" for child witnesses. App.67a. Petitioner is therefore wrong to claim that the state courts crafted and applied a rule that requires "a screen" to "be placed between the defendant" and a witness "whenever the prosecutor asks for one." *Contra* Pet. 19, 22.

This case is not a vehicle for resolving the question set forth in the petition. The Court should deny the petition on this basis alone.

2. In any event, the state-court rulings comport with this Court's precedents. *Contra* Pet. 2-3, 15-22.

a. The trial court accorded petitioner his confrontation rights.

The Confrontation Clause grants the "accused" a "right" to "be confronted with the witnesses against him" "in all criminal prosecutions." U.S. Const. amend. VI. The confrontation right's "primary object" is to allow a defendant the "opportunity" for "cross-examination" where the witness must "stand face to face with the jury" so they may "judge" the credibility and "demeanor" of the witness. *Mattox v. United States*, 156 U.S. 237, 242-43 (1895). That "'*opportunity of cross-examination*'" is the "'main and essential purpose of confrontation.'" *Davis v. Alaska*, 415 U.S. 308, 315-16 (1974) (quoting 5 J. Wigmore, *Evidence* § 1395, p. 123 (3d ed. 1940) (Wigmore) (emphasis in original)). To effectuate that aim, this

Court has maintained that "confrontation" demands testimony "under oath," subject to "cross-examination," with the jury's "observ[ation]" of the "demeanor of the witness." *California v. Green*, 399 U.S. 149, 158 (1970) (citing 5 Wigmore § 1367). Those elements "ensure the reliability of the evidence"—testimony under "oath," "cross-examination," "physical presence," and "observation by the trier of fact"—but do not include an "indispensable" right to the defendant's own "face-to-face confrontation" with the witness. *Maryland v. Craig*, 497 U.S. 836, 845-46, 850 (1990); *see Davis*, 415 U.S. at 316 (the defendant "'demands confrontation, not for the idle purpose of gazing upon the witness, or of being gazed upon by him, but for the purpose of cross-examination'") (quoting 5 Wigmore § 1395, p. 123).

Here, as both appellate courts ruled, AGC's trial testimony satisfied each essential element of confrontation. *Craig*, 497 U.S. at 846; *Green*, 399 U.S. at 158; *see* App.8a-10a, 28a-29a, 54a-55a, 71a-72a. AGC testified under oath in real time and acknowledged the "importance of telling the truth." App.8a, 28a. Petitioner's counsel "subject[ed]" the child to a "full and thorough cross-examination," as was "obvious" from the record. App.71a; *see* App.8a-10a. AGC's testimony was live, in the courtroom, in direct "view" of the "jury, judge, and defense attorney"—who could observe "her demeanor at every moment during every word of her testimony." App.71a; *see* App.28a-29a. Although a screen prevented petitioner from being "'seen'" by AGC "'from the witness stand,'" a video monitor ensured that he could "hear the child's testimony live and view her" in real time. App.54a, 71a. "At all times," petitioner "was able to watch, hear, and assist his

counsel while AGC was vigorously cross-examined." App.28a; *see* App.54a, 71a.

What happened here comports with this Court's precedents, which confirm that the Confrontation Clause does not categorically require "face-to-face confrontation." *Coy*, 487 U.S. at 1020-21; *see Craig*, 497 U.S. at 850. While "protecting victims of sexual abuse" is not a *per se* exception to "face-to-face" confrontation, *Coy* explained that "exceptions" may exist for "particular witnesses" who "need[ ] special protection." 487 U.S. at 1020, 1021. The Court stressed that the "rights conferred by the Confrontation Clause are not absolute" and that exceptions may be "necessary to further an important public policy." *Id.* at 1020, 1021. *Craig* confirmed that protecting "the physical and psychological well-being of child abuse victims" may justify an exception to face-to-face confrontation in "some" child-abuse "cases." 497 U.S. at 853. A "special procedure that permits a child witness ... to testify at trial against a defendant" who allegedly abused him or her may be used, this Court explained, when "necessary to protect the welfare of the particular child witness who seeks to testify." *Id.* at 855. That "special procedure" should "adequately ensure[ ]" that the testimony given "is both reliable and subject to rigorous adversarial testing," including by maintaining "the presence of ... other elements of confrontation" such as "oath, cross-examination, and observation of the witness' demeanor." *Id.* at 851, 855.

As explained above, the screen procedure used here was consistent with *Coy* and *Craig*. The trial court allowed a screen during AGC's testimony only after it considered extensive evidentiary submissions, reviewed testimony and written statements from

AGC's mother and grandmother, reviewed the hour-long videotaped forensic interview of AGC, and held an evidentiary hearing on AGC's out-of-court statements and a hearing on the screen procedure. App.4a-7a, 54a, 67a, 71a-72a, 85a-86a, 101a-102a. The screen "protected and ensured" the "essential elements" of "confrontation," including "'physical presence, oath, cross-examination, and observation of demeanor by the trier of fact.'" App.71a (quoting *Craig*, 497 U.S. at 861). And that approach provided the "functional[ ] equivalent" of typical "live, in-person testimony" while serving the State's "transcendent interest" in "protecting the child witness from trauma." *Craig*, 497 U.S. at 851, 855, 856 (quotation marks omitted).

b. Petitioner's arguments for further review lack merit. Pet.15-28.

First, petitioner says that the state courts applied a rule "opposite" from that of *Coy* and *Craig*. Pet. 19; *see id.* 15-22. In his view, those decisions establish that a trial court may "depart from literal face-to-face confrontation" "only" if it makes "an individualized, case-specific finding that departure is necessary to protect the child from trauma that would be caused by seeing the defendant while testifying." Pet. 17-18 (citing *Craig*, 497 U.S. at 855-56). Petitioner says that the state courts violated that rule by allowing a "screen" to "be placed between the defendant and the child witness" just because "the prosecutor ask[ed] for one," "without any individualized, case-specific finding of necessity." Pet. 19.

This argument fails on both the law and the facts. On the law: This Court's cases do not embrace the categorical rule that petitioner identifies. As

explained, *Coy* recognized that "exceptions" may "exist" to a defendant's "right to a face-to-face encounter" with adverse witnesses when "special protection" is needed. 487 U.S. at 1020, 1021. And *Craig* confirmed that an exception exists for child witnesses in sexual-abuse cases when "necessary to protect the welfare of the particular child witness who seeks to testify." *Id.* at 855.

On the facts: As explained, although the trial court observed that the statute "appears to be mandatory," App.7a, the court did not approve the screen on that basis. The court heard evidence and saw AGC's forensic interview, had an "on-the-record discussion" with the defense and prosecution on this Court's decisions in *Coy* and *Craig*, and "inquired of the State as to the necessity of the screen." App.70a-71a; *see* App.4a-5a, 67a. "Only then did the court authorize the use of the screen." App.71a. And although petitioner claims that the trial court did not make the finding that this Court's cases require, Pet. 19, the court examined all that it needed to. It "inquired of the State as to the necessity of the screen" before ordering it, App.67a, 71a, and heard argument that a screen was necessary based on AGC's tender age, that her guardian was concerned that it would be "difficult" for AGC to "testify" while petitioner "is staring at her," and that there was a risk of AGC "becoming distracted" by petitioner's presence. App.6a-7a; *see* App.54a, 67a.

Second, petitioner argues that the state supreme court's ruling conflicts with other appellate decisions. Pet. 22-24. He points to a handful of decisions that faulted trial courts for blocking defendants from the view of witnesses without making "an individualized, case-specific finding" that the procedure was

"necessary to prevent trauma to [a] child." Pet. 22. And he points to cases where trial courts "approved departures from face-to-face confrontation" only after making "individualized" findings of necessity. Pet. 24. But as explained, the trial court here *did* "ma[k]e a finding of necessity" (App.67a) before allowing the use of a screen during AGC's testimony. None of the cases petitioner identifies suggests that courts must use "magic words" when "finding" that a screen is necessary in a particular case. App.67a n.11. And petitioner's cited cases (Pet. 22-24) just apply the legal standards set out in this Court's Confrontation Clause precedents to reach the result that the particular facts demanded. That is what the state courts did here.

Third, petitioner claims that Mississippi's statute on screen procedures is unlike "similar" federal and state laws on child-witness testimony. Pet. 24-26. He says that the relevant federal law—18 U.S.C. § 3509—and other state laws "require[ ]" an "individualized finding[ ] that departure from face-to-face confrontation is necessary," but that Mississippi's law "purports to allow" a "depart[ure] from face-to-face confrontation whenever a child witness testifies" "without any" such finding. Pet. 24, 25. But again, the state courts here recognized that Mississippi's statutory framework respects "the right to be confronted with [adverse] witness[es]" and "the right to cross-examine [a] child [witness]" and, as this Court's precedents allow, "balance[s] the defendant's [confrontation] rights" with "certain protective rights" for child witnesses. App.66a-67a (quotation marks omitted); *see* App.20a. In any event, petitioner's view of Mississippi's law does not help him. The trial court observed that the statute "appears to be mandatory"

(App.7a), but the court did not allow a screen on that basis. The court "made a finding of necessity" (App.67a) before allowing a screen. *See supra* 2-3, 12-14.

Last, petitioner claims that granting review "is important" because otherwise prosecutors in Mississippi will be "entitled to infringe [a] defendant's right to face-to-face confrontation without making the showing that *Coy* and *Craig* require." Pet. 26; *see* Pet. 26-28. But that is not so because that is not what happened here. The prosecutor here *did* show that using a screen was necessary in the circumstances, including AGC's age, her guardian's concern that it would be "difficult" to "testify" while petitioner "is staring at her," and the risk of AGC "becoming distracted" by petitioner's presence. App.6a-7a; *see* App.54a, 67a. And the trial court allowed a screen on that basis. *See supra* 2-3, 12-14.

3. This case is also a poor vehicle for plenary review or for resolving the narrow question on which petitioner seeks review. The case presents at most a fact-bound dispute and this Court's answer to the question presented would not affect the outcome.

Petitioner does not truly seek plenary review of the state court's rulings here. He does not claim that lower courts are divided over a question of law or that this Court's intervention would have broad impact. Petitioner instead invites the Court to address allegedly "erroneous factual findings"—an invitation that is "rarely" accepted (S. Ct. R. 10)—and repeatedly couches the petition as a bid for a rare summary reversal (Pet. 3, 15, 28). But, as explained, the state-court rulings align with this Court's

precedents and correctly resolved fact-bound evidentiary issues against petitioner.

And even if the trial court's screen procedure was error, the error was harmless. A constitutional error is harmless when the reviewing court determines the error was "harmless beyond a reasonable doubt." *Chapman v. California*, 386 U.S. 18, 24 (1967). Claimed face-to-face confrontation errors are "subject to that harmless-error analysis." *Coy v. Iowa*, 487 U.S. 1012, 1021 (1988). The assessment excludes from "consideration" the witness's testimony taken in violation of the defendant's confrontation right and focuses on the "remaining evidence." *Id.* at 1021-22.

As the state court of appeals ruled, if the trial court's screen procedure "were error, it was harmless." App.73a; *see* App.72a-75a. That conclusion was correct and was left undisturbed on further state review. Even without AGC's testimony, the "remaining evidence" against petitioner was overwhelming. App.73a; *see* App.2a-4a. AGC's mother and grandmother testified on AGC's "consistent disclosure" of petitioner's sexual abuse. App.73a. And the "most incriminating evidence" was submitted by petitioner "himself." App.73a. The defense introduced the mother's and grandmother's written statements in evidence. *Ibid.* The defense also called an employee of the Child Advocacy Center to testify and had AGC's videotaped forensic interview "played to the jury in its entirety." App.3a; *see* App.52a, 73a-74a. AGC's description of petitioner's sex acts in the video were "consistent" with her testimony: she told the interviewer that "'[w]hen I was trying to sleep'" petitioner "'dug his finger in my vagina, [and] ... when he was done he said touch mine, touch mine'" and AGC denied that "anyone told her what to say during

the interview." App.3a-4a, 73a. As the court of appeals concluded, "[t]he screen did not prejudice the jury against [petitioner]; the evidence did." App.73a.

Petitioner argues that without "AGC's testimony" the State's case "would have fallen apart" and that her testimony "was by far the most important evidence supporting the jury's verdict." Pet. 27. But that ignores the "overwhelming" evidence of guilt that petitioner *himself* introduced at trial: the mother's and grandmother's statements and AGC's forensic interview played to the jury. App.73a; *see* App. 3a, 52a, 73a-74a. Petitioner also says that the mother's and grandmother's trial testimony was "hearsay" that would not have been admitted without AGC's testimony. Pet. 27 n.2. But petitioner *himself* introduced those witnesses' written statements and the videotaped interview. App.73a. Last, petitioner contends that this Court should "resolve the question presented" and "remand the case for the lower courts" to consider harmlessness "in the first instance." Pet. 27-28. Again, that approach would be pointless: the court of appeals already ruled that the evidence against petitioner was "overwhelming" and that any error here was "harmless" (App.73a), and the petition does not seek review on that issue (Pet. i), which in any event merely presents no more than an alleged evidentiary error of state law.

CONCLUSION

The petition should be denied.

Respectfully submitted.

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