STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Florence County
Hon. D. Craig Brown, Circuit Court Judge
Appellate Case No. 2023-000162

THE STATE, Petitioner,

v.

QUINTERRIS JAVON CARMICHAEL, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled upon by the Court of Appeals on May 22, 2025.

PETITIONER'S ISSUE PRESENTED

I.

Does existing precedent in *State v. Wright*, 439 S.C. 101, 886 S.E.2d 206 (2023), and the Court of Appeals' application thereof in its reversal, conflate the nature of procedural error with that of structural error, where the jury was polled to ensure the unanimous verdict, where there is absolutely no evidence tending to suggest that the defendant received a nonunanimous verdict, and where extraordinary circumstances at trial demonstrated the need for the rare exception in the method of polling?

STATEMENT OF THE CASE

Quinterris Javon Carmichael (hereinafter "Appellant") was indicted at the May 6, 2021, term of the Florence County grand jury for murder (2021-GS-21-00472) and possession of a weapon during a violent crime (2021-GS-21-00473). Appellant and co-defendant, Tirik Jacquan Johnson-Epps (hereinafter "Johnson-Epps"), were tried from January 23-27, 2023, before the Honorable D. Craig Brown, and a jury. Appellant was represented by William "Josh" Edgeworth, III. Gregory Ammons represented co-defendant Johnson-Epps. Assistant Solicitor J. Ryan White prosecuted the case on behalf of the State.

On January 27, 2023, Appellant and Johnson-Epps were both found guilty of murder and possession of a weapon during a violent crime by the jury. (R. p. 514, lines 6-22). Appellant and Johnson-Epps were sentenced to life imprisonment for murder. (R. p. 536, lines 5-12). Appellant challenged his conviction on appeal, and on April 23, 2025, the Court of Appeals reversed and remanded the case for a new trial. *State v. Johnson-Epps*, No. 2023-000179, 2025 WL 1178675 (S.C. Ct. App. Apr. 23, 2025). The Petition for Rehearing was denied on May 22, 2025, and this Petition for Writ of Certiorari now follows.

STATEMENT OF FACTS

The Murder

At approximately 3:30 AM on September 13, 2019, Appellant and Johnson-Epps, along with two black females arrived at the Tiger Mart gas station and convenience store in Florence, South Carolina. Kareem Jones and Victim were together in the gas station when they were approached by Appellant. When they turned down his invitation to smoke with him, Appellant became angry and verbally threatened them. (R.p. 53, line 15; p. 120, lines 17-18; p. 154, line 23-p. 155, line 3; p. 37, line 22-p. 38, line 14).

Jones and the victim tried to ignore Appellant's outburst and diffuse the situation, opting to wait for the store clerk to serve them, but their efforts were to no avail. (R.p. 244, lines 2-10). Appellant then turned the incident violent by striking Jones. (R.p. 244, lines 24-25). Jones did not strike back, fearing that Appellant had a gun. (R.p. 245, lines 1-6). At this point, Appellant, the victim, and Jones were standing together. (R.p. 245, line 9). The trio went behind the store, with Johnson-Epps following them. (R.p. 245, lines 19-24). From the surveillance footage, the jury was able to hear Jones say "ain't no way you're doing this in front of the camera." (R.p. 246, lines 16-18). Once they were around the corner of the Tiger Mart, Johnson-Epps opened fire on the victim, and Jones fled from the scene back to the victim's girlfriend's apartment where he and the victim had left from. (R.p. 246, lines 22-24; p. 247, lines 12-18).

Identification of Appellant and Carmichael as Suspects

The State produced a substantial amount of evidence linking Appellant and Johnson-Epps to the shooting at the Tiger Mart. The first piece of evidence was video surveillance from the Tiger Mart on that evening. According to the lead investigator in the case, Officer Justin Chatlosh, police were able to identify Appellant "almost immediately" from the video surveillance footage. (R.p. 149, lines 2-16). After identifying Appellant, officers used social media to identify the other three passengers in the car, including Johnson-Epps. (R,p. 375, lines 2-9). Warrants were subsequently issued for the arrest of Appellant and Johnson-Epps. (R.p. 376, line 22-p. 377, line 11). When Johnson-Epps was apprehended, he had shaved off the dreadlock hairstyle he wore at the time of the murder. (R.p. 379, lines 21-25).

Witness testimony also identified Appellant and Johnson-Epps as the perpetrators of the murder. Kareem Jones was with the victim the night of the shooting. When the surveillance video, State's Exhibit 3, was played in court, Jones identified himself, the victim, "Tirik" (Johnson-Epps),

and “Man-Man” (Appellant) as the individuals in the footage. (R. p. 246, lines 5-12). Jones was struck by Appellant and escorted around the corner by him, where Johnson-Epps would fire fatal shots at the victim. (R. p. 244, line 24-p. 246, line 24).

Kami Mitchell, an associate of Appellant’s who had “sexual dealings” with him, was with Appellant and Johnson-Epps the night of the murder. (R.p. 101, lines 6-20). She testified that Appellant was known to use drugs, something he stated to Jones and the victim during his altercation with them. (R.p. 102, lines 7-8; *see* p. 87, lines 24-25). Mitchell detailed that Appellant and Johnson-Epps knew Jones and the victim from school. (R.p. 104-105). Mitchell testified that she attempted to corral Appellant back to the car so they could “go have sex”. (R. p. 107, lines 6-7). Appellant, however, continued to escalate the situation, prompting Johnson-Epps and Mitchell to exit Mitchell’s car. (R.p. 109, line 24-p. 110, line 8). Mitchell testified that Appellant and Johnson-Epps, both of whom she identified in court, went around the side of the building, which is where the murder eventually took place. (R.p. 111-116; *see* p. 117, lines 16-25). Tyrin Jones also identified Appellant and Johnson-Epps as the perpetrators of the murder. (R.p. 119-129).

Johnson-Epps’ jeans were tested for DNA evidence. Using a two-scenario outcome—one scenario being the likelihood that the victim’s blood was the one identified on the jeans and the other being that the blood on the jeans came from another, unidentified individual— expert witness Zapata concluded that it was *990 octillion* times more likely that the victim contributed to the blood profile taken from the jeans than another individual. (R.p. 230, line 7-p. 231, line 3).

Jury Polling

After two hours of deliberation, the jury returned to court with a verdict. (R.p. 514, lines 1-2). Appellant was unanimously found guilty of murder and possession of a weapon during a

violent crime. (R.p. 514, lines 6-14). Johnson-Epps was found guilty of the same crimes. (R.p. 514, lines 15-22).

Following the reading of the verdict, Judge Brown polled the jury by asking the jury members to raise their hand if the guilty verdict was and remained each juror's respective verdict. The record demonstrates that all jurors complied and that all twelve jurors raised their hand to individually confirm their verdict. (R. p. 514, line 23-p. 515, line 2). Defense counsel then moved for the court to poll the jurors individually. (R.p. 515, lines 5-8). A bench conference was held after Appellant's and Johnson-Epps' respective counsels motioned for individual polling. (R.p. 515, lines 11-13). It is unclear what occurred during the bench conference. However, after the conference, Judge Brown declined to poll the jury further. (R. p. 515, lines 14-21). Judge Brown stated that the raising of hands by each juror was "sufficient under the circumstances." (R.p. 515, lines 19-20). Further, he stated, "I've given an opportunity for them to respond pursuant to my question, and they've responded, and I think that's appropriate under the circumstances." (R.p. 515, lines 21-23).

The circumstances alluded to by the court are a likely reference to the numerous bizarre and alarming occurrences that took place during the trial. During pre-trial, and on the record, Mr. White stated that witnesses had been getting phone calls from "no caller ID numbers." (R.p. 75, lines 15-16). Mr. White stated that the people on the other end of those calls would simply say "do not go," after which they would hang up. (R. p. 75, lines 17-18). Phones also had to be confiscated from individuals in the gallery. (R.p. 137, line 12-p. 138, line 6).

One juror was dismissed because he was sent a Facebook message about the trial. The message read: "Eric, both [sic] them boys killed Mrs. Betty's grandson, bug son. Shot him 11 times

and one in the head. I had to leave and go to work. Please give them the justice they deserve." (R.p. 140, lines 7-9). As a result, this juror was dismissed. (R.p. 177, lines 5-10).

Additionally, Mr. White alleged that Appellant used a jail phone to contact another individual. (R.p. 177, lines 18-19). He reportedly told another individual not to "worry about looking for Dee's [a juror who had been excused] girlfriend anymore." (R. p. 177, lines 20-21). Judge Brown then admonished the conduct of attendees, and potentially one of the defendants, stating:

> Well, the Court is vitally concerned and tremendously disturbed about what may be going on here. Therefore, I want to do everything within my power to protect the integrity of this process and ensure to the best of my ability that there is no improper contact by anyone with these jurors, that these defendants receive a fair and impartial trial, and that this jury decide his case based upon the evidence and testimony presented in this courtroom, uninfluenced by anything outside of this courtroom.

(R. p. 178, lines 5-13). Clearly, Judge Brown was concerned throughout the trial with issues of jury tampering and potential interference.

Judge Brown would state after the trial that there were things that happened during the trial that he had never seen in his thirteen years on the bench. (R.p. 532, lines 7-11). One juror was dismissed after stating she did not feel comfortable serving on the jury. (R.p. 533, line 2). During questioning by Judge Brown, the Judge stated that she appeared to be "shaken to the point that she was crying as she talked to me." (R.p. 533, lines 2-5). However, she stated that no one had reached out to her and Judge Brown respected that. (R.p. 533, lines 5-6). Nevertheless, she was released from the jury panel, and an alternate was seated. This alternate was the one who received the Facebook message, which Judge Brown stated on the record did not come from either defendant based on the content. (R.p. 533, lines 7-9).

Moreover, because of these events, Judge Brown ordered that only immediate family would be allowed in the courtroom. (R.p. 533, lines 18-22). After that order, a "multitude of

individuals" who were previously present did not reappear. (R.p. 533, lines 22-25). Judge Brown made the order to ensure that the proceedings were properly insulated from impropriety. (R.p. 534, line 1). One individual listed as a sibling of Appellant was not, in fact, his brother, which was confirmed by law enforcement. (R.p. 534, lines 5-8).

Regarding the phone call from Appellant, Judge Brown stated that he was unable to make out the entirety of the phone conversation, but he did hear certain parts where Appellant was discussing the "jury or a juror." (R.p. 534, lines 9-18). Judge Brown stated that the phone call from Appellant factored into his order to restrict access to the proceedings.

Additionally, after the case went to the jury, it was brought to the Judge's attention that four rounds of ammunition were found in the men's bathroom on the floor of the courthouse where the proceedings were being held. (R.p. 534, lines 19-22). This prompted Judge Brown to order law enforcement to evacuate the building and have all attendees come through "downstairs screening." (R.p. 534. lines 22-24). The courtroom was thoroughly searched by law enforcement and both the US Marhsall's and local Sherriff's Offices brought in a dog to go through the courtroom. (R.p. 535, lines 3-9). Fortunately, no firearm was found at the courthouse. (R.p. 535, lines 9-10).

Regarding these many issues of potential impropriety, Judge Brown stated, "I'm putting all of that on the record in an effort to explain my limitations of who was in this courtroom as well as concerns I had throughout the trial." (R.p. 535, lines 10-13).

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. *State v. Elwell*, 403 S.C. 606, 609, 743 S.E.2d 802, 804 (2013). Therefore, this Court is bound by the trial court's factual findings unless the appellant can demonstrate that the trial court's conclusions either lack evidentiary support or are controlled by an error of law. *Id*.

"A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b}, SCACR. The South Carolina Appellate Court Rules set forth a nonexclusive list of the circumstances in which review may be granted. Therein, Rule 242(b) continues: "[t]he following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

(1) Where there are novel questions of law.

(2) Where there is a dissent in the decision of the Court of Appeals.

(3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.

(4) Where substantial constitutional issues are directly involved.

(5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court."

Rule 242(b), SCACR.

ARGUMENTS

I. In the complete absence of evidence that a defendant was denied the right to a unanimous verdict, and where the jury was polled to ensure their verdict was unanimous, there can exist only *procedural* error. Such error does not carry *per se* grounds for reversal and such error leave room for this Court to designate an exception for extraordinary circumstances that impact the jurors' feelings of safety and wellbeing.

The circumstances that threatened jury safety and wellbeing in this case warrant certiorari in this matter in order to address whether *limited* discretion is needed for judges to choose the manner in which jurors are polled to ensure a unanimous verdict against a defendant. Contrary to the holding in *Wright*, the only error that can arise in denying a certain method of polling, is

procedural error, and as such this Court may avoid per se reversible error and instead carve out *limited* exceptions in the face of procedural error analysis.

Through the course of trial eight different instances of witness or juror intimidation and disruption took place. Multiple witnesses received anonymous phone calls not to show, phones had to be confiscated from the gallery, one juror was so frightened to serve in this case that she had to be excused, her alternate replacement was then directly contacted via Facebook to influence his verdict, Appellant was recorded on tape discussing jurors and allegedly arranging for someone on the outside to influence or harm their significant other, trial attendees in the gallery had to be limited solely to the defendants' family members, this directive was then violated by someone pretending to be a defendant's sibling, and four rounds of live ammunition were recovered from the courthouse bathroom during the jury's deliberations. Any one of these events is out of the ordinary, having all eight occur during the course of a single trial is genuinely frightening and the jurors' ability to fulfill their duty in spite of these stresses is commendable. For that reason, at the conclusion of the trial and in light of the circumstances, the trial court found that the jurors' raising of their hands to attest to their verdict (a long-established method of polling before 2020) was sufficient, as opposed to requiring the jurors to speak independently, in open court, of their verdict to convict the defendants of murder. The trial court's actions were understandable, and practically speaking, appropriate. [1]

The State is aware that at the time of Appellant's trial the Court of Appeals in *Wright* set forth a requirement for individual polling and that the Court of Appeals' decision was subsequently affirmed. While the State agrees that in nearly every case, a verbal articulation of one's verdict is

[1] It is not lost on the State that in this technological age the calling of jurors by name to serve in criminal cases creates at least "some" risk to those jurors if the defendant, his family, or his associates wish to carry out vengeful acts.

not arduous and is "*a*" sound method for polling a jury upon request, there will inevitably be an exception that the current law does not account for. This is such a case, and because of the inflexibility of the law, a jury's efforts have been discarded despite all constitutional rights being guaranteed to the Appellant and despite the overwhelming evidence of guilt against him. Some limited room for discretion is appropriate when the circumstances demand it, and as set forth below the Court need only recognize that error in the method of polling constitutes procedural error analysis, not structural error analysis.

Not all constitutional errors automatically require reversal of conviction, but some such errors are "structural" in nature and cannot be deemed harmless beyond a reasonable doubt. *Weaver v. Massachusetts*, 582 U.S. 286, 295, 137 S. Ct. 1899, 1907, 198 L. Ed. 2d 420 (2017). "The purpose of the structural errors doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial." *Id*. However, distinguishing when structural error exists is not necessarily a straightforward endeavor. See *State v. Nelson*, 2014 WI 70, 355 Wis. 2d 722, 733, 849 N.W.2d 317, 322 (2014) (cert denied *Nelson v. Wisconsin*, 575 U.S. 935, 135 S. Ct. 1699, 191 L. Ed. 2d 675 (2015). The case at hand is likewise enigmatic because "the right to poll the jury is not in itself a constitutional right but a *procedural protection* of the defendant's constitutional right to a unanimous verdict." (*State v. Wright*, 432 S.C. 365, 369, 852 S.E.2d 468, 470 (Ct. App. 2020), aff'd, 439 S.C. 101, 886 S.E.2d 206 (2023) (emphasis added)). It follows then, that the *denial* of a procedural protection entirely is an objective structural error in safeguarding the corresponding constitutional right. Such is without a doubt *per se* reversible error because the question as to whether the procedural right was afforded is indisputable. However, it does not follow that the *method* in which a procedural protection is carried out *necessarily* requires reversal. This is so because the question is no longer a binary

inquiry as to whether procedural protections were afforded. Instead, the question becomes: "*how* were the procedural protections afforded and *whether* the process used was sufficient."[2] That question is inherently a subjective review of the process given, and it lends itself not to structural error analysis, but to the fittingly titled "procedural error" analysis.

The framework of Appellant's trial is untainted; the jury reached a guilty verdict, that verdict was unanimous, the jury was polled, Appellant was able to see for himself that all the jurors confirmed their verdict, and there is *no evidence* tending to suggest a nonunanimous verdict. As such there is no basis to find the denial of a constitutional right. The only dispute is the degree in which the jurors are questioned after their verdict has been announced, and unlike true structural error where the record will speak for itself as to the ***absence*** of jury polling, procedural disputes in the form of future challenges to polling methods could be numerous. See *United States v. Miller*, 59 F.3d 417, 421 (3d Cir. 1995). (wherein the court acknowledge that jury polling needs could vary based on the complexity of the trial, the number of charges against the defendant, the number of defendants tried together, etc).[3]

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[2] Indeed, the concept of "method" constituting *per se* structural error presents numerous quandaries. With the demand for verbal and individual polling as the only means of ensuring a constitutional protection, we must then logically admit that every prior case in South Carolina jurisprudence where such methods were not used were inherently plagued with structural error. Similarly, as there is an absence in explicit instruction as to appropriate method by the United States Supreme Court, the debate of method lends itself to the conclusion that two states adopting differing procedures renders the state with lesser methods "structurally erroneous" by comparison.

[3] Though not contemplated by *Miller*, there is also nothing preventing a defendant from demanding that each juror be examined independently by the court while outside the presence of the other jurors. Because issues of this type are currently considered as a matter of structural error, the argument exists that each variation in polling, if not given, constitutes an error to the framework of the trial and therefore per se reversible error if denied. To that end, the existing case law does not address these issues. Trial courts will be left with no legal basis for the exercise of discretion and no guidance on how such issues should be addressed. Certiorari is warranted in this case not just to establish the matter as one of procedural error analysis, but also to provide further guidance on how discretion should be applied.

Existing precedent demands a finding of structural error on the mere (and *rarely* justified) contemplation of dishonesty from jurors and then claims to prevent such structural error by insisting that a juror *might* be less likely to lie about their verdict if asked to confirm their verdict by stating "yes", as opposed to raising their hand. Our precedent has found one remedy a guarantee that a procedurally protected right was afforded, and the other so insufficient as to constitute per se reversible structural error to the underlying mechanisms of a criminal trial.[4]

The goal of being confident about a jury's verdict is an important one, but no process will ever *guarantee* honesty, nor will the distinctions between the two disputed methods prevent or eliminate a defendant's inclination to doubt a juror's honesty. And, despite that reality, the law unnecessarily *demands* the reversal of what is by all accounts a trustworthy conviction in one instance, while hollowly championing the validity of the other. This Court certainly has the authority to determine what procedures are needed, and which are not, but the dispute in this case addresses *where* this Court wishes to draw its line in the sand – not whether a line in the sand is drawn at all. The violation of this Court's established procedure is inevitably a "procedural error" analysis *that may well be reversible* – but it need not be *per se* reversible absent any consideration of circumstances. Here, the court felt compelled to strike a balance between protecting the jurors and confirming their verdict. Had there been *any* indication that the unanimous verdict was uncertain, additional polling or investigations would presumably have been pursued. The established procedure was simply not necessary, and the extremely rare necessity that a judge exercise discretion for such circumstances deserves certiorari to review.

[4] The juxtaposition is even more austere when placed against the backdrop that a jury's unanimous verdict is accepted as entirely valid, with no procedure at all, in the absence of a request for jury polling that requires no justification.

CONCLUSION

Petitioner respectfully petitions this Court to grant certiorari so that the finding of per se reversible error by the Court of Appeals can be reviewed and so that guidance can be provided to the lower courts.

Respectfully submitted,

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July 8, 2025