

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Florence County
Honorable D. Craig Brown, Circuit Court Judge

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S.C. SUPREME COURT

Unpublished Opinion No. 2025-UP-135 (S.C. Ct. App. Filed April 23, 2025)
Lower Court Case Nos. 2021-GS-21-00474 and -00475

THE STATE,

PETITIONER,

V.

TIRIK JAQUAN JOHNSON-EPPS,

RESPONDENT

APPELLATE CASE NO. 2025-001215

RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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PETITIONER'S STATEMENT OF ISSUES ON CERTIORARI

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?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES

Whether the Court of Appeals properly reversed Respondent's convictions where the trial court denied Respondent's timely request to individually poll the jurors, since a poll must be taken if a request for polling is made pursuant to this Court's holding in *State v. Wright*, 439 S.C. 101, 886 S.E.2d 206 (2023)?

STATEMENT OF THE CASE

Respondent was indicted at the May 6, 2021, term of the Florence County grand jury for the offenses of murder and possession of a weapon during the commission of a violent crime. R. 418-421. Respondent's case and that of co-defendant, Quinterris Carmichael, were called to trial on January 23, 2023, before the Honorable D. Craig Brown and a jury. Respondent was represented by Gregory Ammons. William "Josh" Edgeworth, III, represented co-defendant Carmichael. J. Ryan White was the assistant solicitor. R. 1. After a five-day trial, the jury found Respondent and Carmichael guilty as indicted. R. 400, ll. 6-22. Both were sentenced to life imprisonment for the murder. No sentence was imposed on the weapons charge. R. 416, ll. 5-12.

Respondent filed his notice of appeal on February 6, 2023. On April 23, 2025, the Court of Appeals reversed Respondent's convictions holding the trial court committed reversible error by denying Respondent's request to individually poll the jurors. State v. Johnson-Epps, 2025-UP-135 (S.C. Ct. App. filed April 23, 2025). The state filed a petition for rehearing on May 8, 2025, which was denied on May 22, 2025. On July 8, 2025, the state filed a petition for writ of certiorari to the Court of Appeals. This return follows.

STANDARD OF REVIEW

The appellate courts of South Carolina review questions of law *de novo*, with no deference to trial courts. *Smalls v. State*, 422 S.C. 174,181, 810 S.E.2d 836, 840 (2018). If the request [for individual polling] is made, a poll must be taken.” *State v. Linder*, 276 S.C. 304, 309, 278 S.E.2d 335, 338 (1981). The refusal to individually poll the jury upon request is reversible error *per se*. *State v. Wright*, 432 S.C. 365, 370, 373, 852 S.E.2d 468, 471-72 (Ct. App. 2020) *aff’d* *State v. Wright* 439 S.C. 101, 886 S.E.2d 206 (2023).

ARGUMENT

The Court of Appeals properly reversed Respondent's convictions where the trial court denied Respondent's timely request to individually poll the jurors, since a poll must be taken if a request for polling is made pursuant to this Court's holding in *State v. Wright*, 439 S.C. 101, 886 S.E.2d 206 (2023).

Relevant facts

At approximately 3:30 in the morning on September 12, 2019, Tydrecus Williams (Decedent) was shot and killed outside of the Tiger Mart gas station and convenience store in Florence, South Carolina. The incident was captured on motion-triggered surveillance cameras from several different angles. The state alleged the surveillance video showed Respondent and co-defendant Carmichael at the Tiger Mart when Decedent and his friend, Kareem Jones, arrived. Carmichael approached Jones and verbally accosted Jones before striking him. Carmichael, Respondent, Decedent, and Jones then moved around the side of the building out of the camera view. The camera next captures the Decedent running towards the road and being shot at multiple times before falling into the roadway. The surveillance camera cut out, and when it resumed recording, Decedent was no longer in view. The state alleged that Respondent fired the initial shots at Decedent as he ran into the road, and Carmichael fired the other shots, including the fatal shot, off camera. R. 40, l. 16-42, l. 10; See State's Exhibit 3 on file with this Court.

After closing arguments and the charge on the law, the jury began deliberating at 12:24 p.m. R. 399, l. 18-R. 400, l. 8. The jury reached a verdict and came back into open court at 2:30 p.m. R. 401, ll. 1-2. The jury verdicts of guilty of murder and possession of a weapon during the commission of a violent crime were then announced in open court. R. 401, ll. 5-22. After the

verdict was announced, the judge addressed the jury stating: “Madam forelady, ladies and gentlemen of the jury, if this was and still is your verdict, please indicate by raising your right hand.” R. 401, ll. 23-25. All twelve jurors raised their hands in response to the question. Counsel Edgeworth moved to have the jurors individually polled, and Counsel Ammons joined the motion. The judge conducted a bench conference with the parties before ruling,

All right, defense counsel has asked that each individual juror be polled. I have previously asked this jury whether or not this is their verdict and whether or not it is still their verdict, as I indicated on the record, each of those 12 jurors have raised their hands. I believe that that is sufficient under the circumstances and therefore I’m not going to individually poll each juror. 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. 402, ll. 14-23.

Notably, Respondent’s trial did not proceed in the ordinary fashion. Prior to the jury being sworn, two jurors stated they did not feel comfortable sitting on the jury. One of those jurors was visibly shaking and crying during questioning by the court. Although she stated no one had tried to contact her, she was released, and the first alternate (Juror 133) was sat. R. 412, l. 30-R. 413, l. 9. Following the dismissal of that juror, the judge held a bench conference wherein he expressed concern about the number of individuals in the courtroom. The parties agreed they were “a little bit” concerned about the number of spectators. R. 36, l. 5-8. The solicitor informed the court that the case was not gang related, but “there is some bad blood here.” R. 36, ll. 9-12. Counsel Edgeworth stated the “victim’s family obviously holds a lot of grudges.” R. 36, ll. 13-14. The solicitor also informed the court that witnesses for the state had been getting repeated phone calls from blocked numbers where they would answer, be told: “do

not go,” and then be hung up on. R. 36, ll. 15-19. The judge then admonished the gallery about maintaining order before starting the trial. R. 36, ll. 20-24.

The judge recessed for lunch after the testimony of the first witness. When the parties reconvened, Juror 133 informed the judge that during lunch he had received a message on Facebook from someone he did not know. The message read: “Eric, both 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.” Juror 133 was released from the jury, and the second alternate was sat. R. 88, l. 1-R. 90, l. 21.

At the start of the third day of trial, the judge restricted access to the courtroom to family members of the parties, meaning parents, siblings, and grandparents of the Decedent or defendants, due to the numerous irregularities that had occurred up to that point in the trial. R. 101, ll. 1-10. Additionally, the solicitor informed the judge that jail phone calls from Carmichael had been intercepted where it appeared that he was discussing a juror. The solicitor had been told that Carmichael was telling the other person on the call “not to worry about looking for Dee’s girlfriend anymore” because she was excused from the jury. R. 101, ll. 15-24. The judge was “vitaly concerned and tremendously disturbed about what may be going on here.” R. 102, ll. 5-6.

Prior to announcing the sentences, the judge recited into the record the irregularities of the trial, things that he had never witnessed in thirteen years as a judge. He stated, “there is no evidence – right now there’s no evidence that either one of these defendants had anything to do with things that happened this week.” R. 412, ll. 7-10. He further informed the courtroom that after the case was submitted to the jury, four rounds of live ammunition were found in the men’s bathroom. Law enforcement had to clear the building and rescreen everyone through security for

safety. Additionally, the courtroom was searched by dogs from both the local sheriff's department and the U.S. Marshals Service. R. 415, ll. 3-10. The judge made it "abundantly clear, there's no indication that either one of these defendants or anybody on their behalf had anything to do with that." R. 415, ll. 13-17.

Discussion

Petitioner argues that, given the numerous irregularities of Respondent's trial, "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" and that this action was both understandable and appropriate. Pet. For Cert. p. 9. Yet, in *State v. Linder*, 276 S.C. 304, 278 S.E.2d 335 (1981), this Court ended the trial court's discretion regarding jury polling. "Whether a poll of the jury will be conducted is discretionary with the trial judge **unless a polling is requested. If the request is made, a poll must be taken.** We establish this rule to dispel any doubt a party might entertain as to the propriety of a jury verdict as rendered." *Linder*, at 309, 278 S.E.2d at 338. Thus, from 1981 forward, if a party requested the jury be polled, the trial court was required to **individually** poll the jurors. *See Linder* at 308, 278 S.E.2d at 338 ("Polling is a practice whereby the court determines from the jurors **individually** whether they assented and still assent to the verdict") (emphasis added).

Nearly forty years later, the Court of Appeals held as a matter of first impression that a defendant has a **substantial right to an individual poll of each juror in open court**, and the failure to conduct a poll upon request is *per se* reversible error. *State v. Wright*, 432 S.C. 365, 852 S.E.2d 468 (Ct. App. 2020) *aff'd*, 439 S.C. 101, 886 S.E.2d 206 (2023). On certiorari, this Court affirmed the "well-reasoned opinion" of the Court of Appeals writing, "our holding in

Linder is not an empty one, and we agree with the court of appeals that the denial of a defendant’s request for individual polling is reversible per se.” *State v. Wright*, 439 S.C. 101, 103, 886 S.E.2d 206, 207 (2023). Petitioner now asks this Court to grant certiorari to overturn this precedent to reinstate a judge’s discretion regarding jury polling and require some showing of harm or prejudice by the defendant. Respectfully, this Court has already answered this question, twice, and should therefore deny certiorari.

As the Court of Appeals recognized in *Wright*, individual polling supports several interests of justice. Most importantly, polling protects a defendant’s constitutional right to a unanimous verdict. It also protects the right to a public trial. “Individual polling promotes finality and accountability of the verdict stage and enhances the integrity of the deliberative process by ensuring no juror was coerced in the jury room.” *Wright* at 369, 852 S.E.2d at 470. Even the Federal Rules of Criminal Procedure were amended in 1998 to require individual polling, rather than collective polling, as collective polling “saves little time and does not always adequately ensure that an individual juror who has been forced to join the majority during deliberations will voice dissent from a collective response.” *Id. citing* Fed. R. Crim. P. 31 Advisory Committee Notes. Quoting the Connecticut Supreme Court, the Court of Appeals observed:

These cases reflect the understanding, based on common human experience, that members of a group may react differently when addressed as a group, and when addressed individually. They also reflect the notion that the **concept of jury unanimity is sufficiently significant so as to require that, upon request, each juror be required to state his or her verdict in open court—individually—to face the defendant and the state, and confirm, on his or her own, that the collectively reported verdict is truly his or hers.**

Id. at 370, 852 S.E.2d at 471 *citing State v. Pare*, 755 A.2d 180, 193 (2000) (emphasis added).

Petitioner’s argument suffers from two fatal flaws. First, Petitioner argues that the trial courts actions were taken to ensure the safety, wellbeing, and feelings of the jurors. This is purely an assumption, as the conversation that took place at the bench after polling was requested was not transcribed. While one can guess that the trial court did not poll the jury based on the various odd occurrences throughout the case, it is not a known fact. Nevertheless, even *if* the trial judge had explicitly stated its reasons for declining to poll the jury, that discretion was not allowed based on this Court’s holding in *Linder, supra*. Second, this Court, the Court of Appeals before it, and various other state and federal courts have reached the same conclusion – when polling is properly requested but denied, the impact defies harmless error analysis.

To find the error harmless, we would have to conclude the lack of a valid poll was an “error which occurred during the presentation of the case to the jury, and which may therefore be quantitatively assessed in the context of other evidence presented in order to determine whether [the error] was harmless beyond a reasonable doubt. We cannot say the lack of a valid poll contributed to the verdict, as the error occurred after a verdict was announced. It would be an odd end to the matter to deem it harmless, for in effect we would be presuming the unanimity of the verdict while simultaneously denying the defendant the only real right he has to check behind the presumption.

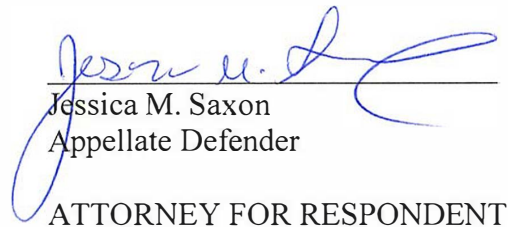
Wright, at 371-72, 852 S.E.2d at 472 (Ct. App. 2020), *aff’d*, 439 S.C. 101, 886 S.E.2d 206 (2023).

Further, the numerous odd occurrences during Respondent’s trial weighed in favor individual polling, not against it. When there are any anomalies in a trial, the sanctity of the verdict becomes questionable. When there are eight occurrences of juror interference or alleged witness tampering, the specter of impropriety looms large, and the need to ensure the jury reached a truly unanimous verdict is heightened. This Court has ultimately concluded that the denial of a defendant's request for individual polling of jurors is reversible *per se*. *State v.*

Wright, 439 S.C. 101, 103, 886 S.E.2d 206, 207 (2023). The only other limitation on the right to polling is temporal as the request for polling must be made immediately after the verdict is published. *Id.* In the matter *sub judice* Respondent timely requested the jurors be individually polled, and that request was denied. The Court of Appeals properly reversed Respondent's conviction pursuant to *State v. Wright*, 439 S.C. 101, 103, 886 S.E.2d 206, 207 (2023).

CONCLUSION

Based on the foregoing argument, Respondent respectfully requests that this Court deny the state's petition for writ of certiorari.



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This 7th day of August, 2025.