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Nov 25 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Florence County
The Honorable D. Craig Brown, Circuit Court Judge
Appellate Case No: 2025-001214

THE STATE, Petitioner,

v.

QUINTERRIS JAVON CARMICHAEL, Respondent.

BRIEF OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

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 "Respondent") 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). Respondent 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. Respondent 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, Respondent 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). Respondent and Johnson-Epps were sentenced to life imprisonment for murder. (R. p. 536, lines 5-12). Respondent 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. Carmichael*, No. 2022-001717, 2025 WL 326560 (S.C. Ct. App. Jan. 29, 2025). The Petition for Rehearing was denied on May 22, 2025, and the State then sought a Petition for Writ of Certiorari. Certiorari was granted on October 21, 2025, and this Brief of Petitioner now follows.

STATEMENT OF FACTS

The Murder

At approximately 3:30 AM on September 13, 2019, Respondent, Johnson-Epps, and two black females arrived at the Tiger Mart gas station and convenience store in Florence, South Carolina. Kareem Jones (hereinafter "Jones") and Victim were together in the gas station when they were approached by Respondent. When they turned down his invitation to smoke with him Respondent 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 Victim tried to ignore Respondent'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). Respondent then turned the incident violent by striking Jones. (R. p. 244, lines 24-25). Jones did not strike back, fearing that Respondent had a gun. (R. p. 245, lines 1-6). At this point, Respondent, Victim, and Jones were standing together. (R. p. 245, line 9). The trio proceeded to walk 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 Victim and Jones fled from the scene back to the victim's girlfriend's apartment where he and victim had previously visited. (R. p. 246, lines 22-24; p. 247, lines 12-18).

Dr. Presnell, a forensic pathologist at the Medical University of South Carolina in Charleston, testified that Victim was shot up to 9 times. (R. p. 419, line 16). The lethal shot was a gunshot to the back of the head that went through the brain and exited through the left temple. (R. p. 419, lines 19-20). She also testified that one of the shots that went through the stomach and intestines would also have killed Victim, but he was already dead when this shot went through his body. (R. p. 419, line 20-p. 420, line 1).

Evidence of Respondent's and Johnson-Epps's Guilt

The State produced a substantial amount of evidence linking Respondent 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 Respondent "almost immediately" from the video surveillance footage. (R. p. 149, lines 2-16). After identifying Respondent, 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 Respondent 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 Respondent 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, Victim, "Tirik" (Johnson-Epps), and "Man-Man" (Respondent) as the individuals in the footage. (R. p. 246, lines 5-12).

Kami Mitchell, an associate of Respondent's who had "sexual dealings" with him, was with Respondent and Johnson-Epps the night of the murder. (R. p. 101, lines 6-20). She testified that Respondent was known to use drugs, something he had stated to Jones and Victim during his altercation with them. (R. p. 102, lines 7-8; *see* p. 87, lines 24-25). Mitchell detailed that Respondent and Johnson-Epps knew Jones and Victim from school. (R. p. 104-105). Mitchell testified that she attempted to corral Respondent back to the car so they could "go have sex". (R. p. 107, lines 6-7). Respondent, 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 Respondent 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 likewise testified that after Respondent struck Jones and proceeded to walk around the corner with Jones and Victim, Respondent exited the vehicle and followed. (R. p. 201, line 23-p. 202, line 17). She also identified Respondent and Johnson-Epps as the perpetrators of the murder. (R. p. 195-205).

Johnson-Epps's 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. 326, line 7-p. 327, line 3).

Jury Polling

After two hours of deliberation, the jury returned to court with a verdict. (R. p. 514, lines 1-2). Respondent 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 Respondent's and Johnson-Epps's 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 motions, 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 Respondent 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.

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). The record showed that one individual listed as a sibling of Respondent was not, in fact, his brother, which was confirmed by law enforcement. (R. p. 534, lines 5-8).

Regarding the phone call from Respondent, Judge Brown stated that he was unable to make out the entirety of the phone conversation, but he did hear certain parts where Respondent was discussing the "jury or a juror." (R. p. 534, lines 9-18). Judge Brown stated that the phone call from Respondent 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 Office and local Sherriff's Office 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). In light of the 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). Judge Brown would ultimately

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).

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*.

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 matters leave room for this Court to find harmless error and permit limited trial court discretion for extraordinary circumstances such as detriments to the jurors' feelings of safety and blunt attempts to interfere with the trial process.

Structural errors demanding per se reversal are rare, and in the rare matters that they do exist, they only exist in the vestiges of a constitutional violation. *Weaver v. Massachusetts*, 582 U.S. 286, 290, 295, 137 S. Ct. 1899, 1905, 1907, 198 L. Ed. 2d 420 (2017) (noting that "the purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial"); *Neder v. United States*, 527 U.S. 1, 8, 119 S. Ct. 1827, 1833, 144 L. Ed. 2d 35 (1999) (quoting *Rose v. Clark*, 478 U.S. 570, 579, 106 S.Ct. 3101, 92 L.Ed.2d 460 (1986) ("'[I]f the defendant had counsel and was tried by an impartial adjudicator, there is a strong presumption that any other [constitutional] errors that may have occurred are subject to harmless-error analysis.'"); *Johnson v. United States*, 520 U.S. 461, 468, 117 S. Ct. 1544, 1549, 137 L. Ed. 2d 718 (1997) (noting "we have found structural errors only in a very limited class of cases" and then itemizing only actual constitutional violations). Our current caselaw exceeds this parameter and insists that a structural and *per se* reversible error exists – not

just when a defendant's constitutional right to a unanimous verdict is *denied* – but even when a guilty verdict is announced and polled to confirm unanimity, but not polled *further* under *prescribed procedures*. *Wright* established a polling procedure for trial courts to follow, but conceded that the procedure was not a constitutional right. Indeed, the procedure is not even mandatory; it is only required upon request by the defendant. *State v. Wright*, 499 S.C. 365, 103-104, 886 S.E.2d 468, 207-208 (Ct. App. 2020), aff'd, 439 S.C. 101, 886 S.E.2d 206 (2023). In both description and effect, the error of the trial court in this case was only procedural in nature and its deviation from *Wright* was only undertaken in light of the extraordinary circumstances surrounding juror safety and the need to prevent further interference. This case demonstrates the need for the trial court to retain a *limited* degree of discretion. Individual and verbal attestation by jurors may remain the preferred and instructed means of polling a jury, but *Wright* requires *modification*.

a. The grant of jury polling when requested that effectively obtains individual confirmation from each juror but denies the specified method of polling can only be a procedural error that permits harmless error analysis. In light of the facts of this case, the trial court's error was indeed harmless.

Structural error, such that the error demands per se reversal without consideration of surrounding facts, does not attach to the utilized method of jury polling.[1] It applies to whether a unanimous guilty verdict *was rendered* – but nothing more. Even after *Wright*, polling is not mandatory unless requested, and there is no Sixth Amendment duty imposed upon counsel to demand polling after a guilty verdict is announced. What is in dispute are procedural mandates that have evolved within South Carolina jurisprudence, and while the right to polling in some form

[1] This Court apparently fully adopted the structural error approach in not modifying the prior opinion in *Wright* where the Court of Appeals wrote that jury polling "eludes neat classification" and that "*Weaver* offers a rational way out of our classification dilemma." *State v. Wright*, 432 S.C. 365, 371, 852 S.E.2d 468, 471 (Ct. App. 2020), *aff'd,* 439 S.C. 101, 886 S.E.2d 206 (2023).

was first guaranteed in *State v. Linder*, 276 S.C. 304, 309, 278 S.E.2d 335, 338 (1981), little more was demanded. The *Linder* Court also gave no indications that further development of the law should result in a posture requiring per se reversible error. A review of *Linder* is first necessary to properly frame the holdings reached in *Wright*.

This Court in *Linder* correctly articulated that it is *the trial judge* that must be satisfied with the unanimity of the verdict. *State v. Linder*, 276 S.C. 304, 309, 278 S.E.2d 335, 338 (1981). This point, which inherently denotes a certain aspect of discretion in meeting that duty, did not receive focus in *Wright*, with the Court instead focusing upon the potentially incurable doubt of *the defendant*. *Linder* also defined polling as "a practice whereby the court determines from the jurors individually whether they assented and still assent to the verdict." *Id*. While the focus in *Wright* became the meaning of the word "individually," alongside the acknowledgment that *Linder* does not prescribe any particular polling process, too much has been made of the term. The Court in *Linder* presented this definition in juxtaposition of the efforts of the trial court, which sought no form of communication from the eleven others jurors at all, but instead relied solely upon the foreman to assent on the other jurors' behalf's – an effort that bore little to no distinction from the handing down of the verdict and signed sentencing recommendation that had already occurred. This decision was then followed by the trial court's *refusal* to conduct a polling of the other eleven jurors *directly*. *Id*. at 337.

While in this instance the trial judge was satisfied, the *Linder* Court was within its discretion to establish new state law precedent that more was required in our state's polling methods. As such, polling was rendered mandatory once requested and a court cannot rely upon the foreman to speak on behalf of the other jurors as a means of polling the jury. But crucially, nowhere in the *Linder* opinion does the Court rest on a constitutional violation, and nowhere does

it suggest that Linder was denied his right to a unanimous verdict. Instead, the Court very clearly established its own procedural rule in order "to dispel any doubt a party might entertain as to the propriety of a jury verdict as rendered." *Id*. The goal of dispelling doubt was not inappropriate, and this Court did not err by pursuing the same endeavor in *Wright*, but error arose in the rigidity to which review was constrained. *Wright* has now compelled the Court of Appeals to apply this rigidity in error.

In summary, the holding in *Wright* correctly concedes the lack of a constitutional right to polling, it correctly identifies that *Linder* gave no directive as to how South Carolina courts should conduct a jury polling once requested, and though Petitioner doubts the *Linder* Court's intention to so robustly rely upon the term "individually," the Court of Appeals and this Court *did not err* by holding that individual polling requires verbal attestation from each juror as the state's desired methodology; rather, the error arose when that directive was hitched to the per se reversible error framework of structural error, and the potential for harmless error analysis was foreclosed.

That error originates from part II of the opinion. The Court of Appeals in *Wright* failed to properly review the three characteristics identified by the Supreme Court in *Weaver* as giving way to structural error. *State v. Wright*, 432 S.C. 365, 371, 852 S.E.2d 468, 471 (Ct. App. 2020), aff'd, 439 S.C. 101, 886 S.E.2d 206 (2023). *Weaver* instructs that a structural error can include instances where "the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest." *Weaver v. Massachusetts*, 582 U.S. 286, 287, 137 S. Ct. 1899, 1903, 198 L. Ed. 2d 420 (2017). The Court of Appeals opinion asserted that Wright's case met this standard by serving as a means of confidence in the verdict for the public. *Id*., at 470. However, separating the defendant's confidence in the verdict from that of the greater public's confidence, is a difference without distinction. Regardless of who is appreciating it at any given

moment, the demand of a unanimous guilty verdict can only be considered a right protecting against an erroneous conviction.

Weaver next instructs that an error can be deemed structural if the effects of the error are simply too hard to measure. *Id*. Here, there are simply no "effects" to measure at all because the verdict was given by the jury *before* any basis for error arose. The verdict itself, properly charged and rendered, went entirely unchanged and the polling performed did nothing more than *bolster* confidence that Respondent's constitutional right was afforded.

For the third category of structural error, *Weaver* asserts "some errors always result in fundamental unfairness e.g., when an indigent defendant is denied an attorney. . ." *Id*. 582 U.S. at 287. In application to the case at hand however, the denial of the right to unanimity of a verdict will always be fundamental unfair – *but that right was not denied*. Here, not only was constitutionally demanded unanimity of the verdict given, but the right was protected under *Linder* by polling the jury. Fundamental unfairness does not follow from the facts of this case.

Following its application of *Weaver*, the Court of Appeals sought to anchor its structural error decision with reference to the newly adopted federal procedural rules and similar decisions from other jurisdictions. However, while the persuasive authorities cited to by Court of Appeals' all reiterate the importance of conducting a jury poll upon request, *none* do so in the context of structural error versus procedural error, and *none* found per se reversible error when presented with record proof of all twelve jurors giving their individual confirmations of their verdicts.[2] This

[2] In *United States v. F.J. Vollmer & Co*., 1 F.3d 1511, 1522 (7th Cir. 1993), the Court did not poll the jury at all, despite the defense's request. In *Gov't of the Virgin Islands v. Hercules*, 875 F.2d 414, 419 (3d Cir. 1989), the court found that the reliance upon the signed verdict slip does not constitute polling and the jurors must be given an opportunity in open court to express their agreement or disagreement with the verdict. It found per se reversal due to the complete absence of any undertaken polling. In *Miranda v. U.S.*, 255 F.2d 9, 18 (1st Cir. 1958), per se reversible error was assigned to the collective questioning of unanimity to the jury as a whole before the verdict

Court acknowledged that jury polling was not, in and of itself, a constitutional right. *Wright*, 432 S.C. at 369, 852 S.E.2d at 470. It therefore follows that structural error does not arise from whether a specified means of polling is conducted, but whether the defendant's right to a unanimous verdict conviction was protected. *Weaver v. Massachusetts*, 582 U.S. 286, 295, 137 S. Ct. 1899, 1907, 198 L. Ed. 2d 420 (2017) ("The structural error doctrine is to ensure insistence on certain basic, *constitutional* guarantees that should define the framework of any criminal trial.") (emphasis added). The Court of Appeal's structural error analysis, and by extension this Court's affirmance, was therefore flawed.

The Court of Appeals in *Wright* also attempted to secure the "structural error" classification by relying upon the Supreme Court's pre-*Weaver* opinion in *Arizona v. Fulminante*, 499 U.S. 279, 310, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991), and asserting that to engage in harmless error

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was read aloud, and where response was provided only by the jury foreman. In *Com. v. Downey*, 557 Pa. 154, 157, 732 A.2d 593, 594 (1999), the court denied polling entirely in light of the arguments that the request for polling was untimely. In *Miles v. Com*., 256 S.W.3d 46, 47 (Ky. Ct. App. 2008) the trial court was obligated to follow a specific state court rule of criminal procedure. The court denied the defense's request to have the jury polled properly under its established rule, and the appellate court noted "[i]t is possible that all six jurors individually responded in a non-verbal way to the court's four queries. While a non-verbal response to the court's queries can be sufficient. . . the response must be to a question specifically posed to that responding juror and to him alone." While this is probably the closest in comparison, the distinctions here are still clear. In *United States v. Miller*, 59 F.3d 417, 421 (3d Cir. 1995), the court found: "[w]hen that proceeding is considered against the backdrop of a relatively simple case, a short period of deliberation by the jury, and no indication in the record that any of the jurors displayed reluctance or disagreement with the verdict, we cannot say that the district court abused its discretion. Accordingly, in this instance, we conclude that the collective poll did not constitute reversible error." Neither *United States v. Carter*, 772 F.2d 66, 67 (4th Cir. 1985) nor *State v. Coulthard*, 171 Wis. 2d 573, 581, 492 N.W.2d 329, 333 (Ct. App. 1992) demanded per se reversal, and *Coulthard* goes on to say that "[w]hether the right to an individual poll is, as Coulthard describes it, 'of constitutional dimension' or, as the Behnke court said, 'a corollary to the defendant's right to a unanimous verdict,' denial of the right does not necessarily defy analysis under 'harmless error' standards." In *State v. Pare*, 253 Conn. 611, 634, 755 A.2d 180, 193 (2000), the court addressed whether the denial of any jury polling was in error on the basis of the request being untimely.

analysis the error in question would *have to* have occurred during the presentation of the case to the jury, i.e. a "trial error." While the Supreme Court in *Fulminant* noted that its list of topics subject to harmless error analysis all share in the common characteristic of being "trial errors" that can be "quantitatively assessed in the context of the other evidence presented" the finding did not go so far as to suggest that *only* "trial errors" can avoid the demarcation of "structural error" and invoke harmless error analysis. *Fulminante*, 499 U.S. at 309 (citing *Rose v. Clark*, 478 U.S., at 577–578, 106 S.Ct., at 3106). Of note, the Court's analysis in *Fulminante* demonstrates that a structural defect follows from a *constitutional deprivation* and then devoted its discussion to determining whether the unconstitutional coerced confession may still abide harmless error analysis. As previously stated, there is no constitutional deprivation in the case at hand, and moreover, the "trial errors" categorization relied upon by the Court of Appeals in *Wright* fails when considering the numerous subjects that have had harmless error analysis applied, but fall outside the "trial errors/presentation of the case to the jury" posture. *See, e.g., United States v. Martinez-Salazar,* 528 U.S. 304, 311, 120 S. Ct. 774, 779, 145 L. Ed. 2d 792, n. 4 (2000) (the role of the peremptory challenge is to reinforce a defendant's right to trial by an impartial jury, but such is auxiliary to the Sixth Amendment right and is not the right itself, and that the erroneous denial of peremptory challenge makes little sense in light of the developed harmless error jurisprudence); *State v. Heyward*, 357 S.C. 577, 594 S.E.2d 168 (Ct. App. 2004) (trial court's procedural error in failing to select a jury de novo after *Batson* challenge was harmless); *State v. Holmes*, 320 S.C. 259, 262, 464 S.E.2d 334, 336 (1995) (any error in qualifying juror was harmless where juror was alternate and never used in trial); *State v. Green*, 301 S.C. 347, 354, 392 S.E.2d 157, 161 (1990) (same); *see also United States v. Brown*, 136 F.4th 87, 92-100 (4th Cir. 2025), *cert. denied*, No. 25-5743, 2025 WL 3131959 (U.S. Nov. 10, 2025) (holding that sentencing issue under *Erlinger v.*

United States, 602 U.S. 821 (2024) was subject to harmless error analysis and discussing other non-structural errors subject to harmless error analysis); *State v. Hunt*, 150 Vt. 483, 490, 555 A.2d 369, 373–74 (1988) (defendant failed to demonstrate prejudice resulting from the change of venue, and therefore the doctrine of harmless error applied); *State v. Barnes*, 421 S.C. 47, 804 S.E.2d 301 (Ct. App. 2017) (noting that "even if denial of severance compromised defendant's right to confront codefendant, the error was harmless. . ."); *United States v. Neely*, 76 F.3d 376 (4th Cir. 1996) (holding government's designation of two case agents, both of whom were exempted from the sequestration order, was only harmless error).

The Court of Appeals opinion in *Wright* then concludes with a number of misconceptions within the paradigm of structural error: 1) it attempts to claim that the lack of "valid" polling did not contribute to the verdict (a premise that is earnestly a point in favor of the propriety of the verdict because it demonstrates the absence of constitutional violations) and 2) that it cannot "presum[e] the unanimity of the verdict while denying the defendant the only real right he has to check behind the presumption." *Id*. at 472. The court at this juncture disregarded the fact that not only does the law presume that the jurors follow the instructions of the court, and that countless convictions go without receiving any form of polling, but the court successfully checked behind the unanimity of the verdict by polling the jury in a previously accepted manner. The opinion in *Wright* too strongly presents its argument as if no polling had been conducted at all.

The only dispute in both the case at hand and *Wright* is the *degree* in which the jurors were questioned after their verdict had been announced; the opinion in *Wright* loses sight of this distinction.[3] The court has transformed what was originally sought as a means of bolstering the

[3] Unlike true structural error where the record will speak for itself as to the *absence* of a unanimous verdict, 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

protections of the defendant into an outward presumption of dishonesty from the jury. All of these findings stem from the mistaken premise that the failure to poll the jury with verbal confirmations of their verdicts is a structural error. It is not, it is merely procedural error, and this Court has the means of ruling it as such.

When the structural error impediment is removed, and a harmless error analysis is conducted, harmless error is clearly present. "Whether an error is harmless depends on the circumstances of the particular case. No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it 'could not reasonably have affected the result of the trial.'" *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (quoting *State v. Key*, 256 S.C. 90, 180 S.E.2d 888 (1971)).

The jury was correctly and clearly instructed: "The verdict that you render in this case, ladies and gentlemen, must be the verdict of each and every juror. It must be your unanimous verdict. All twelve of you must agree on the verdict which you authorize the forelady to write for the jury." (R. p. 397). The jury then deliberated and returned a unanimous guilty verdict against Respondent after just two hours of deliberation. Judge Brown then polled the jury by asking the jurors to confirm their individual guilty verdicts for the court by each raising their hands; the record confirms that each juror did so. The record contains no evidence or circumstances tending to

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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). Also, though not contemplated by *Miller*, there is 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 more stringent 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 and trial courts will be left with no legal basis for the exercise of discretion and no guidance on how such issues should be addressed.

suggest that Respondent's conviction was not unanimously reached and delivered, and Respondent did not raise any allegations at trial or on appeal that there was cause to doubt the unanimity of the verdict against him. The record does not even contain evidence tending to show that the jury was confused by certain legal matters or that unanimity was difficultly reached. The only thing that Respondent failed to receive was the specific process of the jurors being *verbally* polled. In consideration of the law and facts presented, only a procedural error exists and that error was harmless.

b. With the question of jury polling untethered from the rigid per se reversal that follows structural error doctrine, this Court should permit the use of *limited* discretion by trial courts to deviate from the prescribed polling methods in *Wright*, when such is justified by extraordinary circumstances.

This case is not a simple "error of law" case where the trial court unknowingly made a mistake in the application of controlling authority. The record suggests that the trial court's decision to forego further polling was purposeful in light of the substantial issues that involved witness, juror, and courtroom safety. South Carolina jurisprudence is full of circumstances where this Court chooses to trust the trial court to exercise proper discretion in matters of both constitutional rights and courtroom safety.[4] There is no legal impediment for this Court to choose to do so here as well. As argued, the error in question was harmless, but it should not have to be deemed error at all. This Court can ensure that a defendant's right to poll a jury is maintained while also permitting the most limited means of trial court discretion when the circumstances demand concern. The occasions where such discretion will be needed will certainly be rare, but in the

[4] This has worked well in other contexts. For instance, for a judge to allow restraints to remain on the defendant in court, he must place a reason on the record and "it should reflect particular concerns ... related to the defendant on trial." *Deck v. Missouri*, 544 U.S. 622, 633 (2005). Much like *Deck v. Missouri*, similar guidance can be given for jury polling and courts can be trusted not to abuse discretion in matters that impact the constitutional rights and protections of defendants, even when circumstances arise that make normal court proceedings difficult.

absence of a change in the law a future court may be placed in a similarly difficult situation where they must either risk an appeal of the verdict or the safety of those rendering it. Change is needed.

Through the course of trial eight different instances of witness intimidation, juror intimidation, and/or courtroom disruption took place: 1) Multiple witnesses received anonymous phone calls not to show, 2) phones had to be confiscated from the gallery, 3) one juror was so frightened to serve in this case that she had to be excused, 4) her alternate replacement was then directly contacted via Facebook to influence his verdict, 5) codefendant Carmichael was recorded on tape discussing jurors and allegedly arranging for someone on the outside to influence or harm their significant other, 6) trial attendees in the gallery had to be limited solely to the defendants' family members, 7) this directive then demonstrated an ongoing deception by an attendee pretending to be a defendant's sibling, and 8) 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 the requiring the jurors to independently speak in open court and pronounce their verdict to convict the defendants of murder. The trial court's actions were understandable, admirable, and practically speaking, reasonable.[5]

While the State agrees that in nearly every case, a verbal articulation of one's verdict will not be arduous or concerning, and that such is "*a*" sound method for polling a jury upon request,

[5] 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.

there will inevitably be an exception for which the current law does not account. This is such a case, but because of the inflexibility of the existing law, a jury's valid efforts have been discarded despite all constitutional rights being guaranteed to the Respondent, despite efforts being taken to instill confidence in the verdict, and despite the overwhelming evidence of guilt against him. Such need not be the case. As demonstrated above, the trial court's deviation from *Wright* constitutes only procedural error, and it is therefore not subject to per se reversible error. The court can take this opportunity to strongly recommend the polling methods set forth in *Wright* and note that any deviation from those methods will require a convincing recitation of the extraordinary circumstances that made further polling problematic. Such a holding will not impair a defendant from appealing a decision he disagrees with, and such a holding will ensure that the trial court is equipped with the authority to make decisions that circumstances dictate.

The trial court was faced with a case involving considerable safety concerns that extended beyond the four walls of the courtroom, it exercised discretion in the face of that danger and there is simply no per se legal basis that requires the valid and unanimous verdict reached by the jury be tossed out. This Court should encourage judges to act as Judge Brown did, while giving guidance and warning to how such decisions will be received on appeal in the future.

CONCLUSION

Petitioner respectfully argues that the Court of Appeals' decision in this case be reversed, and that *State v. Wright* be modified to hold that polling methodology does not constitute structural error.

(Signature block on following page)

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November 25, 2025