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S.C. SUPREME COURT

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

THE STATE,

PETITIONER,

V.

QUINTERRIS JAVON CARMICHAEL,

RESPONDENT

Opinion No. 2025-UP-136 (S.C. Ct. App. Filed April 23, 2025)

APPELLATE CASE NO. 2025-001214

BRIEF OF RESPONDENT

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ISSUE PRESENTED

Whether the Court of Appeals correctly reversed Respondent's convictions where the trial court denied Respondent's request to individually poll the jurors, since a poll must be taken if a request for polling is made?

STATEMENT OF THE CASE

During the May term of 2021, a Florence County Grand Jury indicted Quinterris Carmichael, Respondent, for murder and possession of a weapon during the commission of a violent crime. Respondent was tried jointly with his codefendant, Tirik Johnson-Epps, before the Honorable D. Craig Brown and a jury, from January 23 – 27, 2023. Respondent was represented by William "Josh" Edgeworth, III. Gregory Ammons represented Johnson-Epps. J. Ryan White and Todd Tucker prosecuted the case. Respondent was convicted as indicted, and he was sentenced to life imprisonment without parole for murder. No sentence was imposed for the weapons charge. App. 550 – 553; App. 6; App. 231; App. 525, ll. 6-14; App. 547, ll. 5-20; App. 554 – 557.

On January 31, 2023, Respondent served his notice of intent to appeal. On April 23, 2025, Respondent's convictions were reversed when the Court of Appeals held the trial court erred by denying Respondent's request to poll the jury. *State v. Carmichael*, Op. No. 2025-UP-136 (S.C. Ct. App. filed April 23, 2025). On May 8, 2025, the State filed a petition for rehearing. On May 22, 2025, the Court of Appeals denied rehearing. The State filed a petition for writ of certiorari to the Court of Appeals. Respondent made his return. On October 21, 2025, this Court granted the petition for writ of certiorari. The State has served its brief of petitioner and appendix.[1] This brief of respondent follows.

[1] Simultaneous with the filing of its brief of petitioner, the State filed an appendix which included the record on appeal. For ease of reference, Respondent cites to the appendix page numbers, located at bottom right of the pages.

STANDARD OF REVIEW

The appellate courts of South Carolina review questions of law de novo. *State v. Adams*, 409 S.C. 641, 647, 763 S.E.2d 341, 344 (2014); *Jordan v. State*, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013). "We clarify that appellate courts 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).

ARGUMENT

The Court of Appeals correctly reversed Respondent's convictions where the trial court denied Respondent's request to individually poll the jurors, since a poll must be taken if a request for polling is made.

A. The trial court refused a timely request to individually poll the jurors.

At approximately 3:30 a.m. on September 12, 2019, eighteen-year-old Tydrecus Williams (Decedent) was shot and killed outside the Tiger Mart in Florence. Decedent and his friend, Kareem Jones (Jones), were there to buy cigars. The State alleged surveillance footage from cameras outside the Tiger Mart captured the following. Respondent and his codefendant, Johnson-Epps, arrived in a car with two women. Respondent and Johnson-Epps got out of the car. Respondent and Jones argued, and Respondent struck Jones. Johnson-Epps fired shots at Decedent. Decedent ran toward the road and collapsed. The surveillance system, which was motion-triggered, stopped recording. When recording resumed, Decedent was gone, out of frame. State's Exhibit #3; App. 253, ll. 6-7; App. 408, l. 2 – 412, l. 3; App. 93, l. 15 – 97, l. 9; App. 106, l. 6 – 120, l. 3; App. 106, l. 15 – 138, l. 21; App. 189, l. 6 – 197, l. 23; App. 6.

The State alleged Johnson-Epps and Respondent went around the corner of the building. Shortly thereafter, Johnson-Epps got back in the car with the women, drove a short distance away, and stopped to wait for Respondent to get back in the car. All four left. Law enforcement arrived and found Decedent's body near the store. Decedent had been shot approximately eight or nine times and died at the scene. Authorities collected a pair of jeans from Johnson-Epps's home that had a spot of Decedent's blood on them. State's Exhibit #3; App. 116, l. 12 – 121, l. 4; App. 186, l. 4 – 187, l. 20; App. 287, l. 17 – 295, l. 17; App. 325, l. 22 – 333, l. 3; App. 24, l. 6 – 25, l. 11.

Atypical problems occurred during this five-day trial. App. 6; App. 231. Prior to the jury being sworn a discussion transpired between the judge and the lawyers over a "concern[] about the number of people" in the courtroom. The solicitor told the court there was "some bad blood here." Defense counsel stated the "victim's family obviously holds a lot of grudges." The solicitor offered that witnesses had been getting hang up phone calls. The court instructed the spectators in the gallery that any attempts to influence or intimidate witnesses would be met with "up to 10 years in jail." App. 80, ll. 2-19; App. 81, l. 25 – 83, l. 19.

When the jurors returned from lunch, Juror #133 was ultimately removed and an alternate substituted because Juror #133 had been contacted through Facebook Messenger by someone in the gallery and instructed to convict the defendants. The juror was messaged: "Eric, both them boys killed Mrs. Betty's grandson, bug son. Shot him 11 times and one in the head. I had to leave to go to work. Please give them the justice they deserve." The court released the juror and seated an alternate. App. 144, l. 1 – 161, l. 21.

The next morning, the solicitor claimed Respondent was heard on a jail phone call "discussing with another individual don't worry about looking for Dee's girlfriend anymore, she's the one that was excused yesterday." The court stated, "I couldn't make out the entire discussion but was able to make out there was someone as part of the jury pool that was prepared to vote not guilty who was not seated on this jury. I have concerns about individuals making further efforts to contact this jury and taint the jury for or against the State or for or against the defendants." The court thus ruled it would allow only immediate family members of the parties in the audience and on courthouse grounds. App. 181, l. 7 – 183, l. 13. The court confirmed with the jurors they had not been contacted about the case. App. 184, ll. 5-13.

On a subsequent day of trial, a juror became ill and the jury was sent home for the day. App. 317, l. 9 – 322, l. 13. The next day, someone stopped defense counsel and asked him if the jurors were going to lunch, and whether the individual could "go get them some lunch." Defense counsel told the individual the jurors would be provided with lunch and ended the conversation. App. 415, l. 19 – 416, l. 5.

The verdicts were handed up and the judge announced the guilty verdicts by reading them aloud. App. 524, l. 7 – 525, l. 2; App. 525, ll. 6-22. After announcing the verdicts, the court conducted the common practice of collectively addressing the jury about the verdicts. It addressed the jury as a body, asking: "if this was and still is your verdict, please indicate by raising your right hand." The court then stated,

> All right, let the record reflect that all 12 jurors have raised their hand pursuant to the question that I've asked of this jury. All right, at this time anything, Mr. Edgeworth, at this time?
>
> MR. EDGEWORTH: **Your Honor, I'd move to have each of the jurors individually polled.**
>
> THE COURT: All right, Mr. Ammons?
>
> MR. AMMONS: I join in that motion, your Honor.
>
> THE COURT: All right. Can the lawyers approach please?
>
> (WHEREUPON, a bench conference was held in the presence of the jury, but out of the hearing of the jury.)
>
> THE COURT: 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.

App. 525, l. 23 – 526, l. 23 (emphasis added).

After the jury left the courtroom, the court heard post-trial motions and heard from the attorneys and from family members of the parties regarding sentencing. In response to the solicitor's argument that Respondent was on the jail telephone "seemingly tampering with this jury," the court stated: "I want to make it abundantly clear. There's no evidence—right now there's no evidence that either one of these defendants had anything to do with the things that happened this week." App. 527, l. 1 – 543, l. 5; App. 542, l. 24 – 543, l. 10. The court detailed the events that occurred and its efforts to ensure a safe trial. The court stated that after the case went to the jury, four rounds of ammunition were found in the men's bathroom of the courthouse. Law enforcement cleared the building and had everyone come back through security screening. The court stated it also had law enforcement officers search the courtroom, and a police dog went through the courtroom as well. App. 543, l. 6 – 546, l. 17; App. 545, l. 19 – 546, l. 17.

The Court of Appeals held "the trial court erred by denying Carmichael's request to individually poll the jurors because the denial of his right to an individual poll of each juror is reversible per se." The Court of Appeals cited the holding of *State v. Wright*, 439 S.C. 101, 102, 886 S.E.2d 206, 207 (2023), that the denial of a defendant's timely request the jury be individually polled is reversible per se. *State v. Carmichael*, Op. No. 2025-UP-136 at 2. App. 619. Because it reversed on the jury polling error, the Court of Appeals declined to address Respondent's remaining arguments.[2] *State v. Carmichael*, Op. No. 2025-UP-136 at 2. App. 619.

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[2] In addition to the jury polling error, Respondent also raised an error regarding the admission of statements he made during his recorded interrogation, wherein Respondent requested a lawyer five times but Officer Shelley informed him he could not have a lawyer unless he "ha[d] one on retainer," and continued the recorded interrogation. Respondent additionally raised an error regarding the admission of "investigative" hearsay. Brief of Appellant at 6 – 16; 17 – 21. App. 570 – 580; App. 581 – 585.

B. The refusal to conduct individualized polling was error which requires reversal.

i. Respondent was entitled to individual rather than collective polling, and the circumstances do not excuse the error.

The State argues the collective poll sufficiently obtained individual confirmation from the jurors, and "too much has been made of" the term "individually." *See* Brief of Respondent at 9 – 10. Collectively addressing the jury is different from individually addressing each juror. In *State v. Sanders*, 251 S.C. 431, 436, 163 S.E.2d 220, 224 (1968), this Court stated: "To poll the jury means to examine each juror separately, after a verdict has been given, as to his concurrence in the verdict." (cleaned up). In *Sanders v. Charleston Consol. Ry. & Lighting Co.*, 154 S.C. 220, 151 S.E. 438, 447 (1930), this Court explained polling the jury is a practice whereby the jurors are asked individually whether they assented and still assent to the verdict. In *State v. Linder*, 276 S.C. 304, 308-09, 278 S.E.2d 335, 338 (1981), this Court again stated that polling is a practice whereby the court determines from the jurors individually whether they assented and still assent to the verdict. It further held: "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." *Id.*

Polling has been addressed again recently by this Court and by the Court of Appeals. In *State v. Wright*, 432 S.C. 365, 368-70, 852 S.E.2d 468, 470-71 (Ct. App. 2020), *aff'd*, 439 S.C. 101, 886 S.E.2d 206 (2023), the Court of Appeals explained that "individual polling means each juror must be separately asked to confirm verbally on the record that the verdict announced is still his or her verdict." It found the clerk's collective inquiry did not satisfy the polling right, and held the error was reversible. This Court affirmed in *State v. Wright*, 439 S.C. at 103, 886 S.E.2d at 207, distinguishing individual from collective polling. This Court explained individual polling "is commonly accomplished by separately asking each juror, 'Was this your verdict?' If

the answer to that question is 'yes,' the customary follow-up question is, 'Is this still your verdict?'" *State v. Wright*, 439 S.C. at 102-03, 886 S.E.2d at 207. *See, e.g.*, *Miranda v. United States*, 255 F.2d 9, 18 (1st Cir. 1958) ("the right to poll the jury is the right to require each juror individually to state publicly his assent to or dissent from the returned verdict which has been announced in open court in his presence"). In *Wright*, as in this case, the jury had been collectively polled and affirmed by a show of hands the verdict was theirs. *Wright*, 432 S.C. at 368, 852 S.E.2d at 470.[3] In this case, there was not a separate examination of each juror: the jurors were not asked individually whether they assented and still assent to the verdict. Respondent was entitled to individual polling, which is different from collective polling.

A collective poll primarily ensures the verdict form accurately reflects the vote in the jury room. An individual poll ensures no juror was coerced into assenting to that verdict by separately testing the conscience of each juror and giving each juror the floor to dissent while under the protection of the judge. *See Miles v. Commonwealth*, 256 S.W.3d 46, 46 (Ky. Ct. App. 2008) ("The right is one to have the conscience of each individual juror tested by an individualized question directed at him or her, not a question directed at any group of jurors in which individuals may find some degree of anonymity."); *Bethea v. Commonwealth*, 809 S.E.2d 684, 693 (Va. Ct. App. 2018), *aff'd*, 831 S.E.2d 670 (Va. 2019) (Individual polling is a protection "in place to ensure that a jury verdict represents the understanding and agreement of all the jurors."); *Humphries v. D.C.*, 174 U.S. 190, 192-94 (1899) (The object of "severally" polling a jury "is to ascertain for a certainty that each of the jurors approves of the verdict as returned; that no one has been coerced or induced to sign a verdict to which he does not fully assent."); *State v. Tennant*, 319 S.E.2d 395, 399 (W.Va. 1984) ("Courts have recognized that the chief purpose

[3] This case was tried approximately two years after the Court of Appeals' opinion in *Wright* was published but just before this Court's opinion affirming that decision.

behind an individual poll of jurors is to enable a juror to express any reservation he may have about the verdict free from the pressure of his fellow jurors."); *State v. Pare*, 755 A.2d 180, 193 (Conn. 2000) ("[M]embers of a group may react differently when addressed as a group, and when addressed individually.").

Juror privacy and safety did not justify the refusal to individually poll. Respondent asked for standard individualized polling: he did not request the court inquire about the jury's deliberative process. *See State v. Hunter*, 320 S.C. 85, 88, 463 S.E.2d 314, 316 (1995) ("Normally, courts should not intrude into the privacy of the jury room to scrutinize how jurors reached their verdict."); *Ragusa v. Lau*, 575 A.2d 8, 11 (N.J. 1990) (Asking, "Is this your verdict?" does not require that jurors disclose communications during deliberations; to answer that question, jurors need not reveal their reasons for the decision, their deductions, their conversations. A simple "yes" or "no" will suffice. "Such a poll is not overly intrusive of a juror's privacy."). Individualized polling would have asked whether each juror assented and still assents to the verdict. The only way in which a juror would be singled out by an individual poll is if a juror expressed that the verdict was not or did not remain his verdict, which is exactly why the jury should have been individually polled.

Individual polling is important for finality. Judges and law enforcement are fully capable of protecting jurors during trial. *E.g.*, *State ex rel. McLeod v. Hite*, 272 S.C. 303, 305, 251 S.E.2d 746, 747 (1979) (courts have the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice); S.C. Code Ann. § 14-5-320 (circuit court may at its discretion punish contempts of authority by fine or imprisonment); S.C. Code Ann. § 16-9-340 (unlawful for a person by threat or force to intimidate or impede a juror in the discharge of his duty or to destroy, impede, or attempt to obstruct or impede the

administration of justice in any court); *State v. Lyles-Gray*, 328 S.C. 458, 463, 492 S.E.2d 802, 805 (Ct. App. 1997) (discussing continued viability of common-law obstruction of justice). After trial, however, jurors no longer have courthouse deputies and the judge at hand. Juror safety and public confidence in the justice system weigh in favor of individual polling, so the verdict is unassailable and bad actors have nothing to gain by approaching jurors after the trial to threaten or pressure them into recanting.

The State argues the judge should have discretion in whether to individually poll the jury in "extraordinary circumstances." *See* Brief of Petitioner at 1; 17. Extraordinary circumstances is not a consistent standard. This Court should maintain its bright-line rule. The trial court should not have discretion in whether to perform individual polling. There is room for a judge to have discretion in how to individually poll based on the circumstances without refusing to individually poll. The judge could individually poll the jurors by number, or could have additional security personnel present in the courtroom, for example. Tellingly, the State has cited no case law from any jurisdiction supporting its theory that unusual circumstances at trial justified the *refusal* to individually poll. While the circumstances may have warranted discretion in how individual polling was accomplished, or in the courtroom arrangement surrounding the individual poll, they did not justify refusing the request for individual polling. To the contrary, unusual circumstances emphasized the importance of individual polling. *Cf. People v. Hoffman*, 24 N.Y.S.2d 59, 61 (N.Y. Sup. Ct. 1940) (where jury deliberated on election eve through election day until shortly before they would need to return a verdict in time to be released and reach their polling places in order to vote, "under such circumstances the right to poll the jury might have been unusually important"). Attempts to influence jurors or witnesses bear on the impartiality of

the jury, the fairness of the trial, and the unanimity of the verdict, meaning a defendant's interest in polling becomes heightened, rather than, as the State argues, less valid.[4]

ii. The refusal to conduct individual polling requires reversal pursuant to controlling precedent. The weight of authority from other jurisdictions is in accord.

As seen, in South Carolina, the refusal of a timely request for an individual poll of the jury is reversible per se. *State v. Linder*, 276 S.C. at 311, 278 S.E.2d at 339 (new trial ordered due to refusal of polling request); *State v. Wright*, 432 S.C. at 370, 852 S.E.2d at 471 ("depriving a defendant of his or her polling right is not a technicality, but a material and prejudicial error"); *State v. Wright*, 439 S.C. at 103, 886 S.E.2d at 207 ("the denial of a defendant's request for individual polling is reversible per se").

The discussion and treatment of polling and polling refusals by appellate courts of other jurisdictions confirms the correctness of South Carolina's precedent. Notably, many states have not addressed polling refusals, with several courts specifically mentioning that their trial courts unfailingly honor a polling request. *E.g.*, *Mancari v. A.C. & S. Co.*, 541 A.2d 584, 587 (Del. Super. Ct. 1988) ("With respect to the polling of a jury, I know of no instance where a judge in this State has refused a request to have the jury polled on its verdict."); *Gunnett v. State*, 104 P.3d

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[4] The State's argument the judge refused the polling request based on the jury's safety is speculative. *See* Brief of Petitioner at 5. The record does not show the judge ruled the polling request was refused based on security concerns. In refusing the polling request, the court simply stated: "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 is sufficient under the circumstances, and therefore I'm not going to individually poll each juror." App. 525, ll. 15-21. During sentencing, the court went through the atypical problems that had occurred during trial, and stated: "I'm putting all that on the record in an effort to explain my limitations of who was in the courtroom as well as concerns that I had throughout the trial." Notably, the court did not state its ruling about jury polling was related to these concerns, although it stated its limitation of spectators was so related. App. 546, ll. 10-13.

775, 780 n. 4 (Wyo. 2005) ("[I]t is our experience that trial courts virtually always conduct an individual poll of the jury, and that was done in this instance.").

Of jurisdictions that have addressed a refusal to poll, an overwhelming majority of courts have found reversible error. *See Wingfield v. State*, 128 S.W. 562, 562 (Ark. 1910) (court's refusal to poll the jury upon defendant's request "was a prejudicial error, for it deprived the defendant of a substantial right to ascertain to a certainty from the individual expression of each juror whether or not the verdict reported by the foreman was concurred in by all"); *Rinker v. State*, 492 S.E.2d 746, 747 (Ga. Ct. App. 1997) (denial of a timely request to poll the jury was the denial of a material right requiring the conviction to be reversed); *People v. DeStefano*, 212 N.E.2d 357, 368 (Ill. App. Ct. 1965) (failure to poll the jury, after an affirmative request to do so, is reversible error); *People v. Wheat*, 889 N.E.2d 1195, 1199 (Ill. App. Ct. 2008) (same); *Gianino v. State*, 108 N.E. 579, 580 (Ind. 1915) ("Reversible error is predicated on the denial of appellant's motion to poll the jury."); *Johnson v. Commonwealth*, 694 S.W.3d 232, 252 (Ky. 2023) ("failure to poll the jury when requested and preserved is reversible error"); *Stewart v. People*, 23 Mich. 63, 77-79 (Mich. 1871) (error in denying to the prisoner the right to have the jury polled requires reversal and new trial); *McLarty v. State*, 842 So.2d 590, 592 (Miss. Ct. App. 2003) (failure to poll the jury at defendant's request, while jury was still in the courtroom, was reversible error); *Duffy v. Vogel*, 905 N.E.2d 1175, 1175-76 (N.Y. 2009) (failure to poll a jury may never be deemed harmless); *Kinney v. Hartshorn*, 28 Ohio Law Abs. 116, 118-19 (Ohio Ct. App. 1937) (trial court's refusal to poll jury at plaintiff's request, which was made while jurors were still seated in jury box, was "prejudicial and reversible error," not a mere "technical matter"); *Watchtower Mut. Life Ins. Co. v. Davis*, 99 S.W.2d 693, 695 (Tex. Civ. App. 1936) (failure to poll jury upon timely request is an error which requires reversal); *Wells v. Lone Star*

S.S. Co., 1 S.W.2d 925, 928 (Tex. Civ. App. 1927), *writ refused* (1928) (same); *State v. Pockert*, 746 P.2d 839 (Wash. Ct. App. 1987) (although foreman confirmed verdict was unanimous, the refusal of the request to individually poll the jurors requires reversal); *Miranda v. United States*, 255 F.2d at 18 (court reversibly erred in refusing timely request to poll the jury); *Mackett v. United States*, 90 F.2d 462, 466 (7th Cir. 1937) ("The right of a defendant to poll the jury in a criminal case is a substantial one and when denied is error which requires a reversal."); *Gov't of the Virgin Islands v. Hercules*, 875 F.2d 414, 419 (3d Cir. 1989) (refusal to poll jury is per se error requiring reversal); *United States v. F.J. Vollmer & Co.*, 1 F.3d 1511, 1523 (7th Cir. 1993) (refusal of timely motion to poll jury required reversal of defendant's conviction).

In contrast, courts that have held there is no error in a refusal to poll are few. *See Commonwealth v. Gaeten*, 446 N.E.2d 1102, 1109 (Mass. App. Ct. 1983) (whether to poll the jury is in the discretion of the trial court); *State v. Kenna*, 374 A.2d 427, 430 (N.H. 1977) (trial judge may poll the jury in its discretion if justice so requires); *People v. Phillips*, 91 P.3d 476, 479 (Colo. App. 2004) (right to a jury poll is not absolute).

A minority of courts, largely civil, have held the refusal to poll is error, but have concluded or suggested the error may be subject to harmless error review. *See Walton Const. Co. v. MGM Masonry, Inc.*, 199 S.W.3d 799, 806 (Mo. Ct. App. 2006) ("we are not persuaded by Walton's argument that a failure to poll the jury upon request is per se reversible error in a civil case"); *Sanford v. Chevrolet Div. of Gen. Motors*, 629 P.2d 407, 410-12 (Or. App. Ct. 1981) (denial of timely request to poll the jury on each question of a special verdict was error, and because we cannot determine it was harmless, it was reversible error); *State v. Lewis*, 91 P.2d 820, 827 (Nev. 1939) (where jury was polled after verdict was recorded but before jury left jury box, polling was effectuated; although cases might arise where a failure to comply with the

polling statute would be prejudicial to a defendant, in this case the jurors were actually polled); *Levine v. Gallup Sand & Gravel Co.*, 487 P.2d 131, 132 (N.M. 1971) (we will look for even "the slightest evidence of prejudice, and all doubt will be resolved in favor of the party claiming prejudice" where court failed to poll jury upon request). *Cf. State v. Coulthard*, 492 N.W.2d 329, 335 (Wis. Ct. App. 1992) (where the jury was collectively polled but the judge refused a timely request for an individual poll, then reconvened the jury and individually polled the jurors, the initial error in refusing the request for individual polling was harmless).

Fewer jurisdictions have addressed the precise issue in this case: Is reversal required where the trial court collectively inquired of the jurors as to their verdict but refused the defendant's timely request to individually poll the jurors? The majority of courts that have addressed this issue have answered: Yes. Of course, as discussed above, the appellate courts of this State have answered this question affirmatively. Our sister state, North Carolina, has also held this error is one which mandates reversal. In *State v. Boger*, 163 S.E. 877, 877 (N.C. 1932), the jury returned a verdict of guilty and the judge asked the jurors, "Guilty of manslaughter, so say you all, gentlemen?" The jurors thereupon nodded their heads, indicating an affirmative answer to the judge's inquiry. Counsel then requested a poll of the jurors and the judge addressed the jurors: "All of you gentlemen of the jury who return a verdict of guilty of manslaughter, stand up." All of the jurors then stood up. Counsel again requested the judge to poll the jurors, "man for man." The judge denied the request. The North Carolina Supreme Court held the defendant "had the right to insist that a specific question be addressed to and answered by each juror in open court, as to whether he assented to said verdict." *Id.*, 163 S.E. at 878. "For error in denial of this right in the instant case, the defendant is entitled to a new trial. *Id.* This holding was affirmed more recently in *State v. Holadia*, 561 S.E.2d 514, 524 (N.C. Ct.

App. 2002), *writ denied, review denied*, 562 S.E.2d 432 (2002), where the appellate court held the questioning of the jury collectively, and having all the jurors respond collectively by raising their hands, was not an individual poll. "For error in the denial of this right, defendant Cooper is entitled to a new trial." *See also State v. Dow*, 99 S.E.2d 860, 862 (N.C. 1957) (new trial required where counsel requested individual polling but court's individual polling did not require verbal response from each juror, and thus polling did not "affirmatively establish that each juror assented to the verdict entered"). *Cf. State v. Buchannan*, 410 S.E.2d 832, 846 (N.C. 1991) (where death penalty statute prescribed mandatory individualized polling but trial court merely obtained a show of hands by jurors, this collective inquiry failed to meet individual polling requirement, requiring new sentencing hearing).

Connecticut has concluded the same. In *State v. Pare,* 755 A.2d at 185-86, the court collectively polled the jury whether "each of you do say unanimously that the defendant is guilty of the crime of murder, this is your verdict and so say you all?" and the jury collectively responded, "Yes." The court refused the defendant's request to individually poll the jurors, ruling: "I was looking right at the jury, they all nodded and answered yes to my questions, so I'll deny your request." On appeal, Pare argued the refusal of the timely request for individual polling was error, and the impropriety was not subject to harmless error analysis. The Connecticut Supreme Court found error, discussing cases which reflected an "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., 755 A.2d at 193. The Court observed the right to poll the jury was a corollary to the defendant's right to a fair trial. *Id.*, 755 A.2d at 188. It held the error was not subject to harmless error review "because there is no way to ascertain the effects of a poll not taken[.]" "[I]n light of the weighty interest protected by a jury poll, and the impracticality of gauging the results of a poll not taken, we conclude that a violation of a party's timely polling request requires automatic reversal of the judgment." *Id.*, 755 A.2d 180, 194-96.

Pennsylvania agrees. In *Commonwealth v. Martin*, 109 A.2d 325, 329-30 (Pa. 1954), the jury collectively affirmed the verdict in unison and the judge denied the defendant's request for an individual poll, finding the request had come too late. The Pennsylvania Supreme Court found the request was timely as the verdict had not yet been recorded. *Id.* It found the error required reversal: "The action of the court in such regard worked a denial of a right of the accused so fundamental as to require a retrial even though, as clearly appears from the record, the trial was otherwise markedly free from error and the jury's verdict was fully warranted by the evidence. Yet, it is better that the case be tried again than that a precedent impairing a defendant's right to a poll of the jury be engrafted on our criminal procedure." *Id.*, 109 A.2d at 327. *See also Commonwealth v. Downey*, 732 A.2d 593, 594-96 (Pa. 1999) (Where the jury collectively affirmed the verdict, the error in refusing the request for an individual poll required reversal: Given "the fundamental importance of determining whether a jury's verdict represents the conscious choice of each individual juror, we are not inclined to accept the Commonwealth's invitation to now impose a new rule requiring a showing of prejudice.").

Kentucky is in accord. In *Miles v. Commonwealth*, 256 S.W.3d at 46, the trial court did not ask each juror if this was his or her verdict, instead asking: "Is that the verdict of the jury?" while visually scanning the jury, and then asking three of six jurors whether it was his or her

verdict, with none of the jurors responding audibly. The Kentucky appellate court reasoned: "While a nonverbal response can be sufficient," "the response must be to a question specifically posed to that responding juror and to him alone." The Court held reversal was required where "the court polls more than one juror at a time, *i.e.*, any subset of the jury greater than one juror[.]" *Id. See also Powell v. Commonwealth*, 346 S.W.2d 731, 733 (Ky. 1961) (reversal required where the verdict was returned while the defendant's attorney was temporarily absent, and where the judge "polled the jury as a body but not the individual jurors," as the right to poll the jury "is a substantial legal right and to deny it without waiver is prejudicial error in felony cases").[5]

Wisconsin and Alaska agree. In *State v. Wojtalewicz*, 379 N.W.2d 338, 339 (Wis. Ct. App. 1985), the verdict was read aloud and the trial court immediately stated to the jury: "I want to ask you all if this is the verdict of each of you and if there is any member of the jury panel who dissents from either one of the two verdicts that I've just read, I want you to raise your right hand at this time." None of the jurors responded and the defendant asked for individual polling, which was refused. The Wisconsin appellate court discussed the importance of polling and held:

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[5] Courts overwhelmingly hold the refusal to permit the defendant the opportunity to request a poll (by accepting the verdict in his absence), is an error which requires reversal. *E.g.*, *Harris v. State,* 49 So. 458, 460 (Ala. 1907) (where verdict was received in absence of prisoner and the jury was discharged before he had the opportunity to poll, reversal and discharge on the ground of former jeopardy); *Sowell v. State*, 458 So.2d 375, 376 (Fla. Dist. Ct. App. 1984) (trial judge erred by permitting the jury to enter a sealed verdict and then depart from the courthouse, thereby denying appellant his right to poll the jury; the error cannot be harmless); *State v. Rodriguez*, 460 P.2d 711, 716-17 (Idaho 1969) ("[I]f a trial judge should elect to proceed without defense counsel being present, he has the duty to have the jury polled in order to assure that the defendant's rights were not violated. The right to poll the jury is a substantial legal right and to deny it without waiver is prejudicial error in a felony case."); *State v. Callahan*, 7 N.W. 603, 603 (Iowa 1880) (defendants' deprivation of opportunity to poll the jury was a deprivation of a substantial right, and trial court erred in denying their motion to arrest the judgment and discharge them from custody; reversed).

"The question thus becomes whether the trial court's question to the jurors satisfies the polling requirement . . . we adhere to the majority rule that it does not." It further found the refusal was reversible error. *Id.*, 379 N.W.2d at 348-50. Alaska has also indicated the error would be reversible. *See Lee v. State*, 509 P.2d 1088, 1094 (Alaska 1973) (where the defendant was absent at the return of the verdict, and where the jury was asked generally if this was their verdict, the defendant was deprived of the opportunity to insist on an individual poll being taken, which affected his substantial rights and the error cannot be regarded as harmless).

However, a few courts have held or indicated that to justify reversal for a trial court's refusal to individually poll the jurors where the jury was collectively polled, prejudice must be shown. In *People v. Masajo*, 49 Cal. Rptr. 2d 234, 236 (Cal. Ct. App. 1996), the jurors were asked: "each of you that voted for the specific verdict, in other words, guilty, would you raise your hand," and everyone raised hands but the court refused the defendant's request for individual polling. The California appellate court concluded the refusal to ask each juror if the verdict was his or hers was not reversible per se, noting the right to poll the jury is not of constitutional dimensions. *Id.*, 49 Cal. Rptr. 2d at 237. In *State v. Stephens*, 264 S.W.3d 719, 737 (Tenn. Crim. App. 2007), *abrogated on other grounds by State v. Beaty*, 2016 WL 3752968 (Tenn. Crim. App. 2016), the court *sua sponte* asked jurors to raise hands if the guilty verdict was the collective judgment of the entire jury and all jurors raised hands. The defendant did not request that the jury be polled or object to the method of polling. The Tennessee appellate court held the defendant waived any question about the verdict, the trial court did not abuse its discretion in its polling method, and any error in this regard would be harmless. *Id.*[6]

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[6] Relatedly, other appellate courts have held that where a trial court granted the request for polling, individually polled eleven jurors, but inadvertently failed to individually poll the twelfth juror (or the transcript did not capture the twelve's juror's response), the error did not necessarily

Finally, a few courts have not reversed on this issue in a particular case but have instructed trial courts to conduct individual polling going forward. *In United States v. Carter*, 772 F.2d 66, 68 (4th Cir. 1985), the Court held: "Although we cannot conclude that the trial judge abused his discretion in polling the jurors by asking for a show of hands, we recommend that in the future, when a poll is conducted at the request of a party or on the court's own motion, each juror be asked to respond individually whether he agrees with the verdict as announced. We find that such a procedure best fulfills the purpose of a jury poll." In *Ragusa v. Lau*, 575 A.2d at 12, the New Jersey Supreme Court held: "Because plaintiff has not demonstrated that the poll here had the clear capacity to produce an unjust result, we reverse the judgment of the Appellate Division and reinstate the judgment of the trial court. Henceforth, however, trial courts should poll a jury by asking each juror whether the announced verdict is his or her verdict." In *United States v. Miller*, 59 F.3d 417, 420 (3d Cir. 1995), the Third Circuit found that because the method of polling was in the discretion of the trial judge, there was no reversible error in refusing the

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mandate reversal. *See Suggs v. Fitch*, 64 S.W.3d 658, 661 (Tex. App. 2001) (The failure to separately and individually poll each juror is subject to harmless error analysis: the only juror who signed the verdict certificate but was not polled was Irvin, the presiding juror who read the verdict to the court and represented the jury had returned the requisite number of signatures. Even though he was not polled, these circumstances strongly indicate Irvin concurred in the verdict and would have responded positively if asked whether this was his verdict.); *People v. Phillips*, 91 P.3d 476, 478 (Colo. App. 2004) (where jury collectively affirmed verdict, defendant's subsequent request for individual polling was granted and eleven jurors affirmed their verdicts but the twelfth juror was inexplicably not polled and the defendant did not bring this problem to the court's attention, "the unexplained failure individually to poll one of the jurors did not undermine the fundamental fairness of the trial"); *People v. Jackson*, 211 N.E.3d 414, 436 (Ill. 2022) (in considering plain error review, where judge polled eleven of twelve jurors but inadvertently failed to poll twelfth juror, and defendant's counsel did not bring the error to the judge's attention, error was not of such magnitude as to undermine the framework within which the trial proceeds and may be analyzed for prejudice); *State v. Bey*, 975 N.W.2d 511, 515-21 (Minn. 2022) (where jury was comprised of twelve, jury was asked collectively and affirmed verdict, jurors were then individually polled, judge stated "I think that's everyone," but transcript only reflected eleven responses, and no one raised any objections at the time, defendant's right to a unanimous jury of twelve members was not violated and the error was not structural).

request for an individual poll where a collective poll was performed. However, it held: "In the future, whenever a party timely requests that the jury be polled, the procedure shall be conducted by inquiry of each juror individually, rather than collectively." Notably, the federal cases in this category were decided before Fed. R. Crim. P. 31(d) was amended in 1998 to specify the method of polling the jury is no longer in the discretion of the district courts—an individual poll must be conducted when polling is requested or when polling is directed sua sponte by the court. *See* Fed. R. Crim. P. 31(d), notes to 1998 Amendments.

This Court has already held in *Linder* and *Wright* that an individual polling request must be honored. *Linder* and *Wright* are in keeping with the weight of authority from other jurisdictions.

iii. The error is not amenable to harmless error analysis.

The State argues the Court of Appeals' analysis in *Wright*, and this Court's affirmance, were "flawed." *See* Brief of Petitioner at 13. Interestingly, this Court stated in its opinion that the Court of Appeals' opinion in *Wright* was "well-reasoned." *Wright*, 439 S.C. at 102, 886 S.E.2d at 207. In *Wright*, the Court of Appeals acknowledged the error in refusing an individual poll is one which "elude[s] neat classification." *Wright*, 432 S.C. at 371, 852 S.E.2d at 471. The Court of Appeals concluded in *Wright* the error was structural or reversible per se. *Id.*, 432 S.C. At 371-72; 852 S.E.2d at 471-72. In affirming *Wright*, this Court agreed the error was reversible per se. *Wright*, 439 S.C. at 102, 886 S.E.2d at 207. This Court should adhere to its holdings in *Linder* and *Wright* instead of imposing a prejudice requirement and opening a Pandora's Box of contacting jurors after the fact. *See United States v. Miller*, 59 F.3d at 420-21 (collective polling "may lead to unnecessary challenges to the finality of jury verdicts;" an "advantage to individual

polling is the likelihood that it will discourage post-trial efforts to challenge the verdict on allegations of coercion on the part of some jurors").

As the Court of Appeals explained in *Wright*, this error "resembles both an error affecting the 'framework within which the trial proceeds' (structural error) and 'an error in the trial process itself' (trial error)." *Wright*, 432 S.C. at 371, 852 S.E.2d at 471. There, the Court of Appeals applied *Weaver v. Massachusetts*, 582 U.S. 286 (2017), and concluded the error was structural. *Wright*, 432 S.C. at 373, 852 S.E.2d at 472. The United States Supreme Court explained in *Weaver*, 582 U.S. at 295, there are three broad rationales informing why a particular error is structural. First, an error has been deemed structural in some instances if the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest. Second, an error has been deemed structural if the effects of the error are simply too hard to measure. Third, an error has been deemed structural if the error always results in fundamental unfairness. These categories are "not rigid," and it is not necessary to meet all three categories for the error to be structural. For instance, an "error can count as structural even if it does not lead to fundamental unfairness in every case." *Id.*, 582 U.S. at 295-96. All three rationales support the conclusion this error is structural.

First, the error was structural because the polling right protects not only the defendant from erroneous conviction but also protects some other interest: "the public's interest in ensuring the outcome of the criminal trial process is reliable." *Wright*, 432 S.C. at 371, 852 S.E.2d at 472. *See People v. Thornton*, 155 Cal.App.3d 845, 859 (Cal. Ct. App. 1984) (in "numerous" cases, "the processes of requiring the jury to orally acknowledge their verdict and express individual assents to it have revealed that the entire jury was mistaken in signing a particular verdict form, or that one or more jurors acceded to a verdict in the jury room but was unwilling to stand by it

in open court"); *Stewart v. People*, 23 Mich. at 77 ("there are many cases in which individual jurors refuse to assent on being polled"); *Bethea v. Commonwealth*, 809 S.E.2d at 693 (Individual polling is a protection "in place to ensure that a jury verdict represents the understanding and agreement of all the jurors.").

The polling right protects not only the public's interest in a reliable trial; it also relatedly protects jurors by preventing coercion. *See Humphries v. D.C.*, 174 U.S. at 194 (The object of a jury poll "is to ascertain for a certainty that each of the jurors approves of the verdict as returned; that no one has been coerced or induced to sign a verdict to which he does not fully assent."); *People v. Wheat*, 889 N.E.2d at 1199 ("Through a jury poll, jurors may freely assent or dissent to the verdict without the fear, errors, or coercive influences that may have prevailed in the jury's private collective deliberations."); *Davis v. State*, 160 S.E.2d 697, 703 (N.C. 1968) (Polling enables the court and the parties to "ascertain with certainty that a unanimous verdict has been in fact reached and that no juror has been coerced or induced to agree to a verdict to which he has not fully assented.").

The error was also structural under the second category of *Weaver*. The denial of the polling right "defies harmless error analysis." *Wright*, 432 S.C. at 371, 852 S.E.2d at 472. The error in refusing to conduct individualized polling is one peculiarly unsuited to harmless error review. In *Duffy v. Vogel*, 905 N.E.2d at 1177-79, the New York Court of Appeals explained the failure to poll a jury may never be deemed harmless. "A verdict in a jury trial is emphatically not a judicial construct." "Harmless error analysis in this context would amount to no more than a speculative exercise, impermissibly substituting the judgments of judges for those that would have been made and disclosed by jurors had their verdict been properly pronounced in open court." *Id. See People v. Thornton*, 155 Cal.App.3d at 860 ("we are faced with error of

constitutional proportions whose actual prejudicial effect is insusceptible of calculation"); *State v. Pare*, 755 A.2d at 194 (The "denial of a valid polling request is not amenable to harmless error analysis because there is no way to ascertain the effects of a poll not taken . . . the denial of a timely request to poll is of substantial and unique magnitude."). As the Court of Appeals explained in *Wright*, 432 S.C. at 371-72, 852 S.E.2d at 472,

> 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.**

(emphasis added) (citation omitted) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 307–08 (1991)). Had the judge individually polled the jury, any complaints about irregularities in the jury's answers could be assessed by the appellate courts. Because the judge denied the request for individual polling, however, the error was structural.

Third, the error was structural because it undermined the systemic requirements of a fair and open judicial process. In *Wright*, 432 S.C. at 372, 852 S.E.2d at 472, the Court of Appeals reasoned that "the denial of the polling right caused fundamental unfairness by undermining the systemic requirements of a fair and open judicial process. If an announced verdict lacks unanimity in fact, then the harm to the integrity and fundamental legitimacy of the entire trial is total." (cleaned up). Victims, defendants, and the public all have an interest in a fair and open process and the integrity of criminal trials, and in finality. As discussed *supra*, by ensuring verdicts are not the product of coercion but represent the verdict of each juror, individual polling

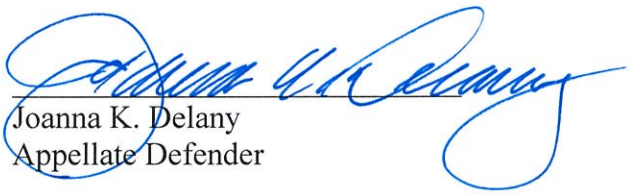
furthers these interests. *E.g.*, *Humphries v. D.C.*, 174 U.S. at 192-94 (severally polling a jury ascertains "for a certainty that each of the jurors approves of the verdict as returned; that no one has been coerced or induced to sign a verdict to which he does not fully assent."); *Commonwealth v. Martin*, 109 A.2d at 328 ("The polling of the jury is the means for definitely determining, before it is too late, whether the jury's verdict reflects the conscience of each of the jurors or whether it was brought about through the coercion or domination of one of them by some of his fellow jurors or resulted from sheer mental or physical exhaustion of a juror."); *State v. Behnke*, 456 N.W.2d 610, 612 (Wis. 1990) ("The right to poll the jury at the return of the verdict is corollary to the defendant's right to a unanimous verdict."): *Ramos v. Louisiana*, 590 U.S. 83, 93 (2020) (Sixth Amendment right to a jury trial, as incorporated against the States by way of Fourteenth Amendment, requires a unanimous verdict to convict a defendant of a serious offense).

Three separate rationales support the conclusion the error was structural. The polling request was timely, was refused, and the issue was raised on direct appeal. The Court of Appeals correctly reversed the case. *Linder*, 276 S.C. at 309, 278 S.E.2d at 338; *Wright*, 439 S.C. at 103, 886 S.E.2d at 207. This Court should adhere to its precedent. *See James v. State*, 55 Miss. 57, 59 (Miss. 1899) ("Less evil is likely to result from upholding the right to have the jury examined by the poll rather than denying it."); *Commonwealth v. Martin*, 109 A.2d at 327-30 (The denial of individual polling touches not matter of form, but matter of substance; "it is better that the case be tried again than that a precedent impairing a defendant's right to a poll of the jury be engrafted on our criminal procedure.").

CONCLUSION

Respondent respectfully requests that this Court dismiss the writ of certiorari as improvidently granted or affirm the Court of Appeals.

Respectfully Submitted,



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This 28th day of January, 2026.