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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Florence County
Honorable D. Craig Brown, Circuit Court Judge
Appellate Case No. 2025-001215

THE STATE,

Petitioner,

vs.

TIRIK JAQUAN JOHNSON-EPPS,

Respondent.

**MOTION TO
ARGUE AGAINST PRECEDENT**

Petitioner (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

Respondent Tirik Jaquan Johnson-Epps’s criminal appeal is currently pending before this Court following a grant of a writ of certiorari. At present, the case is scheduled for oral argument on March 31, 2026, at 11:30 a.m.

II.

In his appellate brief, Campbell raised the following issue to this Court on certiorari:

Does existing precedent in *State v. Wright*, 439 S.C. 101, 886 S.E.2d 206 (2023), and the Court of Appeals’ application thereof in its reversal, conflate the nature of procedural error with that of structural error, where the jury was polled to ensure the unanimous verdict, where there is absolutely no evidence tending to suggest that

the defendant received a nonunanimous verdict, and where extraordinary circumstances at trial demonstrated the need for the rare exception in the method of polling?

As support for that issue, the Court of Appeals relied upon this Court's earlier decision in *State v. Wright*, 439 S.C. 101, 886 S.E.2d 206 (2023), finding structural error on the part of the trial court in failing to conduct individual polling of the jury members. Indeed, *Wright* is the applicable precedent for this case and the State conceded as much in its appellate brief to the Court of Appeals. However, in its appellate brief, the State also argued that the attachment of structural error to the issue in *Wright* was the result of an incorrect application of *Weaver v. Massachusetts*, 582 U.S. 286, 137 S. Ct. 1899, 198 L. Ed. 2d 420 (2017), that any error was procedural in nature, and that the extraordinary circumstances of this case created a need for discretion by the trial court. The State requests the opportunity to argue the same during oral arguments before this Court.

III.

Pursuant to Rule 217 of the South Carolina Appellate Court Rules, a party is not required to receive permission from an appellate court to argue against precedent in an appellate brief. See Rule 217, SCACR ("Permission of the appellate court shall not be required to argue against precedent in the brief."). However, a party must receive prior leave from the appellate court in order to argue against precedent during oral argument. *See id.* ("Oral argument against precedent shall not be permitted except upon leave of the appellate court in which the case is then pending, pursuant to motion in accordance with Rule 240 filed at least fifteen (15) days prior to oral argument.").

IV.

Through this motion, the State seeks leave from this Court to argue against the precedent of *State v. Wright* in a manner consistent with the arguments already raised in the State's Brief of

Petitioner. In making this motion, undersigned counsel for Petitioner certifies this motion complies with Rule 240, SCACR, and is being made at least fifteen days prior to oral argument before this Court.

WHEREFORE, Respondent prays this Court will permit argument against precedent during oral argument before this Court; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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March 4, 2026