FIRST DIVISION
BARNES, P. J.,
MARKLE and HODGES, JJ.

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November 2, 2026

In the Court of Appeals of Georgia

A26A1052. CARTER v. THE STATE.

A26A1053. WHITE v. THE STATE.

MARKLE, Judge.

In these related cases, co-defendants Dominique Carter and Quatez White appeal from the denial of their motions for new trial, contending, inter alia, that the trial court erred by concluding they had waived their objections to a juror's status as a felon because they had not raised the issue during trial. For the reasons that follow, we conclude the trial court erred in this respect, and we reverse its judgment.

> Where, as here, the trial court's denial of the motion for new trial involves a mixed question of law and fact, we review de novo the trial court's decision as to any questions of law, while applying the clearly erroneous standard of review to any factual findings made by that court, and we defer to the trial court's credibility determinations.

Sarat-Vasquez v. State, 350 Ga. App. 322, 323(1) (829 SE2d 394) (2019) (citation modified).

So viewed, the record shows that Carter, White, and Darren Mills were indicted for several offenses, including participation in street gang activity, criminal attempt to commit murder, aggravated assault, aggravated battery, armed robbery, motor vehicle hijacking, second degree arson, and multiple firearm possession counts. *Mills v. State*, 375 Ga. App. 433, 434 (916 SE2d 479) (2025). The three defendants were tried jointly, and the jury convicted Carter, White, and Mills of all counts, except possession of a firearm during the commission of a felony. *Mills*, 375 Ga. App. at 434, n.2.

Thereafter, Carter and White filed their motions for new trial, arguing, inter alia, that they were entitled to a new trial because they had subsequently learned that one of the jurors seated for the trial was a convicted felon. Following evidentiary hearings, at which the trial court adopted the portions of the transcript from Mills' new trial hearing regarding the ineligible juror, the trial court denied the motions. These appeals followed.

Case No. A26A1052

1. Carter argues that the trial court erred in denying his motion for new trial because he did not know the juror was a convicted felon until after the trial and, thus, there was no waiver of his objections to that juror's eligibility.[1] We agree.

In *Mills*, we held that a defendant is entitled to a new trial where he did not learn — until after the verdict was rendered — that a convicted felon served as a trial juror. *Mills*, 375 Ga. App. at 436(1). See also OCGA § 15-12-40 ("Any person who has been convicted of a felony in a state or federal court who has not had his or her civil rights restored ... shall not be eligible to serve as a trial juror."); OCGA § 15-12-163(b)(5). However, as the State contends, our Supreme Court has overruled *Mills* "to the extent that [we held] that a trial is void when an ineligible juror serves on the jury."[2] *State v. Embert*, 322 Ga. 199, 209(2)(a) (917 SE2d 56) (2025) (overruling *Williams v. State*, 12 Ga. App. 337 (77 SE2d 189) (1913), and its progeny on this ground). See also *Mills*, 375 Ga. App. at 436 (1).

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[1] As both parties adopt arguments from the briefs in related Case No. A26A1053, this division addresses certain arguments from those briefs, to the extent they are applicable, for the sake of efficiency. See Court of Appeals Rule 23(a) ("Parties may adopt, and are encouraged to adopt, all or a portion of another brief in the same case or from another case pending in this Court.").

[2] The Supreme Court of Georgia denied certiorari in *Mills*. 375 Ga. App. 433.

A trial in which an ineligible juror participated is thus *voidable*, that is, the "judgment remains in effect if unchallenged." *Embert*, 322 Ga. at 208(2)(a) (whereas "a void judgment is void from its inception."). And, as our Supreme Court clarified, "a trial court may find, in the face of a valid, properly raised challenge, that a verdict issued by a jury with an ineligible juror is, in fact, invalid, and thus that the defendant is entitled to a new trial." *Embert*, 322 Ga. at 209(2)(a).

Thereafter, in *Simms v. State*, 323 Ga. 874, 877(2) (928 SE2d 66) (2026), our Supreme Court explained that "a trial by a jury that includes an ineligible juror is a defect that may be 'waived' by the parties." Therefore, where a defendant may have impliedly waived an objection to an ineligible juror, a trial court "must determine not only whether the party failed to object, but also whether the party knew that the juror was ineligible, and if not, whether the party could have learned of the juror's ineligibility through the exercise of ordinary diligence." Id.

Despite the State's insistence otherwise, *Simms* is inapposite because, here, it is undisputed that the defendants did not know, nor could have known, of the ineligible juror prior to the verdict. Importantly, for the purposes of their motions for new trial, the State consented to Carter's and White's requests to adopt the portion

of the transcript from Mills's new trial hearing pertaining to the ineligible juror issue. That transcript reflects that the juror never revealed she had been convicted of a prior felony during the trial because she did not hear any questions to this effect.[3] The juror further testified that she was not aware of an issue as to her eligibility until she was contacted by the State's new trial counsel. Moreover, during argument, the State conceded that trial counsel had no reason to know of the juror's felon status.[4] Accordingly, there is no question of fact to be resolved regarding Carter's knowledge of the juror's ineligibility. See *Mills*, 375 Ga. App. at 436(1) (distinguishing a case where, "*unlike this case*, the defense learned of the possible disqualification of the juror during trial and did not immediately raise the issue until after trial" (emphasis added)). Compare *Simms*, 323 Ga. at 877(2) (vacating and remanding denial of motion for new trial where trial court made no inquiry regarding Simms's knowledge of ineligible juror; instead, trial court "concluded that Simms had waived his

[3] The record reflects that the trial court asked the venire panel the qualifying questions, including felon status, during voir dire.

[4] During White's new trial hearing, the trial court specifically adopted the "argument and ruling" from Mills' hearing.

ineligible-juror claim merely because Simms did not object at trial — that is, because Simms 'remained silent.'").

As it is undisputed that a juror who had been convicted of a felony without restoration of rights was seated on the jury, and there is no issue of waiver here, the verdict was invalid and Carter is entitled to a new trial. See *Harris v. State*, 188 Ga. 745, 751(2) (4 SE2d 651) (1939) (where defendant did not know until after his trial that a juror was related to the prosecutor, holding that "[i]t cannot be said that the defendants in error have had their case tried; certainly not legally, and, although the verdict may be in accordance with the facts, and such as a lawful jury should have rendered, yet it is no verdict."); *Wright v. Davis*, 184 Ga. 846, 850-53 (193 SE 757) (1937) (new trial warranted where juror was a convicted felon, and no showing of lack of reasonable diligence by defendant or trial counsel for failing to object during trial).[5] See also OCGA § 15-12-40; Ga. Const. of 1983, Art. I, Sec. 1, Par. XI(a) ("The right to trial by jury shall remain inviolate.").

2. In light of our decision in Division 1, we do not address Carter's remaining enumerations of error.

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[5] Notably, the Court in *Embert* cited favorably to both *Harris* and *Wright*. *Embert*, 322 Ga. at 209(2)(a).

3. White also argues that the participation of the ineligible juror was reversible error. As mentioned above, the trial court granted White's request to adopt the portion of the transcript from Mills's new trial hearing pertaining to the ineligible juror issue. Thus, for the reasons set forth in Division 1, we conclude the trial court erred by failing to grant a motion for new trial on this ground.

4. In light of our decision in Division 3, we do not address White's remaining enumerations of error.

Judgments reversed. Barnes, P. J., and Hodges, J., concur.